

WHISTLEBLOWER POLICY

Endorsed by Board: 15 June 2020	Review Date: June 2023
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1. Introduction and Purpose

Leading Age Services Australia (**LASA**) is committed to transparency and to promoting a culture of honest and ethical behaviour. We are unwavering in our objective of building an environment in which individuals feel free to raise legitimate issues relating to our operations.

LASA's Whistleblower Policy (**Policy**) reinforces our commitment to providing a safe and confidential environment where concerns regarding wrongdoing can be raised without fear of reprisals or victimisation and where individuals who disclose wrongdoing will be protected and supported.

A whistleblower is someone with inside knowledge of an organisation who reports misconduct or dishonest or illegal activity that may have occurred within that organisation.

This Policy outlines how disclosures will be dealt with and is an important tool for helping LASA identify wrongdoing that may not be uncovered unless there is a conducive environment for doing so. This Policy further serves to inform LASA's staff and stakeholders of the framework for receiving, handling and investigating disclosures.

A transparent policy is essential to good risk management and corporate governance and can assist in uncovering misconduct that may not otherwise be detected. Often, such wrongdoing only comes to light because individuals (acting alone or together) are prepared to disclose it, sometimes at great personal and financial risk.

Whistleblower policies help:

- provide better protections for individuals who disclose wrongdoing;
- improve the whistleblowing culture of entities and increase transparency in how entities handle disclosures of wrongdoing;
- encourage more disclosures of wrongdoing; and
- deter wrongdoing, promote better compliance with the law and ethical culture, by increasing awareness that there is a higher likelihood that wrongdoing will be reported.

2. Scope

The Corporations Act 2001 and the Taxation Administration Act 1953 (collectively **Legislation**) provide a consolidated whistleblower protection regime for Australia's corporate sector and contain protections for whistleblowers. The Australian Securities and Investments Commission (**ASIC**) applies the whistleblower protection provisions to various corporate entities including companies limited by guarantee such as LASA.

Charities that are companies registered with ASIC (such as LASA) must comply with this Legislation.

This Policy applies to LASA and its subsidiaries, LASA Directors, employees, contractors and volunteers. It also applies to LASA stakeholders, including Members, Affiliates and members of the public and ensures they are fully aware of the process to follow and the procedures that will be undertaken should a disclosure be made.

3. Definitions

Detrimental conduct: conduct, or a threat to engage in conduct, that causes detriment to the discloser. This can include dismissal, injury to employment, alteration of position or duties, discrimination, harassment or intimidation, harm or injury (including psychological harm), damage to property, reputation and business or financial position.

Disclosable matter(s): means the disclosure of the types of wrongdoings as set out in section 4 below to which the whistleblower protections apply.

Discloser: an individual who discloses wrongdoing or an eligible whistleblower.

Disclosure: a disclosure of information relating to wrongdoing or a disclosable matter. A qualifying disclosure involves reporting conduct that represents misconduct, an improper state of affairs or circumstances, or breach of the law.

Eligible recipient: an individual who can receive a disclosure or a delegate appointed by the eligible recipient.

Eligible whistleblower: an individual to whom the whistleblower protections apply, including LASA Directors, employees, contractors, volunteers, Members, Affiliates and members of the public and relates to a disclosure to ASIC, Australian Charities and Not-for-profits Commission (ACNC), the Australian Prudential Regulation Authority (**APRA**), the Commissioner of Taxation, the Ombudsman, a prescribed Commonwealth authority, a Member of Parliament, a legal practitioner or to LASA's eligible recipient and the eligible whistleblower has reasonable grounds to suspect that the disclosed information concerns a disclosable matter.

Emergency disclosure: the disclosure of information to a journalist or parliamentarian, where the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment.

Misconduct: includes fraud, negligence, default, breach of trust and breach of duty.

Personal work related grievance: a disclosure which relates to the discloser's current or former employment, which has implications for the discloser personally, but does not have any other significant implications for LASA.

Reasonable grounds: based on the proposition that a reasonable person would also suspect the information you are disclosing concerns misconduct, an improper state of affairs or circumstances or a breach of the law.

Whistleblower: a discloser who has made a disclosure that qualifies for protection and is someone with inside knowledge of an organisation who reports misconduct or dishonest or illegal activity that may have occurred within that organisation.

Whistleblower Investigation Officer: the LASA officer responsible for investigating disclosures.

Whistleblower Protection Officer: the LASA officer responsible for protecting or safeguarding discloser(s) and ensuring the integrity of the reporting mechanisms.

4. Matters to which the Policy applies

This Policy applies to the following types of wrongdoing:

- Misconduct, including fraud, negligence, default, breach of trust and breach of duty;
- Illegal conduct, such as theft, violence or threatened violence and criminal damage against property;
- Fraud, money laundering or misappropriation of funds;
- Offering or accepting a bribe;
- Financial irregularities;
- Failure to comply with, or breach of, legal or statutory requirements; and/or
- Engaging in or threatening to engage in detrimental conduct against a person who has made, or is believed or suspected to have made, or to be planning to make, a disclosure.

Disclosable matters which indicate a significant risk to public safety would constitute a disclosable matter even if it does not involve a breach of a particular law.

A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

Matters which are not disclosable matters do not qualify for whistleblower protections. This Policy is not intended to cover personal work related grievances or staff complaints about other staff. A personal work related grievance may qualify for protection if it includes information about misconduct, breach of employment or other laws (punishable by imprisonment for 12 months or more) or relates to conduct that is a danger to the public.

Staff grievances are dealt with via an established process overseen by the Manager People, Culture & Safety.

Furthermore, an eligible whistleblower will only be protected if they have objectively reasonable grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of the whistleblower protections scheme.

The protections under the whistleblower protection scheme will not extend to vexatious or deliberately false complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for LASA to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

5. Who can receive a Disclosure

LASA's Chief Executive Officer (**CEO**), acts as the eligible recipient. Disclosures should be made to the eligible recipient to qualify for protection as a whistleblower. This role at LASA is also described as the Whistleblower Investigation Officer.

6. Making a Disclosure

6.1. How to make a disclosure

Disclosures can be made in writing to the Whistleblower Investigation Officer who also has the discretion to initiate an investigation process arising from a verbal disclosure if the discloser does not wish to make a written disclosure. If the disclosure is about the CEO, the disclosure should be made directly to LASA's Chairman who in this instance will be the applicable Whistleblower Investigation Officer.

A disclosure may be made anonymously, however disclosers should be aware that if LASA is unable to validate a disclosure or seek further information to progress a disclosure, the disclosure may not be able to be fully investigated.

The discloser may choose to remain anonymous during and after the investigation, and they may also decide to not answer questions that they feel could reveal their identity at any time, including during follow-up conversations.

However, the discloser will be encouraged to make available communication channels to enable feedback. A discloser may also request to be given a pseudonym for the purposes of the disclosure and investigation.

Disclosures should be made to:

The Whistleblower Investigation Officer (marked private and confidential)
Leading Age Services Australia Ltd

By post: First Floor, Andrew Arcade
42 Giles Street
KINGSTON ACT 2604

By email: CEO@lasa.asn.au

If the disclosure is about the CEO, the disclosure should be made directly to LASA's Chairman.

By post: Dr Graeme Blackman AO (marked private and confidential and to be opened only by the addressee)
Level 2, 176 Wellington Parade
EAST MELBOURNE VIC 3002

By email: chairman@lasa.asn.au

Disclosures may also be made directly to regulatory bodies or other external parties (such as journalists and parliamentarians) about a disclosable matter which qualifies for protection without making a prior disclosure to LASA, particularly in relation to cases that pertain to organisational-wide behaviours or matters involving groups of Directors or a Director and the CEO. Disclosures may be made to a range of Commonwealth regulatory bodies including, but not limited, to ASIC, ACNC, APRA and the Ombudsman. Disclosures to a legal practitioner for the purposes of obtaining legal advice or representation are also protected under Legislation.

6.2. Public interest and emergency disclosures

A public interest disclosure can be made to a journalist or a parliamentarian when 90 days has elapsed since the disclosure was made to ASIC, APRA or another Commonwealth body and the discloser does not have reasonable grounds to believe that action is or has been taken about the disclosure.

If the discloser believes there is a public interest in making a further disclosure, they must give written notice to the body to which the disclosure was made originally ensuring there is sufficient information to identify the disclosure and to advise the body that there is an intention to make a public interest disclosure.

An emergency disclosure applies where a disclosure has been made to ASIC, APRA or another Commonwealth body and the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment.

As with a public interest disclosure, they must give written notice to the body to which the disclosure was made originally ensuring there is sufficient information to identify the disclosure and to advise the body that there is an intention to make an emergency disclosure. The extent of the information disclosed should be no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

7. Protections for Disclosers

7.1. Legal Protections for disclosers

Important protections relating to confidentiality and detriment apply to eligible whistleblowers who report disclosable matters in accordance with this Policy. Protection applies to internal disclosures and disclosures to external bodies and legal practitioners.

A discloser is protected from civil (includes any legal action against a discloser for breach of an employment contract, duty of confidentiality or another contractual obligation), criminal (includes attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution) and administrative liability (includes disciplinary action for making a disclosure).

Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under this Policy. Unless the eligible whistleblower consents, it is against the law for a person to disclose an eligible whistleblower's identity or any information that may lead to their identification.

LASA takes the protection of an eligible whistleblower's identity seriously and ensures:

- maintaining mechanisms to reduce the risk that the eligible whistleblower will be identified from the information contained in a disclosure (such as redactions or referring to the person in gender neutral terms etc.);
- maintaining mechanisms for secure record-keeping and information-sharing processes and limiting access to records and information; and
- reminding each person (as appropriate) who is involved in handling and investigating a disclosure about the confidentiality requirements, including that an unauthorised release of an eligible whistleblower's identity may be a criminal offence.

If an eligible whistleblower's disclosure qualifies for protection set out in this Policy, it is likely that the eligible whistleblower will be asked to provide consent to the disclosure of their identity or information that is likely to lead to their identification.

This would be to facilitate any investigation and/or resolution of the matter. If consent is withheld, it may not be possible to adequately investigate and respond (if at all) to the disclosure.

If there is a breach of confidentiality, an eligible whistleblower can lodge a complaint with the eligible recipient or a regulator such as ASIC or APRA for investigation.

Furthermore, LASA will put in place measures to protect a discloser or any other person from detriment in relation to the disclosure through the appointment of a Whistleblower Protection Officer who will work with the Whistleblower Investigation Officer to ensure that protection is being appropriately afforded and actioned.

It may be necessary during the course of an investigation to take reasonable administrative action to protect an eligible whistleblower from detriment (e.g. changing the whistleblower's reporting line if the disclosure relates to a manager). Such conduct will not be detrimental conduct. Where such a circumstance arises, the Whistleblower Protection Officer will explain this clearly to the discloser.

A disclosure will also not prohibit LASA from managing (in the ordinary way) any separate performance issues that may affect the work of an eligible whistleblower.

The whistleblower protections also make it unlawful for a person to engage in conduct against another person that causes or will cause a detriment where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure.

Threats of detriments will also be unlawful if the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out.

Threats may be express or implied, conditional or unconditional. An eligible whistleblower (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

A whistleblower may be subject to disciplinary action if, in the course of investigating a disclosure, LASA determines that the eligible whistleblower was complicit in the misconduct or improper state of affairs or has otherwise acted in an improper way.

However, if an eligible whistleblower believes they have suffered detriment they can lodge a complaint with the eligible recipient or a regulator such as ASIC, ACNC or APRA for investigation.

A discloser can seek compensation and other remedies through the courts if they:

- Suffer loss, damage or injury because of a disclosure; and
- LASA has failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

LASA strongly encourages Disclosers to seek independent legal advice.

7.2. Support and practical protection for disclosers

The Whistleblower Protection Officer will discuss with the discloser the measures that will be put in place to protect their identity.

In practice, it is important to recognise that an eligible whistleblower's identity may still be determined if the eligible whistleblower has previously mentioned to other people that they are considering making a disclosure, the eligible whistleblower is one of a very small number of people with access to the relevant information or the disclosure related to information that an eligible whistleblower has previously been told privately and in confidence.

LASA will protect the identity of the discloser by redacting all personal information, or information which may identify the discloser. A discloser will be referred to in gender neutral terms.

The Whistleblower Protection Officer will undertake a risk assessment to understand the risk of detriment to the discloser and put in place mechanisms with them to control any risks identified. The identity of disclosers may be made by exception to ASIC, APRA, Australian Taxation Office or the Australian Federal Police; to a legal practitioner (for the purposes of obtaining legal advice or representation); or to a person or body prescribed by regulations or with the consent of the discloser.

A discloser may make a complaint to LASA for breach of confidentiality. A complaint may also be made to external organisations such as ASIC or a regulator.

8. Handling and investigation

8.1. Investigation process

In the first instance, the eligible recipient will assess whether the disclosure qualifies for investigation.

The disclosure will be passed to a Whistleblower Investigation Officer appointed by the eligible recipient who has been appropriately trained and who is independent of the discloser or the issue at hand.

An acknowledgement of receipt will be sent to the discloser which may include a request for further information to assist with the investigation. This acknowledgement will also provide information about the appointed Whistleblower Protection Officer.

Where the disclosure is made anonymously and qualifies for investigation, an investigation may still commence whilst recognising the limitations of being unable to respond to the discloser. The objective of the investigation is to determine whether there is sufficient evidence to substantiate or refute the matters reported.

Generally, if an investigation is required, LASA will determine:

- the nature and scope of the investigation;
- who should lead the investigation – including whether an external investigator is appropriate;
- the nature of any technical, financial or legal advice that may be required to support the investigation; and
- the anticipated timeframe for the investigation noting that LASA's intent is to complete an investigation as soon as practicable.

LASA may not be able to undertake an investigation, or provide information about the process etc. if it is not able to contact the eligible whistleblower, for example, if a disclosure is made anonymously and the discloser has not provided a means of contact.

8.2. *Fair treatment of employees or individuals*

LASA is committed to transparency and to building an environment in which people feel free to raise legitimate issues relating to LASA's operations. LASA is also committed to protecting eligible whistleblowers from detriment.

When a qualifying disclosure is made, LASA will reiterate the requirements of this Policy to relevant individuals to ensure the protections are not undermined. Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against an eligible whistleblower.

In addition, LASA's usual Employee Assistance Program services will be available to all whistleblowers and other employees affected by the disclosure, should they require that support.

LASA may also consider a range of other matters to protect an eligible whistleblower from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure. These could include:

- Assessing whether anyone may have a motive to cause detriment.
- Analysing and evaluating the likelihood of risk and evaluating the severity of the risk.
- Developing and implementing strategies to prevent or contain the risks.
- Monitoring and reassessing the risk of detriment where required.
- Assisting the eligible whistleblower by providing support services.
- Undertaking protecting interventions where detriment has already occurred.

If the disclosure mentions or relates to employees of LASA other than the eligible whistleblower, LASA will take steps to ensure that those individuals are treated fairly. Typically, this would include giving those persons an opportunity to respond to the subject matter of the disclosure having regard to principles of procedural fairness.

8.3. *Keeping the discloser informed*

Where practicable, LASA will keep the eligible whistleblower informed of the steps taken or to be taken (or if no action is to be taken, the reason for this), and provide appropriate updates, including about the completion of any investigation. The frequency and timeframe of any updates may vary depending on the nature of the disclosure.

However, the extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors LASA considers relevant in the particular situation.

An estimate of the scope and timescale of the investigation will be shared with the discloser and the proposed communication and reporting plan.

8.4. *Reporting findings*

A report will be made to the discloser on the outcome of the investigation. The findings may be limited due to the nature of the disclosure and there may be circumstances where it may not be appropriate to provide details of the outcome of the investigation.

A redacted report will be made available to the Board to maintain oversight of issues and the efficacy of the Policy.

8.5. *Management of documentation*

All papers and electronic documents will be stored, used and shared securely. Access to this information and the identity of the discloser will be limited to those directly involved in managing and investigating the disclosure. These staff will be reminded of their confidentiality obligations. The email address for receipt of disclosures will be limited to the eligible recipient

All documentation in relation to the disclosure, investigation and reports will be held on a secure, password protected area of LASA's IT network infrastructure.

9. Policy Communication and Review

9.1. Policy availability and communication

This Policy will be available on the LASA website and the internal staff intranet (Confluence). This Policy will be included in the induction pack for all new Directors and staff. Annual updates on the Policy will be included in all staff webinars.

9.2. Policy review

This Policy will be reviewed by the Board of Directors every three years or at any other time as required or as determined by the Board.