

## Whistleblower Policy

### 1 Purpose

- 1.1 Meals on Wheels NSW Ltd (ABN 87 418 074 604) (**MOW NSW**) is committed to promoting the highest standards of integrity and ethical behaviour.
- 1.2 MOW NSW encourages people who have a working relationship with MOW NSW to notify any Disclosable Matter to MOW NSW in accordance with this policy to enable MOW NSW to address it appropriately.
- 1.3 The objective of this policy is to provide information about:
- (a) to whom Disclosures may be made, and how they may be made;
  - (b) how MOW NSW will investigate Disclosures;
  - (c) the protections available to Whistleblowers;
  - (d) how MOW NSW will support Whistleblowers and protect them from detriment;
  - (e) how MOW NSW will ensure fair treatment of those mentioned in Disclosures; and
  - (f) how this policy will be made available to MOW NSW's officers, employees and volunteers.
- 1.4 This policy will be made available:
- (a) to all existing officers, employees and volunteers by email or post via their nominated address;
  - (b) to all new officers, employees and volunteers with their new starter package;
  - (c) on MOW NSW's intranet; and
  - (d) on MOW NSW website

### 2 Definitions

- 2.1 In this policy:
- (a) **Detriment** means any damage arising from reprisal against a Whistleblower, including (but not limited to):
    - (i) if the Whistleblower is an employee of MOW NSW:
      - (A) dismissal;
      - (B) injury in his or her employment with MOW NSW;
      - (C) alteration of duties to his or her disadvantage; or
      - (D) discrimination between the Whistleblower and other employees in MOW NSW;
    - (ii) harassment or intimidation;
    - (iii) harm or injury (including psychological harm);
    - (iv) damage to property, reputation or business or financial position; or
    - (v) any other damage.

- (b) **Disclosure** means a disclosure of information by a Whistleblower to a person or entity listed in the table at clause 3 about a Disclosable Matter in accordance with this policy.
- (c) **Disclosable Matter** means any Disclosure concerning misconduct, an improper state of affairs or circumstances in relation to MOW NSW or the tax affairs of MOW NSW. This may include (but is not limited to) a disclosure of information if the Whistleblower has reasonable grounds to suspect that MOW NSW or an officer or employee of MOW NSW has engaged in conduct that:
- (i) constitutes an offence against, or a contravention of, a provision of the *Corporations Act 2001*, *Australian Securities and Investments Commission Act 2001*, the *Australian Charities and Not-for-profits Commission Act 2012*, the *Banking Act 1959*; the *Financial Sector (Collection of Data) Act 2001*; the *Insurance Act 1973*; the *Life Insurance Act 1995*; the *National Consumer Credit Protection Act 2009*; the *Superannuation Industry (Supervision) Act 1993* or an instrument made under any one of those Acts;
  - (ii) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
  - (iii) represents a danger to the public or the Australian financial system, including conduct that poses significant risk to public safety or the stability of, or confidence in, the Australian financial system, whether or not it is in breach of any law.

Examples of Disclosable Matters can include (but are not limited to):

- (iv) corruption (e.g. bribes);
  - (v) fraudulent behaviour (e.g. falsifying documents);
  - (vi) illegal activity (e.g. theft, violence);
  - (vii) a breach of any law, regulation, internal policy or code;
  - (viii) endangerment to the health and safety of others or potential damage to the environment;
  - (ix) inappropriate workplace behaviour (e.g. bullying, harassment and discrimination);
  - (x) maladministration (e.g. unjust, based on improper motives, unreasonable, oppressive or negligent);
  - (xi) actions that may cause financial or non-financial loss to MOW NSW or be otherwise detrimental to the interests of MOW NSW; or
  - (xii) concealing any Disclosable Matter.
- (d) **Responsible Person** means MOW NSW's Whistleblower Protections Officer (or the CEO or Chairperson of the Board if the Whistleblower Protections Officer is implicated in the Disclosure).
- (e) **Whistleblower** means, generally, an insider within, or close to, MOW NSW that reports misconduct or dishonest or illegal activity within MOW NSW. A Whistleblower can be any one of the following individuals that makes or attempts to make a Disclosure in accordance with this policy:
- (i) an officer of MOW NSW;

- (ii) an employee of MOW NSW;
  - (iii) an individual who supplies goods or services to MOW NSW (whether paid or unpaid);
  - (iv) an employee of a person who supplies goods or services to MOW NSW (whether paid or unpaid);
  - (v) a family member or dependent of any individual listed in paragraphs (i)-(iv); and
  - (vi) an associate of MOW NSW (within the meaning of section 318 of the *Income Tax Assessment Act 1936*).
- (f) **Wrongdoer** means an individual who is deemed to have engaged in a Disclosable Matter following an investigation undertaken in accordance with this policy.

### 3 Making disclosures

- 3.1 A Disclosure can be made to the people or entities and through the channels listed in the table below.
- 3.2 Disclosures may be made anonymously, although MOW NSW is best placed to investigate a Disclosure and protect the Whistleblower when the Whistleblower's identity is known.
- 3.3 If a Disclosure is not anonymous, the recipient of the Disclosure must keep the Whistleblower's identity confidential unless the Whistleblower consents to his or her identity being disclosed.
- 3.4 These procedures do not authorise any person to inform commercial media or social media of their concern, and do not offer protection to any person who does so.
- 3.5 Any such Disclosure should, where possible, be in writing and should contain, as appropriate, details of:
- (a) the nature of the alleged breach;
  - (b) the person or persons responsible for the breach;
  - (c) the facts on which the complainant's belief that a breach has occurred, and has been committed by the person named, are founded;
  - (d) the nature and whereabouts of any further evidence that would substantiate the complainant's allegations, if known.
- 3.6 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 is not an absolute bar to the activation of MOW NSW's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.
- 3.7 In contemplating the use of this policy, a person should consider whether the matter of concern may be more appropriately raised under either MOW NSW's constitutional grievance procedures, work health and safety policy and complaints policy.

Who to contact	How to contact
If applicable in the Whistleblower's circumstance, they can: <ul style="list-style-type: none"> <li>• contact their MOW NSW supervisor; or</li> </ul>	Email (or may phone or speak in person to): <ul style="list-style-type: none"> <li>• your MOW NSW supervisor (contact details would have previously been provided to you);</li> </ul>

<ul style="list-style-type: none"> <li>• if they feel that their supervisor may be complicit in the breach, they can contact the MOW NSW CEO; or</li> <li>• if they feel that the CEO may be complicit in the breach, they can contact MOW NSW's nominated Whistleblower Protection Officer.</li> </ul>	<ul style="list-style-type: none"> <li>• MOW NSW's CEO (Les MacDonald, <a href="mailto:lesm@nswmealsonwheels.org.au">lesm@nswmealsonwheels.org.au</a>, ph: 02 8219 4200;</li> <li>• MOW NSW's Whistleblower Protection Officer (Puvana Thillai Nadesan, <a href="mailto:puvanat@nswmealsonwheels.org.au">puvanat@nswmealsonwheels.org.au</a> , ph: 02 8219 4200)</li> </ul>
<p>An auditor engaged by MOW NSW (or a member of an audit team conducting an audit for MOW NSW).</p>	
<p>The duly constituted legal authorities responsible for the enforcement of the law in the relevant area. This will depend on the nature of your Disclosure but we have provided some examples in the column to the right.</p>	<ul style="list-style-type: none"> <li>• The Australian Charities and Not-for-profits Commission: <a href="https://www.acnc.gov.au/contact-us">https://www.acnc.gov.au/contact-us</a></li> <li>• The Australian Securities &amp; Investments Commission: <a href="https://asic.gov.au/complain">https://asic.gov.au/complain</a></li> <li>• Fair Work Ombudsman: <a href="https://www.fairwork.gov.au/">https://www.fairwork.gov.au/</a></li> <li>• Australian Prudential Regulation Authority: <a href="https://www.apra.gov.au/contact-us">https://www.apra.gov.au/contact-us</a></li> <li>• Australian Federal Police: <a href="https://www.afp.gov.au/contact-us">https://www.afp.gov.au/contact-us</a></li> <li>• NSW Police: <a href="https://www.police.nsw.gov.au/contact_us">https://www.police.nsw.gov.au/contact_us</a></li> </ul>
<p>A legal practitioner for the purpose of obtaining legal advice or representation under the “protection for whistleblowers” provisions of the <i>Corporations Act 2001</i> (Cth).</p>	<ul style="list-style-type: none"> <li>• Australian Capital Territory: <a href="https://www.actlawsociety.asn.au/">https://www.actlawsociety.asn.au/</a></li> <li>• New South Wales: <a href="https://www.lawsociety.com.au/for-the-public/find-a-lawyer">https://www.lawsociety.com.au/for-the-public/find-a-lawyer</a></li> <li>• Northern Territory: <a href="https://lawsocietynt.asn.au/nt-legal-directory/other-legal-links-1/9-pages/legal-directory-a-links.html">https://lawsocietynt.asn.au/nt-legal-directory/other-legal-links-1/9-pages/legal-directory-a-links.html</a></li> <li>• Queensland: <a href="https://www.qls.com.au/Home">https://www.qls.com.au/Home</a></li> <li>• South Australia: <a href="https://referral.lawsocietysa.asn.au/">https://referral.lawsocietysa.asn.au/</a></li> <li>• Tasmania: <a href="https://lst.org.au">https://lst.org.au</a></li> <li>• Victoria: <a href="https://www.liv.asn.au/find-a-lawyer">https://www.liv.asn.au/find-a-lawyer</a></li> <li>• Western Australia: <a href="https://www.lawsocietywa.asn.au/find-a-lawyer/">https://www.lawsocietywa.asn.au/find-a-lawyer/</a></li> </ul>

## 4 Investigation process

### 4.1 Initial review

- (a) Upon receiving a Disclosure that qualifies for protection under this policy, MOW NSW will take the steps set out in this clause 4 to review the Disclosure.

- (b) The Responsible Person must be notified by the individual who received the Disclosure.
- (c) If deemed necessary by the Responsible Person, immediate action will be taken to prevent alteration or destruction of any relevant records. Such actions may include (but are not limited to):
  - (i) removing relevant records and placing them in a secure location;
  - (ii) limiting access to the location where the records currently exist; and
  - (iii) preventing the individual whom is the subject of the Disclosure from accessing the records.
- (d) The Responsible Person will promptly carry out an initial review of the Disclosure. If the Responsible Person:
  - (i) believes the behaviour complained of to be unquestionably trivial or fanciful, they may dismiss the allegation and notify the person making the allegation of their decision in writing; or
  - (ii) believes the behaviour complained of to be neither trivial nor fanciful, they must put in motion the investigation process described below.

#### 4.2 Investigation

- (a) If deemed necessary by the Responsible Person, they can liaise with the CEO (or Chairperson of the Board if the CEO is implicated in the Disclosure), who shall be responsible for ensuring that an investigation of the charges is established and adequately resourced.
- (b) Terms of reference for the investigation will be drawn up, in consultation with the CEO (or Chairperson of the Board if the CEO is implicated in the Disclosure), to clarify the key issues to be investigated.
- (c) 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.
- (d) 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. Contemporaneous notes of all discussions, phone calls and interviews will be made. Where possible, interviews will be recorded.
- (e) The principles of procedural fairness (natural justice) will be observed. In particular, where adverse comments about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised. The person or persons conducting the investigation shall be as far as possible unbiased.
- (f) Subject to considerations of the privacy of those against whom the allegations are made and customary practices of confidentiality, the Whistleblower will be kept informed of relevant progress of an investigation.
- (g) A report will be prepared when an investigation is complete. This report will include:
  - (i) the allegations;

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

#### 4.3 Action following investigation

- (a) If the allegation is substantiated by the investigation, the Wrongdoer will be subject to appropriate disciplinary action in proportion to the misconduct, including dismissal if necessary, by the appropriate level of management.
- (b) MOW NSW will also take all reasonable steps, including commencing legal proceedings to recover any loss from the Wrongdoer.
- (c) Subject to considerations of the privacy of those against whom the allegations are made and customary practices of confidentiality, the Whistleblower will be kept informed of relevant outcomes of an investigation.
- (d) MOW NSW will report to the Board of MOW NSW

## 5 Roles and responsibilities

### 5.1 Employees and volunteers have a responsibility to:

- (a) disclose Disclosable Matters in accordance with this policy;
- (b) not raise vexatious, malicious or frivolous concerns;
- (c) ensure that their behaviour complies with MOW NSW's policies and procedures;
- (d) participate in resolution pathways with honesty whilst maintaining confidentiality;
- (e) ensure they do not cause, or threaten to cause, Detriment to Whistleblowers; and
- (f) protect the identity of, or any information that is likely to lead to the identification of, Whistleblowers or individuals mentioned in a Disclosure (this applies to such information obtained directly or indirectly because of the Disclosure). For more information on this, refer to clause 6.2 below.

### 5.2 Managers have a responsibility to:

- (a) conduct themselves in line with MOW NSW's policies and the relevant legislation;
- (b) disseminate approved policies to officers and employees;
- (c) ensure employees have received, read and understood policies;
- (d) assess the risks of Disclosable Matters within their area of control;
- (e) educate employees and volunteers about whistleblower laws; and
- (f) facilitate, receive and investigate Disclosures.

### 5.3 The Whistleblower Protections Officer has responsibility to:

- (a) provide training and coaching to recipients of Disclosures and employees on this policy;
- (b) report instances of Disclosable Matters to the CEO (or Chairperson of the Board of MOW NSW if the CEO is implicated in the Disclosure) as appropriate; and

(c) facilitate, receive and investigate Disclosures in accordance with this policy.

5.4 The CEO has a responsibility to oversee the implementation of this policy and the management of Disclosures in accordance with this policy.

## 6 Whistleblower protections

6.1 MOW NSW will protect any Whistleblower that makes a Disclosure where that Whistleblower has reasonable grounds to suspect the Disclosure concerns a Disclosable Matter.

6.2 Generally, the identity of, or any information that is likely to lead to the identification of, Whistleblowers or individuals mentioned in a Disclosure (this applies to such information obtained directly or indirectly because of the Disclosure) will not be disclosed. Note that disclosures of information likely to lead to the identification of a Whistleblower may be made if it is reasonably necessary for the purposes of investigating a Disclosable Matter. In such circumstances, MOW NSW must take all reasonable steps to reduce the risk of the Whistleblower being identified.

6.3 MOW NSW will not tolerate Detriment toward any Whistleblower that has made or attempted to make a Disclosure in relation to Disclosable Matter. Any employee, officer or volunteer of MOW NSW proven to have caused, or attempted to cause, Detriment to any Whistleblower may be subject to disciplinary action including termination.

6.4 Similarly, MOW NSW itself will not engage in conduct that causes a Whistleblower Detriment. In particular, MOW NSW will not subject the Whistleblower to civil, criminal or administrative liability (including disciplinary action) for making a disclosure and will not enforce any contractual remedy, such as dismissal, against the Whistleblower on the basis of a Disclosure. This protection applies whether the Disclosure is proven or not.

6.5 Where a Disclosure is made, MOW NSW will assess the risk of the Whistleblower being subjected to Detriment and may implement interim measures to manage the risk of Detriment. This may include implementing temporary alternative working arrangements or other measures to support and protect the Whistleblower, including (but not limited to) providing the Whistleblower with:

- (a) access to Employee Assistance Program (EAP);
- (b) flexibility to work practices as necessary and relevant;
- (c) paid personal leave beyond what is currently available (as approved by MOW NSW);
- (d) paid access to other legal services as reasonably required in the circumstances; and
- (e) paid access to psychological services as needed (beyond what is provided via the EAP).

## 7 Fair treatment

7.1 MOW NSW will ensure the fair treatment of both Whistleblowers and any employees mentioned in a Disclosure by:

- (a) educating employees, officers and volunteers on the requirements of this policy;
- (b) facilitating anonymous Disclosures;
- (c) maintaining confidentiality over Disclosures and the identity of Whistleblowers and others identified in reports;

- (d) taking steps to ensure investigations into Disclosable Conduct are confidential, fair and objective;
- (e) protecting Whistleblowers from Detriment as outlined in clause 6 above;
- (f) taking steps to monitor the wellbeing of Whistleblowers and employees mentioned in Disclosures;
- (g) regularly updating the Whistleblower on the progress of any investigation into a Disclosure; and
- (h) not taking any disciplinary action against an employee mentioned in a Disclosure unless or until the Disclosure is substantiated.

## 8 Policy administration details

Date effective:	17.08.2021
Version number:	1
Status of policy:	The terms of this policy are not intended to be contractual in nature and do not form part of any worker's contract of employment or engagement.
Review:	17.08.2023
Related policies, procedures and resources	Grievance policy, Code of conduct policy