

 <b>Community Living and Respite Services Inc.</b>	Policy No.	<b>AD W2</b>		
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	Authorised By	Board of Management		

## **Whistleblowers Protection Policy**

### **Policy**

It is the policy of Community Living and Respite Services Inc. (CL&RS Inc.) to support the Government's commitment to the principles of open, honest and accountable governance as set out in the Whistleblowers Protection Act 2001 (the Act)

CL&RS Inc. aims to provide protection to any person who makes a disclosure.

CL&RS Inc is committed to improving systems to address issues raised by the Whistleblower.

### **Procedures**

#### **1. Purpose of the Act**

To support the principles of The Act, CLRS Inc. will:

- Ensure that all staff are fully aware of the Whistleblowers Protection Policy
- Ensure that a copy of the Whistleblowers Protection Policy is available to members of the public
- Provide a structure that will ensure confidential receipt of disclosures
- Ensure protected disclosures are properly handled
- Receive and assess disclosures of improper conduct
- Refer criminal disclosures to the Ombudsman
- Carry out investigations referred by the Ombudsman
- Take appropriate action in response to findings that improper conduct has occurred
- Protect whistleblowers from reprisals
- Implement a reporting system which ensures security of files and information
- Provide an annual report (where required) of any activities.

#### **2. Definitions**

There are three key concepts in the Act reporting system. They are Improper Conduct, Corrupt Conduct and Detrimental Action. Definitions of these terms are:

## **Improper Conduct**

Improper conduct means conduct that is corrupt, a substantial mismanagement of resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

## **Corrupt Conduct**

Conduct of any person that adversely affects the honest performance of CL&RS Inc. functions.

The performance of a persons functions dishonestly or with inappropriate partiality

Conduct by a person, or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions.

A conspiracy or attempt to engage in the above conduct.

## **Detrimental Action**

Action taken against a person in reprisal for a protected disclosure includes:

Action causing injury, loss or damage

Intimidation or harassment (harassment is a form of discrimination involving uninvited and unwelcome behaviour which can result in a person feeling offended, humiliated or intimidated); and

Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

## **3. Reporting System**

### **Responsibility to Report**

Every person has a responsibility to report dishonesty or fraud that has an impact on CL&RS Inc.. A report may cover any conduct which in the view of the whistle blower, acting in good faith, is:

- Corrupt
- Dishonest
- Fraudulent
- Unlawful or contrary to legislation
- Unethical
- Illegal such as theft, violence, threatened violence, drug use or sale

- Any other conduct which may cause loss to CL&RS Inc. or is detrimental to its interest.

#### **4. How to Make a Disclosure**

Any person can submit an allegation to be considered under the Act. In the first instance whistleblowers are encouraged to report the disclosure to their Team Leader. Where this is not appropriate, contact should be made with the CEO, Protected Disclosure Coordinator, Chairperson of the BOM, or the Ombudsman.

A disclosure can be made in person, in writing, by telephone or electronically. The disclosure should include a summary of specific allegations as well as grounds for the allegation including copies of any supporting documents.

All allegations are referred to the Protected Disclosure Coordinator who will act as the central person for the disclosure.

The Whistleblowers expectations in relation to the handling of the disclosure should be discussed at the outset with the Protected Disclosure Coordinator.

#### **5. The Role of Protected Disclosure Coordinator**

The General Manager will act as the Protected Disclosure Coordinator who will be responsible for the internal reporting systems including:

- Impartially assess each disclosure to determine whether it is a Public interest disclosure
- Coordinate the reporting system used by the organisation
- Being a contact point for general advice about the operation of the Act
- Being responsible for ensuring that CL&RS Inc. carries out its responsibilities under the Act and the Guidelines
- Liaising with the Ombudsman in regard to the Act
- Being responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the public body by the Ombudsman
- Being responsible for overseeing and coordinating an investigation where an investigator has been appointed
- Where necessary, appoint a welfare manager to support the whistleblower
- Advise the whistleblower of the progress of an investigation into the disclosed matter
- Establishing and managing a confidential filing system
- Collating and publishing statistics on disclosures made
- Taking all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential
- Liaising with the Chief Executive Officer (CEO)
- Avoiding unnecessary harm to the person named in the disclosure, particularly as an investigation may exonerate that person from any wrong doing.

## **6. Receiving and Assessing a Disclosure**

When a report or allegation of improper conduct or detrimental action is received, the first step is to determine whether the disclosure falls under the Act.

Once the allegation satisfies the definition of a protected disclosure as set out in the Act. It is known as a disclosure.

If an allegation raises issues that may fall within the provisions of the Act, CL&RS Inc. should assess the allegations in terms of the Act. The protections of the Act may apply to a disclosure regardless of whether or not the individual making the disclosure specifically requests the protections. The assessment is made on the nature of the disclosure, and not the intention of the individual making it, within 45 days of receiving it.

Disclosures alleging criminal offences will be referred to the Ombudsman.

If a disclosure comes from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

## **7. Notification of the Failure to Meet Disclosure Criteria**

CL&RS Inc. will notify the person making the allegation if it has failed to be a disclosure under the Act. CL&RS Inc. will advise the person on what grounds it has made the assessment and should advise the person of their right of appeal to the Ombudsman.

The person will also be informed that their concerns may be made through the CL&RS Inc complaints system or on a *Have Your Say Forms*.

A reassessment of the disclosure can be made if the person provides additional information to support the allegation.

## **8. Public Interest Disclosure**

Once an allegation has been assessed as a protective disclosure the Act requires that an assessment be made of whether it is a Public Interest Disclosure.

## **9. Determination of a Public Interest Disclosure**

Where the disclosure amounts to a Public Interest Disclosure, section 29 of the Act requires, within 14 days that CL&RS Inc.:

- Notify the person who made the disclosure of that conclusion, and
- Refer the disclosure to the Ombudsman for a determination as to if it is a public interest disclosure.

## **10. Determination that the Disclosure is not a Public Interest Disclosure**

Where the disclosure is not a public interest disclosure, section 30 of the Act requires the CL&RS Inc. to:

- Notify the person who made the disclosure within 14 days of that conclusion, and
- Advise that person that he or she may request CL&RS Inc. to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

It is highlighted that if a determination is made that the disclosure is not a Public Interest Disclosure, it does not alter the decision that it is a protected disclosure. The protections of Part 3 of the Act continue to apply in this situation.

## **11. Possible Criminal Charges, Legal Action, and Disciplinary Proceedings**

The Act establishes a number of offences that are attached to a disclosure once it has been determined to be a protected disclosure. Public bodies must ensure all BOM members and staff are aware of the criminal offences created by the Act and other legal action that may be taken against them.

### **12. Criminal offences**

#### 12.1 Detrimental action

It is an offence for a person to take or threaten action in reprisal when:

- a protected disclosure has been made
- a person believes a protected disclosure has been made
- a person believes that another person intends to make a protected disclosure.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 18.

#### 12.2 Breach of confidentiality

It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.

Maximum penalty: a fine of 60 penalty units or six months imprisonment or both: section 22.

#### 12.3 Obstruction of the Ombudsman

It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 60.

#### 12.4 Provision of false information

It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter.

Maximum penalty: a fine of 240 penalty units or two years imprisonment or both: section 106.

### 12.5 Civil action

A whistleblower may take civil action against any person when they believe that detrimental action has been or may be taken against them in reprisal for the disclosure by applying to the Supreme Court for:

- An order that the person who took the detrimental action remedies it
- An injunction in any terms the Court considers appropriate: sections 20 and 21.

A person who takes detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person: section 19.

Disciplinary proceedings can be brought against a person responsible for established conduct that was subject of the investigation: section 81.

## **13. Investigating the Disclosure**

The Investigator is required to:

- Develop a investigation plan
- Contact the person who is the subject of the disclosure of the allegations made against them and given the right to respond
- Collate information relating to the allegation
- Make contemporaneous notes or recordings of all discussions, phone calls and interviews
- Ensure the privacy and confidentiality of all involved in the process
- Advise all witnesses that information about the matter is confidential and that they may be in breach of the Act if they divulge the information to a third party
- Consider the information and draw conclusions objectively and impartially
- Maintain procedural fairness and follow the natural justice principles
- Make recommendations arising from the conclusions
- If applicable advise the Ombudsman of any difficulties or problems encountered by the investigation.

## **14. Protecting the Whistleblower**

An individual receives protection under the Act if their allegation satisfies the definition of a protected disclosure as set out in the Act.

When a person makes a protected disclosure they are not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the protected disclosure.

The Act makes it a criminal offence punishable by a fine or two years imprisonment to take detrimental action against a person for making a protected disclosure.

However, there may be instances where it will be impossible to protect the identity of the whistleblower, for example a case may arise where it is known within the organisation that only the whistleblower could have access to the information in the disclosure. In these instances the whistleblower must be made aware that to

investigate the matter; their identity will probably be revealed. In these circumstances the whistleblower will still be afforded their rights under the Act.

### **15. Welfare Manager**

A senior CL&RS Inc. staff member will be appointed as the Welfare Manager by the Protected Disclosure Coordinator. The Welfare Manager will assist the whistleblower with their welfare, any concerns, and provide advice on the legislative and administrative protections available to them. The Welfare Manager will respond to any reports of intimidation or harassment and foster a supportive work environment

Should the whistleblower not be a staff member the Welfare Manager should discuss the issue of reasonable expectations with the person.

### **16. Occurrence of Detrimental Action**

Should the Whistleblower report any incidents of harassment, discrimination, or adverse treatment that would amount to detrimental action taken in reprisals for making a disclosure, the Welfare Manager should record the details and advise the person of their rights under the Act.

In some instances it may be necessary to report the matter to the police or the Ombudsman.

Should the investigation implicate the Whistleblower in misconduct the general obligation to protect the Whistle blower applies. However, a Whistleblower is not protected from the reasonable consequences flowing from involvement in improper conduct and in these instances CL&RS Inc. may seek legal advice.

### **17. Management of the Person Against Whom a Disclosure is made**

This person of whom the disclosure has been made will be given adequate information as to their rights and obligations under the Act., CL&RS Inc. reporting systems and any relevant legislative requirements.

### **18. Powers with Respect to Witnesses**

The CEO, or delegate, have the power to give a lawful instruction for a staff member to attend a meeting at a particular time and to produce official documents. The CEO, or delegate, are entitled to ask an staff member any relevant question concerning their employment.

Minors may only be interviewed with permission of, and present of, a parent or guardian.

Non staff may be requested to attend an interview and may do so after the person has provided consent.

It is the discretion of the interviewer to determine whether it is appropriate for a witness to have legal representation or a support person present. If permission is

granted for legal representation or a support person to be present, their role is not to answer questions for the witness.

The CEO may use discretionary powers to grant immunity from disciplinary action for witnesses.

## **19. Confidentiality**

The Act requires that any person who receives information related to the handling or investigation of a protected disclose not to disclose that information. Confidentiality of both the whistleblower and the person who is the subject of the disclosure should be maintained.

A breach of confidentiality protection constitutes a criminal offences punishable by a penalty and or two years imprisonment.

## **20. Establishing a Confidential Electronic and Paper Filing System**

To prevent breaches of the confidentiality requirements and to minimise the possibility of detrimental action, a secure electronic and paper filing system to ensure that :

- All paper and electronic files are secure and can only be accessed by authorised staff
- All printed material is kept in files that are clearly marked as a Whistleblowers Protection Act matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a protected disclosure
- Any files saved on a floppy disk or CD-Rom or other disc are password protected
- Any other material, such as tapes from interviews, are stored securely with access only to authorised officers
- The security of communications containing sensitive information or documents, are not emailed or faxed to a machine to which staff have general access.

## **21. Action on Completion of and Investigation**

The Protected Disclosure Officer, or a the Welfare Manager will inform the Whistleblower of the findings of the investigation and actions taken.

The Act requires that the Ombudsman receive a report on the findings of the investigation whether the allegations are substantiated or not.

CL&RS Inc. will develop systems to ensue the allegation/events from reoccurring

A report of the number and type of disclosures and relevant recommendations included in the CL&RS Inc. Annual Report.

## 22. Freedom of Information

The Ombudsman is to be contacted prior to releasing any information originating from the Ombudsman or in relation to the disclosure made under the Act.

## 23. Education and Training

All BOM members and staff are provided with information on the Whistleblowers Protection policy and given appropriate training at induction.

From January 2011, BOM members and staff will be provided with a copy of the Whistleblowers Protection policy.

## 24. Monitoring and Evaluation

BOM members and staff are encouraged to discuss issues at meetings, in person with Management Team Members or in writing.

Complaints are monitored by the BOM and recorded in a Register by the General Manager

Protective Disclosures are reported in the CL&RS Inc. Annual Report.

## Contact Details

Ombudsman Victoria  
Level 9 North Tower  
459 Collins Street  
Melbourne VIC 3000  
Phone 039613 6222  
Toll Free 1800 806 314  
Interpreter Service 131 450  
Email [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
Website [www.ombudsman.vic.au](http://www.ombudsman.vic.au)

Industry Standards		
<b>Disability Act Victoria (2006)</b>	Industry Standard	8
<b>Ageing Disability and Home Care NSW (1993)</b>	Standard	8
<b>CY&amp;FA (2005)</b>	Standard	1
<b>NCAC/OSHCQA (2003)</b>	Quality Area	8