

WHISTLEBLOWER POLICY

1. Purpose of this Policy

The purpose of this Whistleblower Policy (the 'Policy') is to ensure that wrongdoings and conduct not aligned with Peninsula Home Hospice ('PHH') policies are identified so that individuals can disclose wrongdoings safely, securely and with confidence that they will be protected and supported.¹

PHH encourages individuals to disclose wrongdoing and speak up when something isn't right. PHH is committed to ensuring disclosures are dealt with on a timely basis, in accordance with the *Corporations Act 2001* (Cth) (the 'Act') and other regulatory obligations.

This Policy is important in helping identify wrongdoing that otherwise would not have been uncovered without the protections granted by the Act which are detailed below.

2. Who does this policy apply to?

This Policy applies to individuals who are, or have been, any of the following in relation to PHH:²

- (a) An officer or employee;
 - Including permanent, full time, fixed term or temporary roles, interns, managers and Directors.
- (b) A supplier of services to PHH (paid or unpaid) and their workers
 - Including contractors, consultants, service providers and business partners.
- (c) An associate of PHH; and
- (d) A relative, dependant or spouse of an individuals listed in (a)-(c).

The individuals listed above can make a disclosure which may qualify for protection under the Act (collectively referred to as 'eligible whistleblowers').

3. Eligible disclosures³

An eligible whistleblower can make a disclosure relating to a 'disclosable matter'.⁴

A disclosable matter must fulfil the following criteria:

- (1) The eligible whistleblower must have a reasonable ground to suspect conduct in point 3(3) has occurred.
 - a. ASIC suggests an allegation with no supporting information is not likely to have 'reasonable grounds to suspect'⁵; and
- (2) The conduct outlined in (3) relates to PHH or a related body corporate of PHH⁶; and
- (3) Disclosable conduct which is:
 - (i) Misconduct
 - a. Negligence, breach of trust, or breach of duty
 - (ii) Illegal such as;
 - a. Theft, dealing in, or use of illicit drugs or violence or threatened violence
 - b. Fraud, money laundering or misappropriation of funds
 - c. Offering or accepting a bribe
 - d. Financial irregularities

¹ RG 270.40

² RG 270.43, *Corporations Act 2001* (Cth) s 1317AAA, *Taxation Administration Act* (Cth) s 14ZZU.

³ RG 270.48

⁴ *Corporations Act 2001* (Cth) s 1317AA.

⁵ RG 270.53

⁶ RG 270.51

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- e. Failure to comply with, or a breach or legal or regulatory requirements; and
- f. Engaging in or threatening to engage in detrimental conduct against an eligible whistleblower who has made a disclosure or is believed or suspected to make or planned to make a disclosure.
- (iii) Conduct that is an offence against, or a breach of
 - a. *Corporations Act 2001* (Cth)
 - b. *Banking Act 1959* (Cth)
- (iv) An offence against an Australian Commonwealth law (law which is not state governed law) which is punishable by imprisonment for 12 months or more; or
- (v) Business behaviour and practices that may cause consumer harm; or
- (vi) Improper state of affairs or circumstances; or
- (vii) Represents a danger to the public or financial system; or
- (viii) Or prescribed by regulation.

(Collectively referred to as ‘disclosable matters’).

Disclosable matters may relate to issues of public safety but do not necessarily involve a breach of law.

Personal Work Grievances

Disclosures that relate solely to:

- (a) personal work-related grievances; and
 - (b) do not relate to detriment or threat of detriment to the discloser
- do not qualify as a disclosable matter.

Personal work grievances include:

- conflict between an eligible whistleblower and another employer;
- a decision that doesn’t involve a breach of workplace laws;
- a decision about a Workers employment status, transfer or promotion;
- a decision about the terms of a Workers engagement or contract;
- a decision to suspend, terminate or discipline a Worker.

Workers can raise personal work grievances via PHH *Grievance Handling Policy*. Workers may want to consider seeking external legal advice about their rights under employment and contract law.

False Reports

PHH discourages the reporting of deliberate false reporting, which may delay the investigation of valid disclosures. Any false reporting will be treated seriously and may be subject to reporting to appropriate authorities.

4. Who can receive a disclosure?

PHH encourages eligible whistleblowers to make a disclosure to PHH as the first port of call so that wrongdoing can be identified and addressed in a timely manner.⁷

*Who can receive a disclosure within PHH?*⁸

The following people are able to receive a disclosure within PHH:

- A person/s authorised by the entity to receive disclosures

⁷ RG 270.71

⁸ RG 270.64-270.71

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- CEO
- Chair of the Board
- People and Culture Manager (Whistleblower Investigation Officer)
- PHH has engaged an independent whistleblowing service provider, Stopline, to receive whistleblowing disclosures. Stopline can be the first port of call for an eligible whistleblower via the following [link](#).⁹
- An internal or external auditor; OR
- Any one of the following individuals to qualify for protection:

Whistleblower Protection Officer:	Julie Murphy, General Manager - Clinical Services
	Jason Petronio, General Manager – Corporate Services

(collectively referred to as ‘Whistleblower Protection Officers’)

Who can receive a disclosure external to PHH?

An eligible whistleblower can make a disclosure to one of the following individuals to qualify for protection:

- **Lawyer**
A lawyer you have engaged to provide advice on the disclosure or to represent you.
 - In the event that your lawyer concludes that a disclosure doesn’t fulfil the criteria of a disclosable matter, protections still may apply.¹⁰
- **Regulatory Bodies**
Disclosures can also be made to [ASIC](#), ACNC, or another Commonwealth body (body prescribed by regulation) and still qualify for protections granted under the Act outlined in point 6.
- **Public Interest Disclosure**
Disclosures can be made to a journalist or parliamentarian under certain circumstances and still qualify for protection, this is called a ‘public interest disclosure.’¹¹ A public interest disclosure can be made where all of the below criteria is met:
 - At least 90 days have passed since the eligible whistleblower made the disclosure to ASIC, ACNC or another Commonwealth body (prescribed by regulation);
 - The eligible whistleblower doesn’t have reasonable grounds to believe that action is being, or has been taken;
 - The eligible whistleblower has reasonable grounds to believe making another disclosure is in the public interest; **and**
 - Before making a public interest disclosure, the eligible whistleblower has given written notice to ASIC, ACNC or another Commonwealth body (prescribed by regulation) that identifies their original disclosure, and outlines that they intend to make a public interest disclosure.¹²
- **Emergency Disclosure**
Disclosures can be made to a journalist or parliamentarian under certain circumstances and still qualify for protection, this is called a ‘emergency disclosure.’¹³ An emergency disclosure can be made where all of the below criteria is met:

⁹ RG 270.72.

¹⁰ RG 270.45(B) RG 270.72, s 1317AA(3).

¹¹ S 1317AAD. RG 270.74.

¹² RG 270.75

¹³ RG 270.76

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- An eligible whistleblower has made the disclosure to ASIC, ACNC or another Commonwealth body (prescribed by regulation);
- The eligible whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health and safety of one or more persons or the natural environment;
- Before making a public interest disclosure, the eligible whistleblower has given written notice to ASIC, ACNC or another Commonwealth body (prescribed by regulation) that identifies their original disclosure, and outlines that they intend to make an emergency disclosure; **and**
- The extent of the information disclosed is no greater than necessary to inform the journalist or parliamentarian of the substantial and imminent danger.¹⁴

Before making a public interest or emergency disclosure it is important to ensure all of the above criteria is met. A Worker may wish to seek external legal advice from a lawyer prior to making this type of disclosure.¹⁵

5. Making a disclosure¹⁶

An eligible whistleblower who makes a disclosure (a 'discloser') is able to disclose their report by internal and external means. If the individual has any concerns regards whistleblower protections or procedures, individuals can contact the third party service, Stopline or the individuals listed in point 4 noting that they will not have legal protections available to them outlined in point 6.

6. Legal protections for disclosures¹⁷

Disclosers who fulfil the criteria outlined in points 1-4 have the following legal protections available to them for both internal and external disclosures¹⁸:

A. Protection of a Disclosers Identity¹⁹

PHH has a legal obligation to protect the confidentiality of a disclosers identity.

A person cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser *unless* a person discloses the identity of a discloser to:

- ASIC, ACNC or a member of the Australia Federal Police;
- A lawyer (to obtain legal advice or legal representation);
- A person or body prescribed by regulations; **or**
- With the consent of the discloser

A person can disclose the information contained in the disclosure with or without the disclosers consent if:

- The information doesn't include the disclosers identity;
- PHH has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
- It is reasonably necessary for investigating issues mentioned in the disclosure

¹⁴ RG 270.76

¹⁵ RG 270.78

¹⁶ S 1317AI(5)(b).

¹⁷ RG 270.41, *Corporations Act 2001* (Cth) s 1317AI(5)(a).

¹⁸ S 1317AI(5)(a).

¹⁹ RG 270.90 – RG270.94

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It is illegal for a person to identify a discloser or disclose information that is likely to lead to the identification of the discloser.

- If this has occurred, you can lodge a complaint for breach of confidentiality via Stoptline.
- A discloser may also lodge a complaint with a regulator such as ASIC or ACNC for investigation.

Anonymity

Disclosures by a discloser who fulfils the criteria in points 1-5 can make a disclosure anonymously and still be protected by the Act.

A discloser who makes a disclosure can choose to remain anonymous:

- Whilst making a disclosure;
- Over the course of the investigation;
- After the investigation is finalized

A discloser can refuse to answer any questions which could reveal their identity at any time.

If a disclosure is received from an email address where a person's identity cannot be determined, it will be treated as an anonymous disclosure. Other mechanisms for protecting anonymity include adopting a pseudonym.

B. Protection from detrimental acts or omissions²⁰

A person cannot engage in conduct that causes detriment to a discloser (or another person) in relation to a disclosure if:

- The person believes or suspects that the discloser made, may have made, proposes to make or could make a valid disclosure; and
- The belief or suspicion is the reason (whole or in part) for the conduct.

Threats, (whether express or implied) to cause detriment to a discloser (or another person) is not permitted.

Detrimental conduct, which is prohibited under law includes:

- Dismissal, injury to employment, alteration of position or duties
- Discrimination between an workers and other workers
- Harassment or intimidation
- Harm or injury to a person, property or reputation
- Damage to a person's business or financial position
- Any other damage

Detrimental conduct does not include:

- Administrative action which is reasonable to protect the discloser from detriment
- Management action to manage a discloser's unsatisfactory work performance

If a discloser is subject to administrative or management action, they will be informed of the reasons for taking this action.

²⁰ RG 270.95 – RG270.101

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C. Compensation and other remedies²¹

A discloser (or any other worker or person) can seek compensation and other remedies through the courts if:

- They suffer loss, damage or injury because of a disclosure;
- PHH failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

If a person wishes to proceed with seeking compensation and/or other remedies from the courts independent legal advice should be sought.

D. Civil, criminal and administrative liability protection

A discloser is protected from the below in regards to their disclosure:

- Civil liability
 - Such as legal action against a discloser for breach of an employment contract or duty of confidentiality
- Criminal liability
 - Such as attempted prosecution of the discloser for unlawfully releasing information
 - This does not include protections for making a false disclosure

These protections do not grant immunity for misconduct by the discloser which is revealed throughout the disclosure procedure.

7. Support and practical protection for disclosures

PHH is committed to supporting disclosers and protecting disclosers from detriment throughout the disclosure process.²²

A. Protection of a discloser's identity²³

Receiving a disclosure

- All personal information or reference to the discloser witnessing an event will be redacted
- The discloser will be referred with a pseudonym
- 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 staff

Record keeping

- 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 disclosers consent) or information that is likely to lead to the identification of the discloser
- Communication and documents relating to the investigation of a disclosure will not be sent to an email address or printed that can be accessed by other staff
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements

²¹ S 1317AD RG 207.102 RG 207.103

²² S 1317AI(5)(c).

²³ S 1317AI(5)(c), RG 207.106 – RG 207.108.

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B. Protection from detrimental acts or omissions²⁴

Detriment in the workplace

- Assessing the risk of detriment against a discloser and other persons once a disclosure is received
- Actions to protect a discloser from potential detriment
 - Such as allowing a discloser to perform their duties at a different location or reassigning a discloser to a different role at the same level
- Ensure that Disclosure Officers are aware of the need to manage conflicts, ensure fairness and assess the risk of harm to the discloser
- A discloser can lodge a grievance with Stoplevel if they have suffered detriment.

C. Personal Wellbeing²⁵

In some instances personal wellbeing services may be offered to a discloser, or those subject to detriment including:

- Support services
 - Such as PHH's Employee Assistance Program, Converge International, providing confidential counselling or psychologist services
- Strategies to help a discloser minimize and manage stress, time, performance impacts and other challenges resulting from a disclosure and subsequent investigation
- If personal detriment has occurred PHH may take disciplinary action to individuals who contributed to the detriment

8. Handling and investigating a disclosure²⁶

A. Receiving a disclosure

Once PHH, or a service provider authorized by PHH to receive whistleblowing disclosures receives a disclosure it will assess each disclosure to determine whether:

- The disclosure qualifies for protection; and
- A formal, in-depth investigation is required.

B. When and why a disclosure will be investigated

Disclosures raised will be received and treated seriously and with the utmost sensitivity. Whilst making a disclosure doesn't guarantee a matter will be formally investigated, all disclosures will be reviewed and based on the disclosures nature and evidence provided. From here a decision will be made as to whether the disclosure warrants an investigation.

The determination on whether to investigate the disclosure, the following be considered:

- The objective seriousness of the disclosure
- The quality of information or evidence provided
- Whether the disclosure concerns serious systemic conduct
- Whether similar disclosures have been received
- Whether the conduct involves Disclosure Officers, significant financial matters or non-compliance

²⁴ RG 270.109

²⁵ Ibid.

²⁶ RG 270.111 -

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PHH may not be able to undertake an investigation if it is unable to contact the discloser and/or if the discloser has refused to provide or has not provided a means of contacting them. If this is the case, PHH may opt to conduct a broad review on the subject matter disclosed.²⁷

C. Investigation Process

PHH is committed to conducting objective, fair and independent investigations where this cannot be fulfilled by PHH in part, PHH will opt for a completely external investigation.²⁸ Throughout the investigation process, confidentiality requirements outlined in points 6(A) and 7(A) will continue to be applied.

For disclosures that qualify for protection, PHH will follow the below investigation process:²⁹

1. Receive the disclosure	Disclosures will be received by a Whistleblower Protection Officer.
2. Acknowledge the disclosure	A Whistleblower Protection Officer will acknowledge receipt of the disclosure within a reasonable timeframe.
3. Assess the disclosure and address immediate risks	A Whistleblower Protection Officer will assess the disclosure determining: <ul style="list-style-type: none"> (a) Whether the disclosure fulfils the criteria outlined in points 1-4 (b) The objective seriousness of the disclosure (c) The quality of information or evidence provided (d) Whether the disclosure concerns serious systemic conduct (e) Whether similar disclosures have been received (f) Whether the conduct involves Whistleblower Protection Officers, significant financial matters or non-compliance (g) Whether the disclosure warrants an investigation
4. Resolve the disclosure	For disclosures that do not meet the criteria in points 1-4 or do not warrant an investigation the Whistleblower Protection Officer will seek to resolve the disclosure directly with the discloser or redirect their disclosure to the appropriate Grievance Handling Policy.
5. Investigate or review the disclosure externally	Stopline, a Disclosure Officer of PHH, will conduct an investigation. All workers of PHH must cooperate fully with any investigators.
6. Provide regular updates throughout the process	Stopline will provide regular updates to disclosers and PHH regarding the process of the investigation.
7. Provide the final outcome	The findings of the investigation will be provided to PHH and communicated as appropriate to the discloser and involved Parties.
8. Close the investigation and record the outcome	Stopline will close out the investigation and maintain appropriate records.
9. Facilitate ongoing support for those involved	PHH will provide referrals to professional services to disclosers and other employees as appropriate.
10. Continuous improvement	Stopline will provide recommendations for improvement for future investigations.

²⁷ RG 270.119

²⁸ Good practice tip RG 270.120

²⁹ S 1317AI(5)(d)

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D. Closing the loop on investigations³⁰

A discloser will be provided with regular updates so long as the discloser can be contacted, the main updates will be when the investigation:

- has begun;
- is in process; and
- has been finalised.

A person subject of an allegation will be provided the:

- information regarding the allegation and the nature of the allegation to the extent lawful;
- opportunity to respond to the allegation; and
- outcome of the investigation or report.

Pending the nature of the disclosure, timelines of when a discloser will be provided an update will vary. The discloser may be informed of the outcomes of an investigation,³¹ there may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

E. Review³²

If a discloser is dissatisfied with the outcome of the investigation the discloser may:

- Request a review be conducted by an officer who is not involved in handling and investigating disclosures and provide the review findings to the Governance and Risk Committee; or
- Lodge a complaint with ASIC or the ACNC.

PHH is not obliged to reopen an investigation where it can confirm:

- The investigation was conducted properly
- New information is not available
- New information would not change the findings of the investigation

9. Fair treatment of individuals mentioned in a disclosure³³

PHH is committed to fair treatment of its workers who are mentioned in a disclosure that qualifies for protections under the Act, including those who are subject of a disclosure.

To ensure fair treatment of individuals mentioned in a disclosure:

- Disclosures will be handled confidentially in accordance with point 6(A) and 7(A)
- Each disclosure will be assessed as to whether the conduct listed warrants an investigation. The investigation is conducted to determine whether there is sufficient evidence to substantiate the claims made in the disclosure.
- Investigations will be objective, fair and independent as outlined in point 8.
- A worker will have the contents of the disclosure put to them as required by principles of procedural fairness and prior to any action being taken
- A worker who is subject of a disclosure may access personal wellbeing services outlined in point 7(c).

³⁰ RG 270.121 – 270.122.

³¹ RG 270.123 - 124

³² RG 270.123-124

³³ RG 270.125-126

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10. Accessibility³⁴

This policy will be made publicly available via PHH internal platforms and website.

PHH will conduct staff training sessions on this policy as required to ensure that workers are aware of this Policy. Training to all levels of management will occur to ensure that they are equipped on how to deal with disclosures.

11. Accountability & Continuous Improvement

This Policy will be reviewed periodically, and training may be recommended by Whistleblower Protection Officers or the Board of PHH as appropriate.

Key themes of disclosures will be provided to the board to show patterns of behaviour and systemic issues. All information will not contain personal information in compliance with 6(A) and 7(A).

12. Other

This policy is written in accordance with the [Australian Securities and Investments Commission \(ASIC\) Regulatory Guidelines 270](#).

³⁴ RG 270.128 - 133

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