

# Whistleblower

## Objective

The objective of the policy is to encourage reporting of wrongdoing that is of legitimate concern by providing transparent reporting and investigation procedures, and protection for people who make serious wrongdoing disclosures.

## Scope

The policy and procedures apply to all board members, the Executive Leadership Team, Managers, Employees, Volunteers and Students. It extends to Clients, Service Users, Suppliers or Employees of a Supplier, Associates and Relatives, Dependent or Spouses of any of the aforementioned ['Person,' 'People', 'Whistleblower,' 'Discloser'].

## Policy

### Policy Statement

Cire is committed to the highest standards of conduct and ethical behaviour. Cire recognises that people that have a work, service or client relationship with Cire are often the first to realise there may be something seriously wrong. However they may not wish to speak up for fear of appearing disloyal or may be concerned about being victimised or subject to other reprisals if they report it.

Cire encourages the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving Cire, and provides protections and measures so that people who make a report may do so confidentiality and without fear of intimidation, disadvantage or retaliation.

When a person makes a disclosure about a legitimate wrongdoing:

- a) Their identity must remain confidential according to their wishes;
- b) They will be protected from retaliation, discrimination, harassment or victimisation for making the disclosure;
- c) An independent internal investigation will be conducted;
- d) Issues identified from the investigation will be resolved and/or rectified;
- e) They will be informed about the outcome;
- f) Any retaliation for having made the disclosure will be treated as serious wrongdoing under this policy.

### Matters that should be reported

Disclosable wrongdoing includes but is not limited to:

- a) misconduct or an improper state of affairs (for these purposes misconduct includes but is not limited to fraud, negligence, default, breach of trust and breach of duty) in relation to Cire;
- b) dishonest, corrupt or illegal (including but not limited to theft, drug sales/use, violence or threatened violence, criminal damage against property or an improper relationship between educator and student);
- c) misleading or deceptive conduct including but not limited to practices or representations which amount to improper or misleading accounting or financial reporting practices;

- d) an offence under Commonwealth or State laws which is punishable by imprisonment for a period of 12 months or more;
- e) a contravention of Commonwealth or State laws including (without limitation), the Corporations Act 2001 (Cth), any laws administered by the Australian Securities and Investments Commission (ASIC), the Competition and Consumer Act 2010 (Cth), the Income Tax Assessment Act 1936 (Cth) or the Privacy Act 1988 (Cth), anti-bribery or anti-money laundering laws;
- f) unethical behaviour which is not aligned with our values;
- g) an unsafe work practice\*;
- h) a danger to the public or the financial system; or
- i) likely to cause financial or non-financial loss to Cire or that is otherwise detrimental to the interests of Cire.

Disclosable wrongdoing also includes conduct of the nature outlined above engaged in by a person outside of Cire but who has a business connection to Cire (for example, a supplier, contractor or other corporate or business partner) where the conduct could have legal implications for Cire or materially impact the reputation of Cire.

Disclosable wrongdoing does not necessarily require a breach of a particular law. For example, if the information would be of interest to a regulatory authority or suggest a risk of harm to children or young people (or families) that we support or a significant risk to public safety.

*\*Complaints regarding health and safety should also be made through standard incident reporting procedures.*

### **Personal work related grievances**

Personal work related grievances are not generally considered disclosable wrongdoing under this policy and do not qualify for Whistleblower protections. These grievances should be reported through the other mechanisms Cire has established to receive these complaints.

Personal work related grievances have or tend to have implications for the discloser personally. Examples include:

- a) an interpersonal conflict between the discloser and another employee;
- b) a decision relating to the engagement, transfer or promotion of the discloser;
- c) a decision relating to the terms and conditions of engagement of the discloser; and
- d) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

These types of complaints should be raised with People and Quality and may be dealt with in accordance with the Complaints and Grievance Policy in the case of bullying, discrimination and harassment complaints.

However, if a complaint involves a personal work related grievance, but:

- a) it has significant implications for Cire; or
- b) it includes information about misconduct beyond the individual's personal circumstances or which suggest a systemic issue; or
- c) it concerns conduct or alleged wrongdoing (mentioned above) or Cire has breached employment or other laws punishable by imprisonment for a period of 12 months or more;

then it will also be considered to be wrongdoing and qualify for whistleblower protection and should be reported in accordance with this policy.

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### **Victimisation excluded**

Where a personal work related grievance:

- a) relates to alleged detrimental treatment or threatened detrimental treatment; and
- b) is taken because the individual has made or may make a Whistleblower report under this Policy,

then it will be considered to be a disclosable wrongdoing and qualify for Whistleblower protection and should be reported in accordance with this policy.

## Definitions

### **Whistleblowing**

The disclosure of actual or suspected wrongdoing in an organisation that reveals fraud, corruption, illegal activities, gross mismanagement, malpractice or any other serious wrongdoing. That is, a protected disclosure.

### **Whistleblower**

A person who reports serious wrongdoing in accordance with this policy, who (whether anonymously or not) and an individual to whom the whistleblower protections apply.

### **Disclosure Recipients**

A person who can receive a disclosure. This includes an officer or senior manager, the internal or external auditor or actuary, or a person authorised to receive disclosures that may qualify for protection.

### **Whistleblower Governance Officer**

Conducts sufficient enquiry to ensure a Whistleblower Protection Officer is appointed, each reported wrongdoing is investigated, action is taken in response to investigation findings and that retaliatory action has not been taken against the Whistleblower.

### **Whistleblower Protection Officer**

Protects or safeguards disclosers/whistleblowers and ensuring the integrity of reporting procedures.

### **Whistleblower Investigation Officer**

Investigating disclosures and reports findings.

## Responsibilities

### **Whistleblowers**

Those who disclose a wrongdoing that is made with reasonable grounds to believe it is true.

To ensure that all employees are treated fairly and that resources are allocated efficiently, 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. These will be viewed seriously and may be subject to disciplinary action that could include termination of service or cessation of a service or client relationship.

A Whistleblower should provide sufficient information to assist any investigation of the wrongdoing disclosed.

Even though a Whistleblower may be implicated in the wrongdoing they must not be subjected to any actual or threatened retaliatory action or victimisation in reprisal for making a disclosure under this policy.

It is important to note that making a disclosure may not protect the Whistleblower from the consequences flowing from involvement in the wrongdoing itself. A person's liability for their own conduct is not affected by their reporting of that conduct under this Policy. However active cooperation in the investigation, an admission and remorse may be taken into account when considering disciplinary or other action.

### **Disclosure recipients**

A person who can receive a disclosure.

This is a person authorised to receive disclosures that may qualify for protection such as a senior manager, Whistleblower Governance Officer or CEO. Alternatively, if the disclosure contains allegations against any Cire Executive or where the Whistleblower has a reasonable belief that the senior manager, Whistleblower Governance Officer or CEO is not sufficiently independent, a report can be made to the Chair of the Board.

The disclosure recipient is responsible for notifying a Whistleblower Governance Officer (if not already performing that role) of the disclosure, to provide particulars of the report and maintain confidentiality.

### **Whistleblower Governance Officers**

Whistleblower Governance Officers have a responsibility to conduct sufficient inquiry to be satisfied that:

- a) a Whistleblower Protection Officer is appointed to provide support to the Whistleblower;
- b) each disclosable wrongdoing referred to them is appropriately investigated by a trained and experienced internal investigator who is independent of the area where the wrongdoing is alleged to have occurred;
- c) action taken in response to the findings of an investigation is appropriate to the circumstances; and
- d) retaliatory action has not been taken against the Whistleblower.

Whistleblower Governance Officers must have a direct reporting line to the Chief Executive Officer that is independent of line management in the area that is the subject of the report of wrongdoing.

### **Whistleblower Protection Officer**

With agreement from the Whistleblower (if Whistleblower has chosen to share their identity), provides support and protection to the Whistleblower according to this policy.

A nominated Whistleblower Protection Officer must have a direct reporting line to an Executive Manager from an area of the organisation that is independent of line management in the area that is the subject of the report of wrongdoing.

The Whistleblower Protection Officer will provide mentoring and other support deemed necessary.

The Whistleblower Protection Officer is responsible for keeping the Whistleblower informed of the progress and outcomes of the investigation subject to privacy considerations of those about whom a disclosure has been made.

### **Whistleblower Investigation Officer**

Receives particulars about all Whistleblower events and performs the following functions:

- Conducts an investigation into the disclosures made by the Whistleblower;
- Reports findings from the investigation;
- Ensures appropriate government agencies are notified about Whistleblower events where required; and
- Ensures the Whistleblower Protection Officer is briefed about progress and investigation outcomes.

Cire will investigate all matters reported under this policy as soon as practicable after the matter has been reported.

The Whistleblower Investigation Officer must have internal independence of line management in the area affected by the wrongdoing disclosure but may be a Whistleblower Governance Officers (if appropriate). The Whistleblower Protection Officer and the Whistleblower Investigation Officer act independently of each other and the responsibilities of these roles do not reside with one person.

The investigation will be conducted in an objective and fair manner, and as is reasonable and appropriate having regard to the nature of the disclosure and the circumstances. Where a report is submitted anonymously, Cire will conduct the investigation and its enquiries based on the information available. However, anonymity can sometimes prevent Cire from taking the issue further if further information is unavailable from the source of the report.

The Whistleblower Investigation Officer may second the expertise of other officers in Cire to assist in the investigation and may seek the advice of external experts as required.

## Procedures

### **Making a disclosure**

Where a person believes that a wrongdoing has occurred, that person should report their concern.

Reports of wrongdoing may be made to the following disclosure recipients:

- Senior Manager;
- Whistleblower Governance Officer; or if they feel it may be necessary;
- the Chief Executive Officer; or if they feel it may be necessary;
- the Chair of the Board; or
- an external agency responsible for enforcement in a relevant area or a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the Whistleblower provisions in the Corporations Act. These disclosures are protected (even in the event that the legal practitioner concludes that a disclosure does not relate to a disclosable matter).

'Public interest' or 'emergency' disclosures are able to be made to Members of Parliament and Journalists (national broadcasters) where disclosures have previously been following using the procedure in this policy.

The Whistleblower must have reasonable grounds to believe that the information concerns either 'a substantial and imminent danger to the health and safety' of people or the 'natural environment', or where it would be in the 'public interest to do so'.

Disclosures may be made in the following ways:

- email, direct telephone call or mail to the chosen disclosure recipient
- email to [integrity@cire.org.au](mailto:integrity@cire.org.au)
- anonymous report via the Cire website

When a person makes a disclosure, they may choose to make it anonymously. Under these circumstances, they are entitled to expect that their identity remains confidential to the extent permitted by law or is reasonably practical in the circumstances. Anonymity may make it less likely that the wrongdoing can be substantiated in any subsequent investigation however.

Any person reporting a wrongdoing will not suffer any disadvantage for doing so.

The person receiving the report of wrongdoing will report the disclosure to the Whistleblower Governance Officer who will consider the reported wrongdoing and decide whether it is a disclosable matter.

If the Whistleblower Governance Officer believes the reported wrongdoing is not a disclosable matter, no action will be taken and this will be communicated to the person who made the report (assuming an identity is known). If they believe the reported wrongdoing is a disclosable matter, they will:

- (if the Whistleblower agrees) appoint a Whistleblower Protection Officer to provide support;
- appoint a Whistleblower Investigation Officer (or choose to act in this capacity if appropriate)
- ensure the Whistleblower is protected from retaliation, harassment or victimisation; and
- ensure the allegation is investigated, where a finding is made and communicated internally to relevant parties, and to the Whistleblower. Any such investigation shall observe the rules of natural justice and be conducted with procedural fairness.

These procedures do not authorise any person to inform commercial media or social media of their concern about a perceived wrongdoing, and do not offer protection to any person who does so, unless existing reporting channels have failed to deal with issues effectively (see Public Interest or Emergency disclosures above).

Any person reporting a wrongdoing should be informed that:

- as far as lies in the organisation's power, the Whistleblower will not be disadvantaged for the act of making a disclosure; and
- if the Whistleblower wishes to make their complaint anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law, however;
- reporting such a breach does not necessarily absolve the complainant from the consequences of any involvement on their own part in any misconduct being complained about.

While Cire does not expect a Whistleblower to have absolute proof or evidence of a disclosable wrongdoing, any such report should where possible be in writing and should contain details of:

- the nature of the alleged wrongdoing;
- the person or persons responsible for the wrongdoing;
- the facts on which the Whistleblower's belief that a wrongdoing has occurred, and has been committed by the person named, are founded; and
- the nature and whereabouts of any further evidence that would substantiate the Whistleblower's allegations, if known.

Evidence to support such concerns should be brought forward at this time if it exists. The absence of such evidence will be taken into account in subsequent consideration of whether to open an investigation into the matter. However, absence of such evidence does not prevent an investigation. The existence of such a concern is sufficient to trigger reporting responsibilities.

This policy is in addition to:

- Grievance and Complaint procedures for employees, which is for all staff to raise any matters they may have in relation to their work or their work environment, other persons, or decisions affecting their employment. This policy does not replace other reporting structures such as those for dispute resolution, discrimination, victimisation or matters relating to workplace bullying or harassment;
- Standard complaint mechanisms for clients or volunteers;
- Any exercising of rights under the terms of their contract by contractors and suppliers.

An exception to this is where the issue is wrongdoing of a serious nature, yet the existing reporting system failed to attend to the issue or has processed it in a substantially inappropriate, grossly unfair or heavily biased manner.

### **Commitment to protection**

Whistleblowers who disclose wrongdoing (that is a disclosable matter), will be provided with Whistleblower protections. These guard against the Whistleblower:

- being identified as the Whistleblower;
- being victimised for making and being able to make a protected disclosure; and
- having civil, criminal or administrative liability for making a protected disclosure.

Where an investigation finds that the report of wrongdoing was made on reasonable grounds, the Whistleblower Governance Officer is responsible for ensuring that the Whistleblower suffers no employment-related disadvantage on account of their actions and provide additional support for the person where necessary.

Cire will not tolerate any retaliatory action or threats of retaliatory action against a Whistleblower, or against a Whistleblower's colleagues, employer (if a contractor or supplier) or relatives.

Any such retaliatory action or victimisation in reprisal for a disclosure made under this policy will be treated as serious misconduct and will result in disciplinary action, which may include dismissal. In some circumstance it may be illegal; in which case Cire will notify Police.

Cire will not disclose a whistleblower's identity unless:

- it is necessary to further an investigation and the Whistleblower consents to the disclosure; and/or
- the disclosure is required or authorised by law.

Cire is committed to protecting the Whistleblower's identity and will take all reasonable steps to do so. It is equally important for the Whistleblower to refrain from identifying themselves as a Whistleblower.

When a report is investigated, it may be necessary to reveal its substance to a person or people such as other Cire employees or law enforcement agencies.



It will be necessary to disclose the facts and substance of a report to a person who may be the subject of the report as it is essential for natural justice to prevail. Although confidentiality is maintained, in some circumstances, the source of the reported issue may be obvious to a person who is the subject of a report.

Cire will take all reasonable precautions to store any records relating to a report of wrongdoing securely and to restrict access to authorised persons only. Measures taken to protect the confidentiality of a Whistleblower's identity (where applicable) include:

- all personal information or reference to the Whistleblower witnessing an event will be redacted
- the Whistleblower will be referred to in a gender-neutral context
- where possible, the Whistleblower will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them
- disclosures will be handled and investigated by designated staff
- all paper and electronic documents and other materials relating to disclosures will be stored securely
- access to 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 Whistleblower's identity (subject to gaining consent) or information that is likely to lead to the identification of the Whistleblower
- communications and documents relating to the investigation of a disclosure will not to be sent to an email address or to a printer that can be accessed by other staff
- each person who is involved in managing and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a Whistleblower's identity may be a criminal offence.

Unauthorised disclosure of information that could breach confidentiality and identify a whistleblower will be regarded seriously and may result in disciplinary action. In some circumstance it may be illegal; in which case Cire will notify Police.

### **Investigating a wrongdoing allegation**

All reports of alleged wrongdoing made under this policy will be properly assessed, and if appropriate, investigated, with an objective of gathering evidence relating to the claims made by the Whistleblower. That evidence may substantiate or disprove the claims made.

Investigations must be conducted in a fair and independent manner.

The person receiving the report of wrongdoing (disclosure recipient) will report the disclosure to the Whistleblower Governance Officer who will consider the reported wrongdoing and decide whether it is a disclosable matter.

If the Whistleblower Governance Officer believes the reported wrongdoing is a disclosable matter, they will:

- (if the Whistleblower agrees), appoint a Whistleblower Protection Officer to provide support;
- appoint a Whistleblower Investigation Officer (or choose to act in this capacity if appropriate);
- ensure the Whistleblower is protected from retaliation, harassment or victimisation; and
- ensure the allegation is investigated, where a finding is made and communicated internally to relevant parties, and to the Whistleblower. Any such investigation shall observe the rules of natural justice and be conducted with procedural fairness.

Terms of reference for the investigation will be drawn up, in consultation with relevant Cire staff, to clarify the key issues to be investigated.



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An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

Strict security will be maintained during the investigative process.

All information obtained will be properly secured to prevent unauthorised access.

All relevant witnesses will be interviewed and documents examined.

Thorough notes of all discussions, phone calls and interviews will be made.

The principles of procedural fairness (natural justice) will be observed<sup>1</sup>. In particular, where adverse comment about another person or people is likely to be included in a report, the person or people affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.

The Whistleblower Investigation Officer shall be as far as possible unbiased.

### **Making a finding about a disclosure**

A report will be prepared when an investigation is complete. This report will include:

- the allegations;
- a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions;
- the conclusions reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis; and
- recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

The report will be provided to the Whistleblower where known (with, if necessary, any applicable confidentiality conditions).

### **Disclosure management**

Cire recognises that individuals that are the subject of a report of wrongdoing must also be supported during the management and investigation of the report. Reasonable steps will be taken to fairly treat any person who is the subject of a report, particularly during the assessment and investigation process.

Where a person is identified as being suspected of possible wrongdoing, but preliminary inquiries determine that the suspicion is unfounded and that no formal investigation is warranted, then the Whistleblower will be informed of this outcome and the matter laid to rest.

The Whistleblowing Investigation Officer will decide whether or not the person named in the allegation should be informed that a suspicion was raised and found to be baseless upon preliminary review. This decision will be based on a desire to preserve the integrity of a person so named, so as to enable workplace harmony to continue unfettered and to protect the Whistleblower where it is a bona fide disclosure.

Where an investigation does not substantiate the report, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the report must be handled confidentially.

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<sup>1</sup> Natural justice and procedural fairness do not require that the person affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.

Generally, where an investigation is conducted and the investigator believes there may be a case for an individual to respond, the Whistleblower Investigation Officer must ensure that a person who is the subject of a disclosure:

- is informed of the substance of the allegations;
- is given a fair and reasonable opportunity to answer the allegations before the investigation is finalised;
- has their response set out fairly in the report; and
- is informed about the substance of any adverse conclusions in the investigator's report that affects them. Where adverse conclusions are made in a report about an individual, that individual has a right to respond to those conclusions prior to any action being taken by Cire against them.

Cire will give its full support to a person who is the subject of a report where the allegations contained in the report are clearly wrong.

### **Dissatisfaction with outcomes of the process**

If a Whistleblower or a person or people who are the subject of a report are dissatisfied with the outcome of the investigation process, they may use internal Grievance and Complaint procedures or seek independent advice.

### **Availability of this policy and training**

This policy is available to all employees and volunteers of Cire through the Capability Hub and to external parties via the Cire Services website.

Training will be provided to the Executive Leadership Team and employees who have specific responsibilities under this policy. Further training opportunities for staff will be considered by the Senior Manager, People and Quality in consultation with the CEO, as required.

### **Related Documents**

Code of Conduct  
Conflicts of Interests Policy  
Fraud Prevention and Detection Policy  
Child Safe Standards  
Privacy and Confidentiality Policy  
Legislative Compliance Policy  
Enterprise Risk Management Policy  
Child Safe Agreement  
Complaints and Grievance Policy  
Staff Performance Discipline Policy and Procedures  
Work Health and Safety Policy Statement  
Occupational Health and Safety Policy

### **Related Legislation**

Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)  
Corporations Act 2001 (Cth)  
Taxation Administration Act 1953  
Child Safety and Wellbeing Act 2005

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Education and Care Services National Regulations 2011  
Education and Care Services National Law Act 2010  
Child, Youth and Families Act 2005  
Children legislation Amendment (Reportable Conduct) Act 2017

### Organisational Area

All Cire departments

### Approved by

The Board

Signature:

A handwritten signature in black ink, appearing to be 'AS', written over a light grey grid background.

Date: 2 April 2020

### Operative Date

April 2020

### Review Date

April 2021