



Organisation Management

## **C.20 Whistleblowing policy**

REVIEWED: August 2024

## C.20 Whistleblowing policy

The purpose of the Whistleblowing policy (the policy) is to encourage and support reporting of actual and suspected act(s) of unethical, illegal or serious wrongdoing ('reportable conduct').

At Mercy Services we are committed to providing a safe and supportive culture where individuals feel safe to speak up and make reports about matters of reportable conduct so that the organisation can maintain the highest standards of ethical behaviour and conduct at all times and meet its legislative requirements.

The policy is part of Mercy Services' broader risk management and corporate governance framework.

This policy has been developed in accordance with the relevant legal requirements and current best practices relating to the protection of whistleblowers applicable to the Aged Care industry and not for profit entities.

This policy aims to:

- provide guidance on the appropriate use of the policy;
- ensure that Mercy Services complies with current legal and professional regulations and standards; and
- upholds the reputation of Mercy Services.

This policy relates to Mercy Services and its subsidiaries and applies to all current and former board members, senior executives, management, supervisors, employees, secondees, contractors, suppliers (or their employee or subcontractor) and volunteers. It also applies to relatives, dependants or spouses of any of these people.

A person who makes a report of wrongdoing or misconduct under this policy is known as an 'eligible whistleblower'. An eligible whistleblower has legal rights under the Corporations Act and other legislation (for exemption, taxation legislation). This policy does not override those rights.

Further guidance on the application of this policy can be obtained from People and Culture.

### Record of policy development

Version	Date approved	Policy Changes
1.0	27/09/2021	Complete revision of policy and updating to new format/style
1.1	15/12/2022	Minor update to whistleblowing contact details and Board contacts
2.0	14/11/2024	Revised to align with organisational position, processes and template. Revision of terminology in line with legislation.

Responsibilities and delegations	
This policy applies to	Staff and volunteers
Specific responsibilities	Governance Committees, Head of Risk & Compliance, Quality, Clinical & Safety Advisor
Policy approval	Risk & Continuous Improvement Committee with Board endorsement

Policy context – this policy relates to:	
Standards	NDIS Practice Standards Aged Care Quality & Safety Standards
Legislation	<i>Corporations Act 2001</i>
Contractual obligations	N/A
Organisation policies	A.03 Code of Conduct, C.06 Risk Management Policy, C.08 Managing Performance, C.12 Bullying Harassment and Discrimination, C.13 Incident Management Policy; C.14 Grievance Procedure, E.08 Complaints & Feedback Policy; E.15 Privacy Policy, E.23 Safeguarding Policy, MCSAL-P-003 Complaints Policy
Forms, record keeping, other documents	Quality reviews, Continuous Improvement Register

## Definitions

In the context of this document:

**Detrimental conduct** includes any reprisal, discrimination, harassment, victimisation, retaliation or threats of retaliation against a person making a report or disclosure. This may include dismissal, suspension or demotion; alteration of a person’s position or duties to their disadvantage; disciplinary action; harassment or intimidation; discrimination; harm (including psychological harm) or injury; damage to a person’s reputation; or damage to the person’s property, business or financial position.

**Eligible public recipient** is a person that is a member of Commonwealth Parliament, a member of State Parliament, a member of the legislature or a journalist.

**Eligible whistleblowers** means all current and former board members, senior executives, management, supervisors, employees, secondees, contractors, suppliers (or their employee or subcontractor) and volunteers who make a report of ‘reportable conduct’, make a report to an ‘eligible receipt’ and have reasonable grounds to suspect that the reportable conduct has taken place. It also applies to relatives, dependents or spouses of any of these people.

**Whistleblower Protection Officer (WPO)** is the Executive Governance - Legal and Risk or a person appointed by that Executive.

## Link to Mercy Services values

This policy aligns with the following Mercy values in its implementation and practice through:

**Justice** – ensuring Mercy Services acts with integrity, fairness, and honesty in responding to and managing reports of misconduct or harm. Mercy Services is committed to fostering a culture where it is safe to speak up and be a whistleblower and will protect whistleblowers in accordance with their legal responsibilities to do so.

**Respect** – promotes the dignity of everyone through its emphasis on openness, integrity and honesty in our practice, regardless of an individual’s position, background, beliefs, ethnicity, diversity or preferences.

**Unity** – this policy promotes unity through creating an inclusive culture that respects and acknowledges the rights of those working at Mercy Services to support an environment where everyone works together to further the mission.

## Whistleblowing

Mercy Services encourage individuals who are eligible whistleblowers to speak up and report any actual or suspected act(s) of unethical, illegal or serious wrongdoing (‘reportable conduct’). Mercy Services are committed to fostering a culture where it is safe to speak up and be a whistleblower. When individuals speak up about matters of reportable conduct under this policy, Mercy Services will protect them in accordance with their legal responsibilities to do so.

### What can be reported?

Matters considered to be **reportable conduct** may be reported under this policy. This includes any past, present or likely future activity which:

- is dishonest, corrupt or unethical.
- involves theft, fraud, money laundering or misappropriation of funds.
- is a systemic, wilful or serious breach of the law as it relates to Mercy Services, or its internal policies or processes.
- involves offering or accepting a bribe from a person.
- is illegal (for example, illicit drug sale or use, violence or threatened violence, or criminal property damage).
- presents a significant or serious threat to the health and safety of workers.
- involves a serious mismanagement of Mercy Services’ resources.
- involves victimisation of someone for reporting reportable conduct.
- involves any instruction to cover up or attempt to cover up serious wrongdoing.
- interferes with any impending internal or external audit processes.
- presents a serious risk to the reputation or financial wellbeing of Mercy Services.

In circumstances where Mercy Services is engaged under Federal or State Government contracts, reportable conduct may extend to include ‘**disclosable conduct**’. Disclosable conduct is conduct that:

- perverts or attempts to pervert the course of justice;

- constitutes maladministration (that is, conduct that breaks the law, is unreasonable, unjust or improperly discriminatory, or based wholly or partly on improper motives);
- is an abuse of public trust;
- results in the wastage of any public money or money held by the Commonwealth/a corporate Commonwealth entity;
- results in the wastage of any property (other than money) that is owned by or held by the Commonwealth/a corporate Commonwealth entity; or
- results in danger or a risk of danger to the environment.

### What is **not** reportable conduct

This policy is **not** intended to apply to disclosures relating to conduct concerning a person's individual employment (other than as outlined as reportable conduct) including, but not limited to, personal or work-related grievances concerning:

- alleged bullying, harassment or discrimination.
- disciplinary matters.
- disputes between staff.
- work health and safety matters.
- alleged concerning conduct/behaviour (other than as outlined as reportable conduct) of a worker.
- engagement, transfer or promotion of staff.

These matters are **not** deemed to be reportable conduct and will typically be investigated and/or addressed separately under other organisational policies such as *A.03 Code of Conduct*, *C.12 Bullying, Harassment and Discrimination Policy*, *C.08 Managing Performance Policy* and *C.14 Grievance Procedure*. Any individual who has concerns about matters such as these must refer to one of these applicable policies or contact People and Culture.

This policy is also **not** intended to apply to reporting:

- client/resident complaints other than as outlined as reportable conduct. For such concerns please refer to Mercy Services' *E.08 Complaints & Feedback Policy*.
- concerns involving vulnerable people (including children and young people), other than as outlined as reportable conduct. To respond to such concerns please refer to Mercy Services' *E.23 Safeguarding Policy*.

Reports that do not fall under or relate to reportable conduct will be handled under separate relevant organisational policies.

## How to speak up as a whistleblower

### Before making a whistleblower report

Before making a whistleblower report, an eligible whistleblower or other person should satisfy themselves that they are aware, have knowledge of, or have 'reasonable grounds' to suspect, that someone has, or will commit reportable conduct. 'Reasonable grounds' is based on the objective reasonableness of the reasons for the suspicion. In practice, a mere allegation with no supporting information is unlikely to reach that standard.

## Who to make a whistleblower report to

Individuals are encouraged to speak up and disclose any suspected or actual wrongdoing or illegal activity (reportable conduct) via Mercy Services' independent and externally managed whistleblowing hotline called the Speak Up Integrity Hotline. The Speak Up Integrity Hotline is a hotline available for eligible whistleblowers to make reports and disclosures concerning reportable conduct via telephone, online or email, 24 hours a day, 7 days a week and is run by Core Integrity. This service can be contacted by:

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<b>Contact Details</b>	
<b>Telephone:</b>	1800 324 775
<b>Email:</b>	<a href="mailto:speakup@coreintegrity.com.au">speakup@coreintegrity.com.au</a>
<b>Online:</b>	<a href="https://ispeakup.co/mercyservices">https://ispeakup.co/mercyservices</a>

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To qualify for protection as an eligible whistleblower an individual is required to make a report of reportable conduct to an eligible recipient. Core Integrity via their Speak Up Integrity Hotline are an eligible recipient.

Eligible whistleblowers and other persons may also make disclosures in limited circumstances, including to a Regulator (e.g. Aged Care Quality & Safety Commission), or when making an emergency or public interest disclosure. Before making such a disclosure Mercy Services recommend the eligible whistleblower or other person seek independent legal advice to understand the criteria for making such a disclosure.

Mercy Services has a second eligible recipient that individuals may also contact to make a report. This secondary eligible recipient is MyKludo, an independent organisation located in Sydney NSW not affiliated with Core Integrity. MyKludo have been engaged to undertake the role of Whistleblower Protection Officer (WPO) for Mercy Services. Once a report is made to MyKludo, via either of the methods above, they will direct it to the most appropriate person within Mercy Services so that an investigation can take place. Depending on the nature of the report, following an informed examination of the matter, an appropriate person within Mercy Services could be one, or a combination of, the following:

- General Manager, Risk and Operations
- General Manager, People and Culture
- Chief Executive Officer
- Chair of the MCSAL Board
- Chair of the MCSAL Quality, Safety & Research Committee

An eligible whistleblower may also make a disclosure of reportable conduct to a member of parliament or a journalist in exceptional or 'emergency' situations; however, Mercy Services encourage individuals to report to Mercy Services in the first instance, where practicable.

## What should be included in the Speak Up Integrity Hotline report?

Eligible whistleblowers or other persons should include as much detailed information as possible so that the report can be investigated.

Useful details include:

- date, time and location of the matter;



- names of person(s) involved, roles and their business group;
- your relationship with the person(s) involved;
- the general nature of your concern;
- how you became aware of the issue/situation;
- possible witnesses; and
- any other information you have to support your report.

### **Can a Speak Up Integrity Hotline report be made anonymously?**

Yes, an eligible whistleblower or other person can choose to make their report or disclosure anonymously. However, if the individual chooses to remain anonymous, maintaining anonymity may make it more difficult for Mercy Services to practically investigate the issue or take the action it might like to take. A person reporting should therefore include as much detailed information as possible so that the report/disclosure can be investigated. Ideally, it is preferred that those making a report or disclosure identify themselves, so that Mercy Services can contact them directly to discuss their concerns. It will also permit Mercy Services to investigate the situation more quickly and efficiently, as well as assist the individual by supporting them and answering any questions or concerns they might have about the process.

It is also important to note that on occasion, the nature and content of the report/disclosure itself may inadvertently give the identity of the reporting person away. Individuals making a report/disclosure need to also consider this when wanting to maintain their anonymity.

### **Confidentiality**

Mercy Services will treat all reports, and confidential information acquired in the course of investigating a report, with the strictest confidence. Subject to compliance with legal requirements, Mercy Services will only disclose the identity of the person who made the report, or any other information that is likely to lead to the identification of that person, with their prior consent or in the limited circumstances listed below.

In limited circumstances, Mercy Services may need to disclose the identity of the person making the report without their consent to certain third parties, including:

- Mercy Services' lawyers.
- the Australian Charities and Not-for-profits Commission.
- the Australian Federal Police/NSW Police Force.
- the Commonwealth Ombudsman (where we are engaged under a relevant Federal Government Contract).
- the Aged Care Quality & Safety Commission or the NDIS Quality & Safeguards Commission.
- any third party where the investigating authority, public authority, officer or public official is of the opinion that disclosure of your identity is necessary to investigate the matter effectively, or it is otherwise in the public interest to do so (where Mercy Services is engaged under a relevant Federal or State Government contract).

### **Protection from detrimental conduct**

Mercy Services understands that the decision to make a report for eligible whistleblowers can be a difficult one to make. Accordingly, Mercy Services is committed to ensuring any person feels safe in making a report. When a report in relation to reportable conduct is made, the

identity of the person making the report will remain confidential and the person will be protected from detrimental conduct for making the report.

Under this policy, any detrimental conduct against a person reporting reportable conduct will be treated as a serious wrongdoing. These protections will apply even where it is subsequently determined that the report was mistakenly made or not substantiated.

If a person makes a report and subsequently faces any kind of detrimental conduct, they are encouraged to notify the Speak Up Integrity Hotline immediately and they will ensure that the matter is referred to the WPO. The WPO will then liaise with the most appropriate person within Mercy Services to ensure the matter is investigated promptly. If a person is found to have disadvantaged or retaliated against a person because of their submission of a report, that will be grounds for disciplinary action, up to and including possible termination of employment.

Mercy Services understands that there may also be some serious repercussions for individuals who are mentioned in a report. Accordingly, Mercy Services will ensure their fair treatment and will extend the protections stated above to these individuals where appropriate.

### **False or misleading/vexatious reports/disclosures**

When making a report/disclosure, individuals are expected to have reasonable grounds to suspect the information being reported/disclosed is true. A report/disclosure cannot be made if it is knowingly not true or misleading. In addition to this, a report/disclosure cannot be made if it is baseless and/or made with an adverse primary intent to cause distress, detriment or harassment to the subject of the claim. In circumstances such as these, such actions would be considered a breach of Mercy Services' Code of Conduct and will be considered a serious matter that may result in disciplinary action, up to and including possible termination of employment. There may also be legal consequences if a person makes a knowingly false or misleading report.

### **Responding to reportable conduct**

The Speak Up Integrity Hotline will assess all reports that are received through the various channels and will determine whether the matter falls under this policy.

If the matter is deemed to fall under this policy, the Speak Up Integrity Hotline will forward the matter to the WPO who will make a second assessment to ensure the report falls under this policy.

If the Speak Up Integrity Hotline and/or WPO determine that a report does not fall under or relate to reportable conduct, they will advise the person making the report and refer them to the most appropriate organisational policy that relates to their concern. The person making the report will then be required to follow the specified actions held within that policy to have their matter heard.

### **Investigating reportable conduct**

Any individual who makes, or is the subject of, a report is encouraged to contact Mercy Services' Employee Assistance Program (EAP) for support if required.



A report made that is assessed as falling within this policy will be investigated and the WPO will refer the matter to the most appropriate person within Mercy Services for this to occur.

Mercy Services will then determine whether the matter will be investigated internally or whether an external investigator is required, which will depend on the nature of the report. While the particular circumstances of each report may require different investigation steps, all investigations will:

- follow a fair process;
- be conducted as quickly and efficiently as the circumstances permit;
- determine whether there is enough evidence to substantiate the matters reported; and
- be independent of the person(s) concerned with the allegations.

Feedback will be provided to the person who made the report/disclosure, as appropriate, on the progress and expected timeframes of the investigation.

The investigator will conduct the investigation as soon as practicable and will ensure it is fair and independent from any persons to whom the disclosure relates.

### **Fair treatment of individuals mentioned in a report**

Within the investigation process outlined in this policy, Mercy Services will allow fair treatment of any individuals mentioned in the report/disclosure, including:

- handling any report/disclosure confidentially;
- matters reported will be assessed and may be subject to an investigation;
- there will be a presumption of innocence until the outcomes of the investigation is determined; and
- the purpose of the investigation is to determine whether there is enough evidence to substantiate the matters reported.

### **What happens after an investigation?**

Mercy Services will notify the reporting person once an investigation has been completed. However, reporting person(s) need to be aware that Mercy Services may be unable to disclose particular details or the outcome of the investigation.

### **Public interest and emergency disclosure reporting**

Mercy Services encourages a person to make a report by contacting the Speak Up Integrity Hotline in the first instance where possible.

Reports made in public interest and emergency disclosure situations are also protected. Under these circumstances, reports can be made to an eligible public recipient. It is important that a person making a report understands the criteria for making a public interest or emergency disclosure and we suggest that independent legal advice is sought on the relevant requirements for these types of disclosures.

Reports made in the public interest are protected from detrimental conduct if a person:

- has already made a report to Mercy Services concerning reportable conduct (the 'initial report') and at least 90 days have lapsed since the initial report was made; and
- has no reasonable grounds to believe that action is being, or has been, taken to address the matters relating to the initial report; and

- has reasonable grounds to believe that making a further report would be in the public interest; and
- gives written notification to Mercy Services after the 90 days mentioned above have lapsed, that easily identifies the initial report and the intention to make a public interest report; and
- makes the public interest report to an eligible public recipient and the extent of the information reported is no greater than is necessary to demonstrate the misconduct or improper state of affairs or circumstances.

Reports made in emergency situations are protected from detrimental conduct if a person:

- has already made an initial report to Mercy Services; and
- has reasonable grounds to believe that the information in the initial report concerns a substantial and imminent danger to the health or safety of person(s) or the natural environment; and
- has given Mercy Services written notification that easily identifies the initial report and the intention to make an emergency report; and
- makes the emergency report to an eligible public recipient and the extent of the information reported is no greater than is necessary to inform the eligible public recipient of the substantial and imminent danger.

## Consequences

Breaches of this policy will be taken seriously and may result in disciplinary action, up to and including possible termination of employment.

## Expected outcome

Mercy Services has an effective tool to appropriately identify wrongdoing and a reporting mechanism that permits a safe and secure means for disclosure.