



P45 - Whistleblowing Policy

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1. Introduction

- 1.1 This policy has been designed to meet the obligations of Cancer Council NSW (**Cancer Council**) regarding whistleblower protection under the relevant laws.
- 1.2 The objectives of this policy are to:
 - (a) encourage Cancer Council workers and members of the public to disclose any information concerning misconduct, illegal behaviour, or an improper state of affairs in relation to Cancer Council
 - (b) ensure that all allegations are thoroughly investigated and resolved with suitable action taken, where necessary, and
 - (c) ensure that any such matters are used as an opportunity to improve corporate culture where appropriate.
- 1.3 This policy also provides information about the protections that may be afforded to eligible whistleblowers who report such information to Cancer Council or a recipient.
- 1.4 Cancer Council is committed to a culture of compliance and ethical behaviours, and does not tolerate:
 - (a) improper conduct, illegal activity or misconduct by its officers, employees, contractors, suppliers, sub-contractors or their employees, or
 - (b) reprisals being taken against those who come forward to disclose such conduct.
- 1.5 The document owner is the General Counsel.

2. Application and review

- 2.1 This policy commenced on 7 December 2021. It may be reviewed and amended from time to time to meet the ongoing needs of the organisation and will be reviewed no less than once every three years. It replaces all prior versions of this policy.
- 2.2 This policy applies to all Cancer Council workers, including casual employees and contractors, and volunteers. Non-compliance may result in disciplinary action, including termination of employment. Whilst they are required to comply with this policy, which may be updated and amended from time to time, it does not form part of any employee's contract of employment or other contract and does not create or confer any entitlement, legal right or enforceable benefit on a worker or person contemplated by this policy.
- 2.3 This policy should be read in conjunction with the following policies, copies of which are available on Cancer Council's intranet and external-facing website:
 - (a) the Code of Conduct,
 - (b) Fraud and Corruption Control Policy, and
 - (c) Purchasing Policy.

3. Definitions

- 3.1 In this policy:

Corporations Act means the *Corporations Act 2001 (Cth)* (Corporations Act)

detrimental conduct means conduct that causes or threatens to cause detriment to a person as result of or in connection with that person making a disclosure, including dismissal, demotion, disadvantageous change of duties or position, discrimination, harassment, intimidation, harm or injury (including psychological injury), reputational damage, property damage or other unfavourable treatment, to another person in connection with any disclosure of reportable conduct by that person.

disclosure means any disclosure where a person has reasonable grounds to suspect that the disclosed information concerns reportable conduct.

eligible whistleblower has the meaning defined in the Corporations Act, which includes any current or former:

- (a) employee of Cancer Council
- (b) volunteer for Cancer Council
- (c) director or company secretary of Cancer Council
- (d) contractor or an employee of a contractor supplying goods or services to Cancer Council and its employees
- (e) employee or officer of Cancer Council Australia or another state or territory Cancer Council
- (f) an associate of Cancer Council, and
- (g) spouse, relative or dependant of one of the people referred to above.

eligible recipient means:

- (a) the eligible whistleblower complaints service engaged by Cancer Council known as 'Your Call'
- (b) Cancer Council's Chief Operating Officer or Director, People and Communications or another senior manager at Cancer Council
- (c) Cancer Council's Directors or Company Secretary
- (d) Cancer Council's internal or external auditors
- (e) Any 'Eligible Recipient' as that term is defined under the Corporations Act, including certain Commonwealth regulatory authorities such as the Australian Securities and Investments Commission, the Australian Federal Police (AFP) or the Australian Taxation Office, and
- (f) legal practitioners but only for the purpose of obtaining legal advice or representation in relation to the reportable conduct.

relevant laws include the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)*, the *Corporations Act 2001 (Cth)* and the *Taxation Administration Act 1953 (Cth)*

reportable conduct means misconduct or an improper state of affairs or circumstances at or in relation to Cancer Council, or conduct engaged in by Cancer Council or any of its officers or employees which:

- (a) constitutes an offence against or contravention of any Commonwealth laws, including the Corporations Act, the *Charities Act 2013 (Cth)*, or

(b) represents a danger to the public, or the financial system.

worker means all Cancer Council personnel including its employees, contractors, consultants, agents and volunteers.

4. Responsibilities

- 4.1 Cancer Council has a duty to protect all workers and other individuals who may be eligible whistleblowers.
- 4.2 Supervisors and managers are responsible for ensuring their staff are familiar with this policy and procedures.
- 4.3 All workers will follow the policy principles and procedural details within this document.

5. Reportable conduct

- 5.1 Any person may report information under this policy if they have reasonable grounds to suspect that the information constitutes reportable conduct.
- 5.2 Examples of reportable conduct include conduct by Cancer Council or a worker that amounts to:
 - (a) fraud or any financial irregularity
 - (b) dishonest altering of company records
 - (c) misconduct, or an improper state of affairs or circumstances, in relation to Cancer Council's tax affairs
 - (d) bribery or corruption
 - (e) criminal conduct
 - (f) failure to comply with any legal or regulatory obligation
 - (g) violence, harassment or intimidation
 - (h) theft or criminal damage
 - (i) unsafe work practices
 - (j) Environmental damage
 - (k) any conduct in breach of a Cancer Council policy, and
 - (l) any offence against any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more.
- 5.3 reportable conduct for whistleblowing purposes does not include personal work-related grievances, such as:
 - (a) interpersonal conflict between workers
 - (b) a decision relating to a worker's engagement, transfer or promotion
 - (c) a decision relating to the terms and conditions of engagement, or
 - (d) a decision to suspend or terminate an engagement or take disciplinary action.

These matters should be addressed in accordance with the procedures set out in the relevant employment contract, the Cancer Council Code of Conduct, or other relevant Cancer Council policies.
- 5.4 However, where a general grievance suggests a significant breach of employment laws or systemic misconduct, the reporting of such grievance may constitute a disclosure of reportable conduct.

6. Protection of eligible whistleblowers

- 6.1 Cancer Council is committed to ensuring confidentiality in respect of all reports made under this policy, and to ensuring that those who make reports are treated fairly and not subjected to detrimental conduct.
- 6.2 Eligible whistleblowers who make a disclosure to a recipient will be protected in accordance with this policy if the disclosure is made on reasonable grounds, even if the allegations prove to be incorrect or unsubstantiated.
- 6.3 Workers and other individuals who participate or assist in an investigation into the matters raised in a disclosure will also be protected.
- 6.4 An eligible whistleblower who makes a disclosure, or workers who participate or assist in an investigation, will be protected in respect of making the disclosure, but will not be granted protection or immunity for any illegal act or wrongdoing in which they were involved.
- 6.5 The following support is available for eligible whistleblowers:
 - (a) accessing the Cancer Council employee assistance program (EAP)
 - (b) appointing an independent support person from the People and Communications team to deal with any ongoing concerns, and
 - (c) connecting the eligible whistleblower with third-party support providers such as Lifeline (13 11 14) and Beyond Blue (1300 224 636).

7. Protections available

Eligible whistleblowers who make a disclosure will be protected in each of the following ways:

Protection of identity and confidentiality

- 7.1 This policy provides for confidential reporting. Anonymous disclosures will also be permitted and protected.
- 7.2 Whilst it is not a requirement for an eligible whistleblower to provide their name, this information should be provided where possible to facilitate prompt investigation and resolution.
- 7.3 Subject to compliance with legal requirements, Cancer Council will only share the identity, or information likely to reveal the identity, of an eligible whistleblower:
 - (a) if they consent to the disclosure
 - (b) with ASIC or the AFP or another Commonwealth authority in the context of reporting the disclosure
 - (c) to a lawyer for the purpose of obtaining legal advice in relation to the relevant laws, or
 - (d) where otherwise permitted at law, including under the Corporations Act.

Protection against detrimental conduct

- 7.4 Cancer Council will not tolerate detrimental conduct towards eligible whistleblowers who make a disclosure under this policy.
- 7.5 Cancer Council will support all persons who have reasonable grounds to suspect reportable conduct and who make a disclosure, even if the subsequent investigation into the disclosure concludes that no wrongdoing has occurred.
- 7.6 Any person who discloses information who considers they are, or have been, subjected to detrimental conduct should:
- (a) report the matter in accordance with the 'Process for disclosure' section in this policy, or
 - (b) contact the General Counsel.
- 7.7 Further, if an eligible whistleblower suffers detrimental conduct, the relevant laws provide that a claim may be brought before a court against:
- (a) the individual or company who engaged in the detrimental conduct,
 - (b) if the detrimental conduct was engaged in by a company, the current or former officers and employees who aided, or were knowingly concerned in, the detrimental conduct, or
 - (c) a company which has a duty to prevent an individual from engaging in the detrimental conduct.

Immunities

Whistleblowers may also qualify for certain other protections under the relevant laws for making a disclosure of reportable conduct, including immunity from civil, criminal or administrative liability, or disciplinary action, although may not necessarily provide immunity for involvement in the conduct itself.

8. Consequences of non-compliance

- 8.1 Any worker who attempts to identify or disclose the identity of an eligible whistleblower will be subject to disciplinary action by Cancer Council and may be liable for penalties under the relevant laws, including to pay compensation to the eligible whistleblower.
- 8.2 Any worker who is found to have engaged in detrimental conduct against an eligible whistleblower under this policy will be subject to disciplinary action, which may result in termination of employment.
- 8.3 Penalties for engaging in detrimental conduct against an eligible whistleblower include compensation, injunctions, an apology, reinstatement of that person's employment or, in certain circumstances, exemplary damages.

9. Process for disclosure

- 9.1 Eligible whistleblowers may make a disclosure to any recipient.
- 9.2 Eligible whistleblowers must keep information concerning a disclosure confidential, to avoid jeopardising the investigation.

Direct reporting method

- 9.3 At first instance, disclosures should be made using 'Your Call', a confidential whistleblowing service available as follows:
- (a) Website <https://www.whistleblowing.com.au/report>
Available 24 hours a day 7 days a week. Caller must enter Cancer Council's unique identifier code **CNSW2015**.
 - (b) Telephone: 1300 798 101
Available between 7pm and 10pm, Monday to Friday AEST (excluding public holidays). A message can be left outside of these hours.
- 9.4 Alternatively, disclosures can be made to Cancer Council's Chief Operating Officer or the Director, People and Communications, who are appropriately trained to manage such matters.

Disclosures concerning senior management

- 9.5 If the disclosure relates to:
- (a) the Chief Operating Officer or Director, People and Communications, then the disclosure can be made to the Chief Executive Officer
 - (b) the Chief Executive Officer, then the disclosure can be made to the Chair of Cancer Council's Board of Directors by contacting the Company Secretary, or
 - (c) a member of Cancer Council's Board of Directors or its Chair, then the disclosure can be made to the Chair of the Audit and Risk Committee.

Disclosures to other recipients

- 9.6 The relevant laws provide that a disclosure of reportable conduct by an eligible whistleblower may qualify for protection if a disclosure is made to:
- (a) certain Commonwealth regulatory authorities or law enforcement agencies such as ASIC, the AFP, or the ATO
 - (b) to Cancer Council's auditor, actuary, or registered tax agent, or
 - (c) to a legal practitioner for the purpose of obtaining legal advice or legal representation.

10. Procedure following disclosure

- 10.1 All disclosures will be investigated promptly and fairly having regard to the nature of the allegations and the rights of the individuals involved.
- 10.2 Cancer Council will take reasonable steps during the investigation process to ensure that information likely to lead to the eligible whistleblower's identification is kept confidential and not disclosed without their consent.
- 10.3 Cancer Council will arrange for an impartial, suitably qualified investigator (which may be internal or external depending on the circumstances) to examine the allegations raised in the disclosure.
- 10.4 The investigator will examine all relevant and available evidence, including conducting witness interviews and examining documents, and will conduct the investigation in a timely and unbiased manner.

- 10.5 The investigator will provide a report to the Chief Operating Officer and the Director, People and Communications, who will make a joint recommendation to the CEO on what action needs to be taken, except that:
- (a) if Cancer Council's Chief Operating Officer or Cancer Council's Director, People and Communications is the subject of the disclosure, the recommendations will be provided directly to the CEO, and
 - (b) if the CEO is the subject of the disclosure, the recommendations will be provided directly to the Board of Directors.
- 10.6 The CEO or Board of Directors (as applicable) ultimately approves the action to take.
- 10.7 Where criminal activity is reasonably suspected to have occurred, the disclosure will be referred to the appropriate authorities.
- 10.8 No action will be taken where the disclosure concerns an activity which is not confirmed by an investigation.
- 10.9 Eligible whistleblowers may be kept informed of the process and outcomes of the investigation, depending on the nature of the disclosure and subject to privacy and confidentiality restrictions.
- 10.10 For information about fraud information and fraud reporting and investigations, please refer to the Cancer Council Fraud and Corruption Control Policy.

11. References / related documents

- Fraud and Corruption Control Policy
- Corporations Act 2001 (Cth)
- Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)
- Australian Securities and Investments Commission (ASIC) Act 2001 (Cth)
- Competition and Consumer Act 2010 (Cth)