

# WHISTLEBLOWER PROCEDURE

## Policy statement

Capecare is committed to enabling the reporting of wrongdoing within the organisation and supports this through the promotion of a workplace free of unacceptable behaviour and serious misconduct. We are committed to addressing and investigating reported misconduct and rectifying proven wrongdoing.

## 1. Purpose

To provide a safe, confidential, accessible and legally compliant process for people to report wrongdoing, serious misconduct, unsafe or unlawful practices, or other reportable concerns (including but not limited to: fraud, financial mismanagement, abuse/neglect of consumers, serious safety risks, tax misconduct, and breaches of corporate law), and to ensure reports are assessed, investigated and remediated fairly and without reprisal.

Legislative context (key):

- Corporations Act 2001 — Part 9.4AAA (protections, eligible whistleblowers, eligible recipients; requires a whistleblower policy for some entities). **NB:** Capecare is not governed by the Corporations Act but the provisions of the Act can be included in the policy
- Taxation Administration Act 1953 — Part IVD (tax whistleblower protections; confidentiality offences).
- Aged Care regulatory framework — Serious Incident Response Scheme (SIRS), Aged Care Quality & Safety Commission guidance; new Aged Care Act reforms (providers should prepare for strengthened disclosure protections under the new Act).
- Work Health & Safety Act 2020 (WA) — obligations for WHS reporting and protections for workers raising safety concerns.
- Fair Work Act 2009 — general protections against adverse action for exercising workplace rights (used in workplace reprisal matters).

## 2. Scope

Applies to disclosures by:

- employees, contractors, subcontractors, volunteers, temporary staff, interns, job applicants;
- suppliers, service providers and their employees;
- residents/consumers, families, visitors, advocates and members of the public.  
(These align with the Corporations Act / Tax Act definitions of eligible whistleblowers.)
- All Capecare programs and services

Covers disclosures alleging:

- breaches of corporate law, dishonesty, fraud, bribery;
- misuse of provider funds, financial coercion or stealing from consumers;

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- abuse (physical, sexual, psychological/emotional), neglect, unexplained death, unlawful conduct toward consumers (SIRS reportable incidents and other serious incidents);
- serious risks to health & safety;
- tax avoidance or other taxation misconduct;
- deliberate concealment of any of the above.

### 3. Definitions (short)

- Protected/Qualifying disclosure — a disclosure that meets criteria in the Corporations Act or Taxation Administration Act (e.g. information about an improper state of affairs or tax misconduct made by an eligible whistleblower to an eligible recipient).
- Detriment / reprisal — any conduct causing disadvantage e.g. dismissal, harassment, discrimination, harm to reputation, threats. (See Fair Work Act definitions re adverse action.)

### 4. Who may receive disclosures (eligible recipients)

To maximise protections for disclosers, this Procedure lists both internal and external eligible recipients. (A disclosure to an eligible recipient is more likely to qualify for statutory protection under the Corporations Act / Tax Act.)

Internal:

- Authorised Whistleblower Officer (Capecare CEO) — contact details, phone and secure email is provided on the inter and intranet.
- Board Chair (if disclosure concerns CEO).
- Chief People Officer (for employment-related matters only where appropriate).

External (eligible recipients under law):

- ASIC (corporate law matters); APRA (if relevant); ATO / Tax Practitioners Board (tax matters); Aged Care Quality & Safety Commission (SIRS / aged care regulatory matters); WorkSafe WA (WHS matters); Police.

### 5. How to make a disclosure

- Disclosures may be made: in person, by phone, by email, in writing, or anonymously (including via an external third-party reporting service).
- Provide the Whistleblower Officer's contact details and external reporting service details in staff induction and on the intranet.
- If a disclosure is made verbally, the receiving officer must record the disclosure in writing (discloser to sign where possible) and provide a copy to the discloser (or confirm the record if anonymous).

Note on anonymity & confidentiality: Capecare will treat disclosures confidentially to the fullest extent permitted by law. Certain statutory exceptions apply (e.g. disclosure to the regulator, court, or if required to prevent serious risk to a person). Unauthorised disclosure of a whistleblower's identity may be an offence under the Taxation Administration Act and Corporations Act.

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## 6. Immediate handling (first 48–72 hours)

1. Acknowledge receipt to the discloser (or log anonymous report) within 3 business days and explain the process and likely timeframes.
2. Conduct an initial assessment (safety and confidentiality risks; whether disclosure is a protected/qualifying disclosure; need for immediate action to protect people or evidence).
3. If immediate safety risk: implement interim protective actions (suspension with pay, leave, rostering changes, no-contact directives, security measures) consistent with privacy and employment law. Notify police or WorkSafe as required.

## 7. Investigation process

### 7.1. Appointment of investigator

- The Whistleblower Officer appoints an independent investigator (internal investigator with no conflict, or external investigator for high-risk/senior matters).

### 7.2. Plan & scope

- Investigator prepares terms of reference, confidentiality undertakings, timeframe and evidence preservation plan.

### 7.3. Evidence & interviews

- Collect documents, record interviews (with consent), preserve electronic records. Maintain strict chain-of-custody/log. Use trauma-informed interview techniques where consumers or vulnerable persons are involved.

### 7.4. Fair process

- Individuals implicated will be treated fairly. Where possible, avoid naming the discloser to the subject(s) unless legally required or the discloser consents.

### 7.5. Findings & outcome

- Investigator produces a written report (factual findings, legal/regulatory issues, recommended corrective action, disciplinary recommendations). Board/CEO decides outcomes and remediation.

### 7.6. Feedback

- Provide the discloser with a tailored outcome statement (redacted for privacy) and information about further review/appeal or external reporting options.

Timeframes: While investigations vary in complexity, Capecare will set internal milestones (e.g. initial assessment within 5 business days, preliminary report within 30 calendar days) and will keep the discloser informed. (These operational timeframes are best practice and may be adapted case-by-case.)

## 8. Protections and support for disclosers

- No detriment: The organisation prohibits victimisation, threats or reprisals. Any person who takes reprisal will be subject to disciplinary action (including dismissal). (Statutory remedies may also apply.)

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- Support: the organisation will offer welfare and counselling support and, where appropriate, alternative work arrangements. HR and the Whistleblower Officer coordinate support.
- Confidentiality: identify and limit individuals with access to records. Secure storage (encrypted digital folders; limited access). Only share identifying information where authorised or necessary to investigate or as required by law (e.g. to Aged Care Quality & Safety Commission, Police, ASIC).

## 9. Interaction with other legal/reporting obligations

- SIRS / Aged Care incidents: Where the disclosure relates to an SIRS reportable incident (neglect, abuse, unexplained death, financial coercion, sexual misconduct etc.) the provider must follow SIRS reporting obligations in addition to this Procedure and notify the Aged Care Quality & Safety Commission within its SIRS timeframes. The provider's SIRS and incident management processes must run concurrently with any whistleblower investigation.
- Tax matters: If disclosure concerns taxation misconduct, the ATO/TPB may be an eligible recipient and specific confidentiality protections under the Taxation Administration Act apply.
- Employment law: Use Fair Work Act general protections and related employment law when assessing reprisal or adverse action claims.
- WHS reporting: If the disclosure is a WHS matter, notify WorkSafe WA per WHS Act if required.

## 10. Recordkeeping & privacy

- Secure, separate, encrypted whistleblower file for each disclosure. Access strictly limited to authorised roles (Whistleblower Officer, Investigator, CEO/Chair & legal counsel).
- Retain records for minimum statutory periods and so long as needed for investigations, appeals, regulatory queries (recommend securely for at least 7 years where appropriate — check legal advice for retention periods by file type).
- Comply with Privacy Act and Health/medical records rules when consumer health information is involved.

## 11. Governance & responsibilities

- Board: oversight, receives anonymised annual whistleblower report, ensures independence of investigations, approves policy.
- CEO: ensures operational compliance, appoints Whistleblower Officer.
- Whistleblower Officer (CEO): receives reports, conducts first assessment, engages investigators, ensures protections, keeps Board informed (on sensitive matters).
- People and Culture: supports welfare measures, manages employment processes consistent with law.
- External Legal counsel (if involved): provides advice on disclosure scope, regulator notification, confidentiality, litigation risk.
- Investigators: independent conduct of detailed investigations.

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## 12. Reporting & monitoring

- Immediate reporting: serious matters (e.g. SIRS incidents, criminal conduct, serious WHS risks) must be reported to regulators (Commission, Police, WorkSafe) as required.
- Board reporting: quarterly anonymised summary to the Board (number of disclosures, themes, status, systemic remediation). Annual detailed (confidential) report on policy effectiveness and training compliance.
- Metrics: time to acknowledge; time to finalise investigations; number of reprisals reported; training completion rates.

## 13. Training & communication

- Mandatory element of induction training about whistleblower rights, how to disclose, confidentiality, and non-retaliation for all staff.
- Reference on intranet and internet pages, and easy-read materials for residents/families (make sure accessibility & culturally appropriate resources are available as is reasonable and practicable).

## 14. Sanctions for breach & remediation

- Any person who breaches confidentiality without lawful basis, or who retaliates against a discloser, will be subject to disciplinary action (including termination) and may face civil or criminal exposure under applicable laws (Corporations Act / Tax Act / employment legislation).

## 15. Review of this Procedure

- Review at least every 12 months, or sooner after any significant case, legal change, SIRS amendment or regulator guidance update. The Board approves the Procedure.

## 16. Unique considerations specific to Aged Care in WA

- Ensure alignment between this Procedure, Incident Management System (IMS) for SIRS, complaints management, WHS processes (WHS Act 2020 WA), and privacy/confidential records frameworks.
- Engage an independent external reporting hotline provider for anonymity/confidence and to meet best practice under the Corporations Act guidance. ASIC and many law firms recommend an independent channel as best practice.

## 17. Preparing for the new Aged Care Act (important note and timetable)

The Commonwealth has enacted a new Aged Care Act (Aged Care Act 2024) which the Department and Commission commenced on 1 November 2025, which strengthened whistleblower/disclosure protections and may make maintaining a whistleblower policy a registration condition for providers.

## 18. Quick escalation/contact list (publish in staff manuals)

- Whistleblower Officer: [name / secure email / phone] (internal)
- Aged Care Quality & Safety Commission (SIRS & complaints): <https://www.agedcarequality.gov.au/> — SIRS resources and reporting guidance.

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- ASIC (corporate matters): <https://asic.gov.au/> — guidance on protections.
- ATO / Tax whistleblower pages: <https://www.ato.gov.au/about-ato/whistleblowers>.
- WorkSafe WA (WHS reporting): <https://www.worksafe.wa.gov.au/> — reporting & WHS obligations.
- Police (emergency/criminal matters): 000 (or local police for non-urgent).

## 19. Suggested annexes / templates to attach to the Procedure

1. Whistleblower disclosure form (paper and secure online form).
2. Investigator terms of reference template.
3. Acknowledgement letter template and outcome letter template (redacted).
4. Confidentiality undertaking for investigators.
5. Flowchart: “How a disclosure is handled” (quick visual).
6. Record-keeping / secure file checklist.

## 20. Example “quick flow” (one-page)

1. Disclosure received → Acknowledge within 3 business days.
2. Initial assessment → Safety & legal triage (3 business days).
3. If immediate risk → implement protective actions & notify regulators (if required).
4. Appoint investigator → investigation plan & evidence preservation.
5. Investigation → report with recommendations.
6. Board/CEO decision → remedial action & disciplinary if required.
7. Feedback to discloser (redacted) & case closure.
8. Systemic improvement actions tracked & reported to Board.

## Key references / regulatory sources (for verification)

- Corporations Act 2001 — Part 9.4AAA (Protection for whistleblowers); whistleblower policy requirements (s1317AI / s1317AAA / s1317AA).
- ASIC guidance: Protections for corporate sector whistleblowers.
- Taxation Administration Act 1953: Part IVD / related regs; ATO whistleblower guidance.
- Aged Care Quality & Safety Commission / SIRS: SIRS guidance & reportable incidents.
- Department of Health: New Aged Care Act (starts 1 November 2025) and provider obligations (prepare to update policy accordingly).
- Work Health & Safety Act 2020 (WA): WHS obligations and reporting.

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- Fair Work Act 2009: general protections re adverse action / reprisal.

**Updated Compliance Alignment (Western Australia, 2025 Edition)**

This version has been revised to ensure compliance with Western Australian and Commonwealth legislation as applicable to private aged care providers operating in WA. The following key changes have been made:

1. Added explicit reference to the Aged Care Quality Standards (Standard 8: Organisational Governance), linking whistleblower and incident management processes.
2. Incorporated obligations under the Work Health and Safety Act 2020 (WA), including s38 notification requirements for notifiable incidents to WorkSafe WA.
3. Strengthened privacy and recordkeeping clauses to align with the Privacy Act 1988 (Cth), Health Services (Information) Privacy Regulations 2021 (WA), and State Records Act 2000 (WA).
4. Clarified alignment with SIRS reporting and complaints management obligations under the Aged Care Quality and Safety Commission Rules 2021.
5. Added guidance on independence and procedural fairness in investigations consistent with the Aged Care Quality and Safety Commission's investigation standards.
6. Enhanced reference to the Department of Health and Aged Care's guidance for the Aged Care Act 2024, which commences on 1 November 2025, including the anticipated provider registration conditions.
7. Refined Board and governance accountabilities for oversight, policy review, and systemic learning from disclosures.

**Updated Legislative and Regulatory References**

- Corporations Act 2001 (Cth) — Part 9.4AAA (Whistleblower protections).
- ASIC Regulatory Guide 270 — Whistleblower Policies.
- Aged Care Act 1997 (Cth) and Aged Care Quality and Safety Commission Rules 2018 (SIRS Rules 2021).
- Work Health and Safety Act 2020 (WA) and Work Health and Safety (General) Regulations 2022 (WA).
- Fair Work Act 2009 (Cth).
- Privacy Act 1988 (Cth) and Australian Privacy Principles.
- Health Services (Information) Privacy Regulations 2021 (WA).
- State Records Act 2000 (WA).
- Department of Health and Aged Care — Aged Care Act 2024 (commencing 1 November 2025).
- Aged Care Quality Standards (Standard 8: Organisational Governance).

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