



# WHISTLEBLOWER PROTECTION POLICY

## DOCUMENT HISTORY, APPROVAL and REVIEW DETAILS

| Date         | Version | Author                                 | Owner     | Approved by  | Reason for Update |
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| October 2019 | 1.0     | General Manager, Finance and Corporate | Executive | NACCHO Board | New policy        |

|                |                 |                   |        |                  |                 |
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## 1 Purpose

As a Company Limited by Guarantee, NACCHO is governed by the requirements of the *Corporations Act 2001* (Corporations Act) and as such is required to have a Whistleblower Protection Policy (WPP) in place to inform its officers, employees and members of what are Disclosable Conduct/Matters and how these can be reported.

This policy will serve as a practical tool to help NACCHO identify wrongdoing and create a culture that encourages our people to speak up, in a safe and secure environment, to raise breaches of policy or other Disclosable Matters, and serve as an aid to NACCHO's risk management and corporate governance frameworks.

## 2 Scope

This policy applies to all past and present employees of NACCHO, its Board members and external suppliers (or their employees) and contractors who have transacted with NACCHO.

This policy also applies to a relative, dependent or spouse of an individual referred to above.

## 3 Policy Statement

NACCHO is committed to adhering to its statutory obligations, its policies and its values. NACCHO will provide a safe and supportive environment where people feel confident to raise breaches of NACCHO policies or other Disclosable Conduct/Matters.

NACCHO will treat all reports confidentially and ensure appropriate protection is provided to people who report a Disclosable Matter.

### 3.1 Disclosable Matters Covered by this Policy

Disclosable Matters covered by this policy include situations where the Discloser has reasonable grounds to suspect serious misconduct (Disclosable Conduct), or an improper state of affairs or circumstances, in relation to NACCHO. Misconduct is defined in the Corporations Act to include fraud, negligence, breach of trust and/or a breach of duty to act honestly and in the best interests of NACCHO and its members.

**Directors** of NACCHO has a duty under the *Corporations Act 2001* to exercise due care and diligence in undertaking their roles, to act in good faith and not misuse their position to benefit themselves or related parties or organisations, to ensure they are reasonably informed about matters for which they are making decision(s) and to at all times make decisions in the best interest of NACCHO. These obligations are outlined in the NACCHO Board Code of Conduct.

Obligations of **employees** to act honestly and with integrity, avoid conflicts of interest and make decisions that are in the best interest of NACCHO are contained within the Employee Code of Conduct.

Examples of Disclosable Conduct could include:

- A breach of a director or employee's duties to the organisation in relation to financial management and/or the *Corporations Act 2001*.
- Fraud, misappropriation of funds or offering or accepting a bribe
- Serious misuse of the organisation's resources
- Illegal conduct such as theft, dealing in or using illicit drugs, violent and/or criminal behaviours
- Engaging in, or threatening to engage in, detrimental conduct against a person who has made a disclosure or is suspected to be planning to make a disclosure
- Failing to declare a conflict of interest where decisions made could significantly benefit the decision maker or a related party.

### 3.2 Disclosable Conduct/Matters Not Covered by this Policy – Complaints and Grievances

Disclosable Conduct/Matters covered by this policy do not include a personal work related grievance of the discloser such as an interpersonal conflict between the discloser and another employee; a decision relating to the engagement, conditions of engagement, transfer or promotion of the discloser, or a decision to suspend or terminate the engagement of the Discloser.

Exceptions to this exclusion may include disclosures that will have significant implications for NACCHO going forward or directly relate to conduct by the employee which would be protected under relevant whistleblower legislation.

Other things which, on their own, would not be Disclosable Matters include:

- Complaints about levels of service received from the organisation
- A difference of opinion about a policy adopted by the organisation
- Disagreeing with a decision by the organisation to undertake particular activities that are not fraudulent, illegal or inconsistent with the purposes of the organisation.

### 3.3 Reporting a Disclosable Conduct/Matter

Everyone in the organisation has a role and responsibility in ensuring NACCHO is run ethically and in accordance with approved policies and procedures and relevant legislation.

Where matters related to breaches of NACCHO policies or Code of Conduct, or other Disclosable Conduct/Matters, are identified they should be raised as soon as possible.

### *Internal Reporting*

Sometimes a suspicion of wrongdoing may arise from a misunderstanding and is not wrongdoing. For this reason, identified or suspected breaches should be raised with the relevant manager (or Board Chair for concerns regarding Board members) in the first instance.

- Where a person has concerns about making a report, or the matter concerns their manager, reports can be made either anonymously or by identified person(s) to a nominated Whistleblower Protection Officer.

Where the relevant manager (or Board Chair) determines the identified breach is a Disclosable Matter the manager should refer this to a nominated Whistleblower Protection Officer.

The relevant officer who receives the initial report is responsible to providing feedback to the discloser on proposed actions to manage the report. Where the discloser believes the response to the matter raised is not appropriate the Discloser may refer this matter directly to the nominated Whistleblower Protection Officer.

All internal reports of Disclosable Conduct/Matters should be made on the NACCHO Reporting of Disclosable Conduct/Matters Form.

### *Role of A Whistleblower Protection Officer*

The role of a nominated Whistleblower Protection Officer is to consider all reports of Disclosable Conduct in accordance with procedures included at Attachment A to this policy. The Whistleblower Protection Officer may determine that a matter is of such a serious nature that it should be reported to an external authority. Instances where this may occur include significant fraud, criminal activity, breach of relevant legislation that cannot be remedied by NACCHO or some other matter where non-reporting would seriously jeopardise NACCHO as an entity.

### *External Reporting*

If your matter relates to Disclosable Conduct/Matters and it is not practical to report the matter within NACCHO in the first instance, you can report Disclosable Conduct/Matters to the relevant external agency. External agencies that can receive disclosures of information relating to Disclosable Matters include ASIC, APRA, Fair Work Australia, or another Commonwealth body, prescribed by Regulation, that qualifies for protection under the Corporations Act.

A public interest disclosure can be made to a journalist or parliamentarian under certain circumstances and qualify for protection – refer Section 1317AAD of the Corporations Act.

## **3.4 What Happens When You Report a Disclosable Matter?**

When you report a Disclosable Matter under this Policy, you should provide as much information as possible. Information such as dates, times, locations, individuals involved, other witnesses, physical evidence (eg documents, images) and any other general information may be helpful to assist NACCHO to determine how to take appropriate action

NACCHO will use the information you provide in assessing what course of action should be taken.

Examples of actions could include:

- A satisfactory explanation can be provided in relation to the matter
- The matter is resolved by speaking to one or more parties
- The matter is recorded and monitored going forward
- A decision is made to investigate further
- The matter is referred to another agency for further action

## 3.5 Protections Available When Reporting a Disclosable Matter

### 3.5A. CONFIDENTIALITY

Where an Eligible Whistleblower makes a Disclosure relating to the breach of NACCHO policies or another Disclosable Matter, their details and information provided will be treated in the strictest confidence. NACCHO will only share the information provided on a “need to know” basis with those staff within the organisation who are involved in investigating the matter raised. However, there may be certain times where the organisation is required by law to share these details.

NACCHO is legally obligated to protect the identity of the Eligible Whistleblower (Discloser) unless reporting the matter to ASIC, APRA or the Australian Federal Police, or the Discloser consents to their identity being disclosed.

### 3.5B. PROTECTION AGAINST REPRISALS OR DISADVANTAGE

NACCHO is committed to ensuring that staff and/or Directors who raised a matter under this Policy are provided support and protection from reprisal or personal or financial disadvantage because of making that report.

This will be achieved by ongoing monitoring of how the relevant whistleblower is treated, protecting the identity of the whistleblower, and maintaining strict confidentiality around information provided.

Reprisal or detrimental conduct against a person is prohibited by law. Examples of this type of conduct could include:

- a) Dismissal of an employee
- b) Injury of an employee in his/her employment
- c) Alteration of an employee’s position or duties to his disadvantage
- d) Harassment or intimidation of a person
- e) Damage to a person’s property or reputation
- f) Any other damage to a person

### 3.5C COMPENSATION AND OTHER REMEDIES

A person may be entitled to compensation or other remedies through the Court if they suffer loss, damage or injury because of the Disclosure and NACCHO fails to prevent a person from causing the detriment.

### 3.6 Legal Advice

While an Eligible Whistleblower is protected from civil, criminal and administrative liability resulting from making a Disclosure, anyone considering making a Disclosure under this policy is encouraged to obtain independent legal advice prior to doing so. These protections do not grant immunity for any misconduct the Discloser has engaged in that may be revealed in their Disclosure.

### 3.7 Investigating a Disclosable Conduct/Matter

Upon receipt of a report of a Disclosable Matter the nominated Whistleblower Protection Officer will within three (3) business days review the information provided and determine if it falls within this Policy, and if a formal investigation is required. Further guidance on this is included at Attachment A to this policy.

The nominated Whistleblower Protection Officer will advise the Discloser of the outcome of this review, including advice as to whether the matter is to be pursued.

All reports of Disclosable Matters shall be reported to the NACCHO Board and Audit and Assurance Committee as soon as practicable. Dependent upon the seriousness of the report this may occur 'out of session'.

## 4 Roles and Responsibilities

|   |   |
|---|---|
| NACCHO Board                                    | Ensure NACCHO has a robust Whistleblower Protection Policy in place and staff are aware of this. Actively monitor this policy through regular reporting.  |
| CEO/Deputy CEO                                  | Create a strong governance culture within NACCHO, promulgate NACCHO's Whistleblower Protection Policy to all eligible whistleblowers; receive reports of Disclosable Matters where appropriate, determine further action to be taken.   |
| Whistleblower Protection Officer                | Person appointed by NACCHO to receive and investigate reports of Disclosable Matters, determine appropriate courses of action, provide reporting to Audit and Assurance Committee/NACCHO Board and external bodies as required.<br>Maintain a confidential register of all disclosable matters reported, including outcomes of investigations undertaken and actions implemented. |
| Eligible Whistleblower (Discloser)              | Report Disclosable Matters to an eligible recipient/whistleblower protection officer  |
| Managers/Supervisors                            | Act as first point of contact for reporting Disclosable Matters, determine if information reported is a Disclosable Matter and if so, escalate to Whistleblower Protection Officer for further action; advise whistleblower of action to be taken.  |
| Employees                                       | Act with integrity at all times in accordance with NACCHO's Code of Conduct   |
| Independent Audit and Assurance Committee Chair | Receive reports of Disclosable Conduct/Matters regarding the Board, NACCHO CEO or Deputy CEO.   |
| Audit and Assurance Committee                   | Provide assurance to the NACCHO Board that this policy is being effectively managed through regular monitoring of whistleblower reporting and outcomes.   |

## 5 Applicable Forms and Templates

NACCHO Reporting of Disclosable Conduct/Matters Form

## 6 Related Internal Policies and Procedures

NACCHO Employee Code of Conduct

NACCHO Board Charter and Code of Conduct

Whistleblower Protection Officer Procedures

## 7 Related External Reference Documents/Legislation/Additional Guidance

*Corporations Act 2001*

*Whistleblowers Protection Act 2019*

ASIC website – [asic.gov.au](http://asic.gov.au)

## 8 Definitions

| Term                   | Definition  |
|------------------------|---|
| ACNC                   | Australian Charities and Not-for Profit Commission  |
| APRA                   | Australian Prudential Regulatory Authority  |
| ASIC                   | Australian Securities and Investment Commission   |
| Discloser              | Person making the complaint/providing information re wrongdoing. Must be an eligible whistleblower to qualify for protection under this policy.   |
| Disclosable Conduct    | Misconduct as defined by the <i>Corporations Act 2001</i> . Disclosable conduct may give rise to, or become, a Disclosable Matter   |
| Disclosable Matter     | Misconduct, or an improper state of affairs of the regulated entity where the discloser has reasonable grounds to believe the regulated entity, officer or employee has engaged in conduct that constitutes a contravention of relevant legislation, including the <i>Corporations Act 2001</i> , represents a danger to the public or the financial system, or is prescribed by Regulations made under Section 1364 the <i>Corporations Act 2001</i> . |
| Eligible Recipient     | An officer or senior manager of NACCHO, NACCHO auditor(s), a person authorised by NACCHO to receive disclosures   |
| Eligible Whistleblower | Past and present employees of NACCHO, its Officers and external suppliers (or their employees) and contractors who have transacted with NACCHO.   |
| Officer                | A person who makes decisions that affect the whole, or substantial part of, the activities of a business; or has the capacity to affect significantly the company's financial position.   |
| Regulated Entity       | A company registered under the <i>Corporations Act 2001</i>   |

## WHISTLEBLOWER PROTECTION OFFICER

### PROCEDURES FOR MANAGING REPORTS

It is important to note that not all reports received will relate to a Disclosable Matter and as such may not qualify for protection under relevant legislation.

A disclosure of information will only be a Disclosable Matter if

- It is made by an Eligible Whistleblower,
- It is made to a nominated Whistleblower Protection Officer and
- The information tends to show, or the Discloser believes on reasonable grounds that the information tends to show, one or more instances of "Disclosable Conduct: and defined in the *Corporations Act 2001*.

#### Authorised Officers

People occupying the following positions will be authorised to act at Whistleblower Protection Officers for the purposes of this policy. This list will be maintained by the General Manager, Finance and Corporate and may be updated by authorisation of the NACCHO CEO from time to time.

1. *For reports related to Board members/CEO/Deputy CEO:*

- NACCHO Board Chair or
- Independent Chair NACCHO Audit and Assurance Committee

2. *For reports relating to NACCHO staff members or external suppliers:*

- NACCHO Deputy CEO or
- General Manager, Finance and Corporate

#### Disclosure to a Manager

If a person discloses information to their manager and the manager has reasonable grounds to believe that the information relates to, or could relate to, Disclosable Conduct the manager must pass the information to the relevant Whistleblower Protection Officer (WPO).

If the manager determines the report does not qualify as a protected Disclosure, or the information provided is the result of a misunderstanding, the manager shall notify the Discloser of this decision within 3 business days, and also advise the Discloser they can refer the matter directly to the WPO.

#### Confidentiality

The Whistleblower Protection Officer, and manager where applicable, must take all reasonable steps to protect the confidentiality of the person making a report regarding a Disclosable Matter.

It is an offence to disclose information that could lead to identification of the Discloser, unless reporting the matter to ASIC, APRA or the Australian Federal Police, or the Discloser consents to their identity being disclosed.

### **Initial Consideration of Disclosure**

Upon receipt of a report the WPO must, within 3 business days, consider the information disclosed and determine if the disclosure falls within NACCHO's Whistleblower Protection Policy and applicable legislation.

The WPO must advise the Discloser of their decision and the proposed next steps, which may include formal investigation of the information provided.

### **Risk Assessment**

Upon receipt of a report regarding a Disclosable Matter, the WPO shall undertake a documented risk assessment regarding the likelihood of reprisal against the Discloser and the impact on the Discloser should this occur. Where this risk is assessed as greater than low risk, a risk management strategy should be implemented.

At all times support should be provided for the Discloser, and the possibility of reprisal occurring monitored.

### **Formal Investigation**

If the WPO is satisfied the Disclosure relates to a Disclosable Matter and, on the basis of information provided, there are reasonable grounds to believe Disclosable Conduct has occurred, the WPO shall initiate a formal investigation of the matter. In determining this the WPO shall determine:

#### *1. The nature and scope of the investigation*

The WPO shall determine if the Disclosable Matter is one that can be managed within other NACCHO policies and procedures, eg Fraud Control Plan, Code of Conduct.

If it is determined that it cannot be managed within existing policies and procedures, the WPO shall determine the required scope of an investigation, including undertaking a risk assessment, an initial identification of additional information that may be required for the investigation and whether, given the nature of the conduct and persons involved it may be more appropriate for a specialist investigator to be involved.

#### *2. The person(s) within or outside NACCHO that should lead the investigation*

The nature of the Disclosable Conduct may require specialist skills to properly investigate the matter that do not exist within NACCHO. These could include forensic accounting and investigation, fraud investigation.

In instances where the WPO determines it is appropriate to employ outside assistance to investigate the matter, the WPO should initially consult with NACCHO's Internal Auditors and the Independent Chair of the Audit and Assurance Committee outlining the scope of the proposed investigation and the key issues to be investigated.

### *3. Additional information that may be required to support the investigation*

Instances of Disclosable Conduct may relate to information initially disclosed, or information deemed relevant to the Disclosure. Where the WPO identifies additional information that may be relevant to the Disclosure, this information should be documented and incorporated with the initial report to facilitate investigation.

### *4. The timeframe for the investigation*

Any investigation should be undertaken within 28 business days of receipt of the eligible report by the WPO, The Discloser shall be advised in writing of actions proposed by the WPO to be undertaken to investigate the report within 7 business days of the report being provided to the WPO, and where it is likely the investigation will exceed 28 business days, the Discloser should be kept informed or progress.

## Conducting the Investigation

The following general principles will apply to the conduct of investigations:

- The identify of the Discloser must remain confidential
- The investigation process will be consistent with the principles of procedural fairness
- The investigation will be carried out in a manner that allows for proper consideration of the matter
- All decisions made must be supported by evidence obtained and determined on the balance of probabilities
- A person who is the subject of an investigation must be provided with an opportunity to respond and provide evidence in relation to the allegations.

During the investigation, the investigating officer may obtain information from such persons, and make such enquiries, as they see fit.

During an investigation the interviewee will be informed of:

- The identify and function of each individual conducting the interview
- The process for conducting the investigation, including the authority for the person conducting the interview and available protections for persons being interviewed (including maintaining confidentiality of persons involved in the investigation).

No audio or visual recordings may be made of the interview without the consent of the person(s) being interviewed.

### **Preparation of Report**

Where an external company is employed to undertake the investigation, the investigating officer must prepare a written report of the investigation within 60 days of being requested to undertake the investigation. Where a WPO is the responsible person undertaking the investigation the report shall be prepared within 70 days of receipt of the initial report.

The report must set out:

- a) The matters considered in the investigation
- b) The duration of the investigation
- c) The findings of the investigation
- d) The action (if any) that has been, or is recommended to be taken, and to the extent that is relevant:
  - i. The steps taken to gather evidence
  - ii. A summary of the evidence
  - iii. Any claims made about and any evidence of detrimental action taken against the Discloser, and the response to those claims and evidence.

The full report shall be provided to the independent chair of the NACCHO Audit and Assurance Committee and a summary of this report and its findings provided to the NACCHO Board and CEO.

### **Rights and Responsibilities of Persons who are the Subject of a Disclosable Matter Report**

A person who is the subject of a Disclosable Matter report has the right to be given support during the course of the investigation, and to be able to provide their views on the Disclosable Matter in accordance with the principles of natural justice.

A person who is the subject of a Disclosable Matter must use their best endeavours to assist the investigation and comply with all actions taken by NACCHO to address risks or concerns in relation to the Disclosable Matter report.