

## WHISTLEBLOWER PROTECTION

### Governance Policy # 002.9

#### References:

Constitution

*Corporations Act 2001* (Cth) – Ch.9 Pt. 9.4AAA Protection for Whistleblowers - especially sec. 1317AI

ASIC Regulatory Guide (RG 270) “*Whistleblower policies*” (issued November 2019)

ASIC Information Sheet (INFO 238) “*Whistleblower Rights and Protections*” (issued 1/7/2019)

Australian Standard AS/NZS ISO 31000:2018 Risk Management

*National Disability Insurance Scheme Act 2013* (Cth) – Ch. 4 Pt. 3A Div. 7 Protection of disclosers

*National Disability Insurance Scheme (Code of Conduct) Rules 2018*

*National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*

*National Disability Insurance Scheme (Quality Indicators) Guidelines 2018*

*National Disability Insurance Scheme-Risk Management Rules 2013*

*National Disability Insurance Scheme (Procedural Fairness) Guidelines 2018*

*National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*

Members Register

Minutes Book

#### Related Documents:

NDIS Terms of Business

Director’s Declaration (GOV002)

Code of Conduct and Ethics (HR001)

### 1. PURPOSE OF THIS POLICY

This policy is an important element in helping Flexi Queensland identify and address serious wrongdoing that may not be uncovered unless there is a safe and secure means for employees and other persons to speak up and disclose possible wrongdoing.

The primary purpose of this policy is to ensure individuals (“whistleblowers”) who, acting in good faith, disclose possible wrongdoing can do so safely, securely and with confidence that they will be protected and supported. Throughout this policy these individuals are interchangeably termed either “whistleblower” or “Discloser”.

This policy and supporting procedures also:

- ensures that Flexi Queensland’s governance framework, enterprise risk management, and commitment to continuous improvement effectively provide and protect the safety, well-being and rights of service users, employees, volunteers and other persons
- supports Flexi Queensland’s values, code of conduct and ethics policy (HR001.5);
- ensures disclosures are dealt with in a timely manner and with due regard for procedural fairness;
- supports our organisation’s long-term sustainability and reputation;
- meets our organisation’s legal and regulatory obligations consistent with the nature, size, scale and complexity of Flexi Queensland’s business;

- uses a positive tone and language that encourages the disclosure of wrongdoing;
- helps deter wrongdoing, in line with our organisation's governance framework and enterprise risk management framework and assure a continuing strong ethical culture in Flexi Queensland.

## 2. POLICY STATEMENT

Flexi Queensland is fully committed to providing appropriate protections and measures so that those persons who, acting in good faith, make a report of suspected unethical, fraudulent, corrupt or illegal practices or behaviour that is contrary to our Code of Conduct and Ethics may do so confidentially and without fear of intimidation, disadvantage or reprisal. A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

Anonymous reports of wrongdoing are accepted under this policy. Anonymous reports have inherent significant limitations that may inhibit a proper and appropriate inquiry or investigation. These limitations include the inability to provide feedback on the outcome and/or to gather additional particulars to assist the inquiry/investigation. Specific protection mechanisms may be difficult to enforce if the discloser chooses to remain anonymous.

## 3. WHO IS AN ELIGIBLE WHISTLEBLOWER.

A whistleblower, whose disclosures may be eligible for protection, is an individual who is, or has been, any of the following in relation to Flexi Queensland:

- a) an officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers, and directors);
- b) a supplier of services or goods to Flexi Queensland (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners);
- c) an associate of our organisation;
- d) a relative, dependant or spouse of an above individual (e.g. relatives, dependants or spouse of current and former employees, contractors, consultants, service providers, suppliers and business partners); and
- e) a person with disability who is receiving a support or service from the NDIS provider, or a nominee, family member, carer, independent advocate or significant other of that person.

## 4. TYPES OF WRONGDOING COVERED BY THIS POLICY.

This policy covers the following types of matters that can be disclosed as alleged wrongdoing ("disclosable matters"):

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, money laundering or misappropriation of funds;
- corruption, offering or accepting a bribe;
- financial irregularities;
- serious maladministration (e.g. unjust, based on improper motives, is unreasonable, oppressive or negligent)
- serious or substantial waste (including public money or public property)
- gross mismanagement or repeated breaches of administrative procedures
- failure to comply with, or breach of, legal or regulatory requirements;
- dishonesty or serious improper conduct (including bullying, harassment or discrimination);

- unethical behaviour including breaches of Flexi Queensland Code of Conduct and Ethics and NDIS Code of Conduct;
- conduct which may cause financial loss or be otherwise detrimental to the interests of Flexi Queensland; and
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure.

Disclosable matters include conduct that may not involve a contravention of a particular law -but does indicate a significant risk to public safety or the stability of, or confidence in, the financial system

## **5. MATTERS THAT MAY NOT BE COVERED BY THIS POLICY.**

The law requires that whistleblower protections do not extend generally to certain matters including:

- a) an interpersonal conflict between the discloser and another employee;
- b) a decision that does not involve a breach of workplace laws;
- c) a decision about the engagement, transfer or promotion of the discloser;
- d) a decision about the terms and conditions of engagement of the discloser; or
- e) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

However, any of these above matters of personal work-related grievance may still qualify for protection if:

- a) it includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (mixed report);
- b) our organisation has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances;
- c) the discloser suffers from or is threatened with victimisation and detriment for making a disclosure; or
- d) the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act.

Flexi Queensland has other human resources policies and procedures that provide information about how its employees can internally raise personal work-related grievances and other workplace issues or concerns that are not covered by this policy.

## **6. PROCEDURES**

### **6.1 Protection generally**

Any person who discloses or reports any disclosable matter made in good faith with reasonable grounds to believe it is true, will not be personally disadvantaged by having made the report. He or she will be protected against threats of dismissal, demotion, any form of harassment, discrimination, or current or future bias arising as a result of the report.

However, to ensure that all employees are treated fairly and that resources are not wasted, protection is not available where the disclosure is:

- Trivial or vexatious in nature with no substance. This will be treated in the same manner as a false report and may itself constitute wrongdoing.
- Unsubstantiated allegations which are found to have been made maliciously, or knowingly to be false.

Malicious false reports will be viewed seriously and may be subject to disciplinary action that could include dismissal, termination of service or cessation of a service or client relationship.

Discloser is afforded the following protections:

- a) identity protection (confidentiality) - it is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser;
- b) protection from victimisation and detrimental acts or omissions – making, causing or threatening to cause victimisation and detriment to a discloser (or another person) in relation to a disclosure. A threat may be express or implied, or conditional or unconditional. A discloser (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;
- c) compensation and other remedies – discloser may seek compensation and other remedies through the courts if they suffer loss, damage or injury because of a disclosure; and our organisation failed to take reasonable precautions and exercise due diligence to prevent the victimisation and detrimental conduct; and
- d) civil, criminal and administrative liability protection - a discloser is protected from any of the following in relation to their disclosure:
  1. civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
  2. criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)); and
  3. administrative liability (e.g. disciplinary action for making the disclosure).

The above protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

Also, these protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act.

### **6.2 Measures and mechanisms for protecting confidentiality of discloser's identity**

- All personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in a gender-neutral context;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them;
- disclosures will be handled and investigated by qualified/experienced staff.
- all paper and electronic documents and other materials relating to disclosures will be stored securely;
- access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;

- communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other staff; and
- each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

Whilst the above protections are afforded to the discloser, it should be kept in mind that, in practice, people may still be able to guess the discloser's identity if:

- the discloser has previously mentioned to other people that they are considering making a disclosure;
- the discloser is one of a very small number of people with access to the information; or
- the disclosure relates to information that a discloser has previously been told privately and in confidence.

### **6.3 Measures and mechanisms for protecting discloser from victimisation, detriment or threats**

- Processes for assessing the risk of victimisation and detriment against a discloser and other persons (e.g. other staff who might be suspected to have made a disclosure), which will commence as soon as possible after receiving a disclosure;
- support services (including counselling or other professional or legal services) that are available to disclosers;
- strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation;
- actions for protecting a discloser from risk of victimisation and detriment—for example, our organisation could allow the discloser to perform their duties from another location, reassign the discloser to another role at the same level, make other modifications to the discloser's workplace or the way they perform their work duties, or reassign or relocate other staff involved in the disclosable matter;
- processes for ensuring that management are aware of their responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, a discloser;
- procedures on how a discloser can lodge a complaint if they have suffered victimisation and detriment, and the actions our organisation may take in response to such complaints (e.g. the complaint could be investigated as a separate matter by an officer who is not involved in dealing with disclosures and the investigation findings will be provided to the board or audit or risk committee); and
- interventions for protecting a discloser if victimisation and detriment has already occurred—for example, our organisation could investigate and address the detrimental conduct, such as by taking disciplinary action, or our organisation could allow the discloser to take extended leave, develop a career development plan for the discloser that includes new training and career opportunities, or offer compensation or other remedies.

In addition to Flexi Queensland's above measures and mechanisms, a discloser may wish to seek independent legal advice or further information from regulatory bodies, such as NDIS Quality and Safeguards Commission, ASIC, if they believe they have suffered victimisation and detriment.

### **6.4 Right of Appeal to Board in event of reprisals causing victimisation and detriment to discloser.**

Where reprisals causing victimisation and detriment are taken, or are claimed to have been taken against a whistleblower, the whistleblower will be granted an automatic right of appeal to the Board of Directors, or an independent mediator or arbitrator if the matter cannot be resolved internally. Where the Board refers the matter to an independent party for mediation, the final determination of that appeal body will be accepted.

### **6.5 How to make a disclosure - reporting mechanisms**

As active protection for whistleblowers, reports may be made confidentially and/or anonymously and securely (and outside of business hours if necessary), preferably by email, addressed and communicated directly to any member of the Board of Directors or CEO at Flexi Queensland's internal whistleblower's hotline email [whistleblower@flexiqld.com](mailto:whistleblower@flexiqld.com).

In addition, if the Discloser has reasonable grounds to suspect that the information indicates that an NDIS provider has, or may have, contravened a provision of the NDIS Act, the Discloser may make the disclosure directly to the NDIS Quality and Safeguards Commissioner (Phone 1800 035 544 or write NDIS Quality and Safeguards Commission, PO Box 210, Penrith NSW 2750) or the National Disability Insurance Agency (Phone 1800 800 110).

Preliminary investigation will be undertaken by the relevant Officer to confirm the veracity of anonymous information, prior to instigation of a full investigation by the Board, which will only proceed based on supporting evidence.

Where identity is known, the whistleblower will be kept informed of the outcomes of the investigation, subject to the privacy rights of those against whom the allegations are made.

Upon reporting of a disclosure, Flexi Queensland will assess each disclosure to determine whether:

- a) it qualifies for protection under this Policy; and
- b) a formal, in-depth investigation is required.

### **6.6 Confidentiality**

A whistleblower disclosing matters of alleged wrongdoing ("disclosable matters") will be provided with anonymity to the extent that is legally possible. Confidentiality will be maintained, and files created on reports and investigations will be kept secure. Specific measures and mechanisms for protecting confidentiality of discloser's identity para. 6.2 of this Policy.

Information received from a whistleblower will be held in strictest confidence and will only be disclosed to another person if the whistleblower has been consulted and consents in writing to the disclosure, or if Flexi Queensland is compelled by law to do so.

Discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised – and can refuse to answer questions that they feel could reveal their identity at any time, including during any follow-up conversations.

### **6.7 Support for discloser if requested**

If the discloser specifically requests, Flexi Queensland may appoint an employee (acceptable to the discloser) to act, as/when required, as Discloser Support Officer to provide support to the discloser and assist in ensuring protection to the discloser according to this policy. This Officer will be responsible for keeping the discloser informed of the progress and outcomes of the

inquiry/investigation subject to considerations of privacy of and procedural fairness (natural justice) for those against whom a disclosure has been made.

Upon appointment by the CEO and with agreement of the discloser, the Discloser Support Officer will have open and direct confidential reporting to the CEO in all matters of support to and protection of the discloser – independent of the line management in the area(s) of the business that is the subject of the disclosure

### **6.8 Disclosure investigations general principles**

All reports of corrupt, fraudulent, illegal or improper conduct will be investigated with thoroughness, objectivity, integrity, fairness, diplomacy and confidentiality. Principles of natural justice (procedural fairness) will be observed in any investigation arising out of a whistleblower disclosure.

The person against whom the allegation is made will be given the right to respond. The investigation will focus on the substance of a disclosure, rather than what may be believed to be the discloser's motive for reporting.

The Board of Directors may choose to appoint an independent senior employee or contracted independent external person to undertake an investigation of the disclosure. A person investigating the disclosure can, in the course of conducting the investigation, disclose the information contained in a disclosure with or without the discloser's consent if:

- a) the information does not include the discloser's identity;
- b) our organisation has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
- c) it is reasonably necessary for investigating the issues raised in the disclosure.

However, it needs to be kept in mind that it is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser, outside the above exceptions or required by any law or regulation or with the specific consent of the discloser.

The investigation process may be open to later further administrative, operational or judicial review rights, and an audit trail must be maintained by the internal/external investigator, relating investigative activities back to approved plans, policies, codes of practice or legislative requirements, and documenting critical decisions and evidence to verify findings and recommendations.

### **6.9 Measures and mechanisms for ensuring fair treatment of individuals mentioned in a disclosure**

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- each disclosure will be assessed and may be the subject of an investigation;
- the objective of any investigation of the disclosure is to determine whether there is enough evidence to substantiate or refute the matters disclosed;
- if and when an investigation needs to be undertaken, the process will be objective, fair and independent;
- an employee who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness and prior to any actions being taken—for example, if the disclosure will be the subject of an investigation. Flexi Queensland will determine the most appropriate time to

inform the individual who is the subject of a disclosure about any investigation (provided the individual is informed before making any adverse finding against them). In some circumstances, informing the individual at an early stage of an investigation may compromise the effectiveness of the investigation, such as when there may be concerns that the individual may destroy information or the disclosure needs to be referred to a regulatory agency for investigation;

- an employee who is the subject of a disclosure may contact Flexi Queensland’s employee support services (e.g. counselling).

## 6.10 Disclosure investigations key steps and timeframes

The key steps and timeframes in every separate disclosure investigation process may vary considerably (e.g. relatively straightforward investigation may be addressed in one day- whilst more complex investigations may take several weeks or longer) depending on the nature of the disclosure(s).

As a general guide Flexi Queensland disclosure investigations key steps and timeframes for complex disclosures are:

KEY STEPS	TIMEFRAME FOR COMPLETION
Assessment and qualification of disclosure	3 working days (from receipt of disclosure)
Any mandatory reporting to authorities (if applicable)	2 working days (from receipt of disclosure)
Conduct of Investigation	20 working days (from end of assessment phase)
Finalise investigation draft report and responses	4 working days (from conclusion of investigation)
Final investigator’s report outlining investigation’s processes, actions, findings and recommendations	5 working days (from conclusion of investigation)
Board of Directors issuing decision	7 working days (from advising Responsible Person of investigation outcome)

## 7. BOARD MONITORING OF THIS POLICY

This policy will be self-assessed by the Board of Directors in terms of the NDIS Practice Standards and Quality Indicators, including:

- (a) Governance and Operational Management: *“Outcome: Each participant’s support is overseen by robust governance and operational management systems relevant (proportionate) to the size, and scale of the provider and the scope and complexity of supports delivered.”* and evidenced by relevant Quality Indicators, including *“A defined structure is implemented by the governing body to meet a governing body’s financial, legislative, regulatory and contractual responsibilities, and to monitor and respond to quality and safeguarding matters associated with delivering supports to participants.”*; and
- (b) Risk Management: *“Outcome: Risks to participants, workers and the provider are identified and managed.”* and evidenced by relevant Quality Indicators, including” (i) *Risks to the organisation, including risks to participants, financial and work health and safety risks, and risks associated with provision of supports are identified, analysed, prioritised and treated; and (ii) A documented system that effectively manages identified risks is in place, and is relevant and proportionate to the size and scale of the provider and the scope and complexity of supports provided.”*



The Board of Directors will receive from the CEO periodic reports giving information on individual disclosures received under this policy, ensuring details are not likely to lead to the identification of a discloser:

- a) the subject matter of each disclosure;
- b) the status of each disclosure;
- c) for each disclosure, the type of person who made the disclosure (e.g. employee or supplier) and their status (e.g. whether they are still employed or contracted by our organisation);
- d) the action taken for each disclosure;
- e) how each disclosure was finalised;
- f) the timeframe for finalising each disclosure; and
- g) the outcome of each disclosure.

In addition, the Board of Directors will periodically cause the following actions to be taken and reported to the Board:

- a) monitor and measure its employees' and service users understanding of this whistleblower policy, processes and procedures; and
- b) review this policy to ensure:
  - the scope and application of the policy are appropriate, particularly if there have been changes to Flexi Queensland's business;
  - the policy, processes and procedures are helpful and easy to understand;
  - the policy, processes and procedures reflect current legislation and regulations, and current developments and best practice for managing disclosures; and
  - our handling of disclosures and its protections and support for disclosers is continually improved.

### **8. POLICY DISSEMINATION, STAFF EDUCATION AND TRAINING**

This whistleblower policy is to be widely disseminated to, easily available to and accessible by, its officers and employees and all other persons covered by this policy, by means of:

- complete copies of the policy, and any explanations, available to any person on request
- holding staff briefing sessions and/or smaller team meetings;
- posting summary details of the policy on the stakeholders' and staff communication platforms;
- posting summary information on staff noticeboards;
- setting out details of the policy in the employee handbook; and
- incorporating the policy in employee induction information packs

Staff education and training will be provided for all employees on this policy supported by:

- practical examples of disclosable matters;
- practical information on how to make a disclosure;
- the measures our organisation has in place for protecting and supporting disclosers;
- practical working examples of conduct that may cause victimisation and detriment to a discloser; and
- examples of the consequences for engaging in detrimental conduct
- how disclosers can seek further information about the policy if required.



## **FLEXI QUEENSLAND CORPORATE GOVERNANCE MANUAL**

This initial training will be periodically refreshed to ensure this Policy stay fresh in the minds of all employees.

The Board of Directors and all levels of management, particularly line managers, will receive periodic appropriate training in how to effectively deal with all steps of disclosures.