

Managing Whistleblower Disclosures Policy

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Australian Government
Aged Care Quality and Safety Commission

Engage
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Safeguard



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1 Introduction

Overarching statement

Transparency and accountability in aged care are vital to the safety and wellbeing of older people. An important way the Aged Care Quality and Safety Commission (Commission) uncovers issues and wrongdoing in the aged care sector is when people share information with us. This helps us monitor, support and enforce registered providers, responsible persons and aged care workers to comply with their obligations in the *Aged Care Act 2024* (Aged Care Act). We must protect those who speak up, so that we can safeguard older people.

Background

Some people may fear or face personal and financial risks by coming forward to share information with us. This is why the 2019 Final Report for the Royal Commission into Aged Care Quality and Safety recommended better protections for whistleblowers. The Aged Care Act provides people with rights and protections from retaliation when they share information and make disclosures that qualify for protection under the Aged Care Act, about registered providers, responsible persons and aged care workers.

Purpose

This policy explains how we receive, manage and use information shared with us that qualifies for whistleblower protections. We refer to this type of information as ‘disclosures’ throughout this policy.

Scope

This policy covers how we:

- receive, manage and use ‘disclosures that may qualify for whistleblower protections’ (disclosures) and
- use and share disclosures for our regulatory activities
- respond when someone tells us they have suffered (or have been threatened with) detriment because they made (or were suspected of having made) a disclosure.



It does not cover:

- how we manage information shared with us that does not qualify for whistleblower protections (see our Intake Information Management Policy)
- how we manage complaints (see our Complaints Handling Policy. However, a person making a complaint can still be protected under this policy if the complaint qualifies for whistleblower protection)
- how we respond to providers and workers we find out are not complying with their whistleblower obligations through a disclosure to us or in response to a disclosure to us (see our Supervision Model Policy, Risk-Based Monitoring Policy and Compliance and Enforcement Policy)
- how we respond to disclosures made about us including those which may qualify for protections under the Public Interest Disclosure Act 2022 (see our Complaints About Us Framework)
- how the Department of Health and Aged Care, police officers and independent aged care advocates receive and manage disclosures that qualify under the Aged Care Act.

Audience

This policy is for everyone including:

- Commission staff
- older people, their family members and supporters
- registered providers
- responsible persons and workers of aged care services
- advocates
- members of the public.

Legislation and policy context

Eligible whistleblower disclosures

Section 547 of the Aged Care Act explains when a disclosure qualifies for whistleblower protections. It must be:

- made to an 'eligible recipient'. These are listed in the Aged Care Act and include people like staff from the Commission and registered providers; and
- provided spoken or in writing. They can be made anonymously but do not have to be; and
- the person making the disclosure must also have reasonable grounds to suspect that the information shows an entity have contravened (failed to comply with) a provision of the Aged Care Act. The term 'entity' is defined in section 7 of the Aged Care Act.



Anyone can make a disclosure to us that may qualify for whistleblower protections, if they meet the above requirements. A person making a disclosure does not need to:

- be connected to a person receiving aged care services
- be connected to a registered provider
- have firsthand knowledge about suspected wrongdoing of a registered provider, responsible person or aged care worker.

Whistleblower protections

A person who makes a disclosure has the following rights and protections under the Aged Care Act:

- **Protection from retaliation** – Based on a person making, or being expected to make, a disclosure they cannot be or threatened with being:
 - dismissed
 - harassed
 - discriminated against or treated differently
 - victimised or treated unfairly.
- **Immunity from consequences of disclosure** – People who make a qualifying disclosure cannot be held legally responsible for any civil, criminal or administrative consequence that may arise from their act of having made the disclosure. For example, if a staff member's employment contract says that they will be fired if they share confidential company matters, they cannot be fired in the circumstance that they breach this to make a disclosure which qualifies.

The whistleblower protections and rights under the Aged Care Act also prevents any contractual or other remedy or right from being brought against the person making the disclosure. However, if the person who made the disclosure was also involved in the wrongdoing, they are not exempt from any civil or criminal liability for their conduct that may be revealed by the disclosure. Also, a contract to which the person making a disclosure may not be terminated, on the basis that a disclosure may amount to a breach of the contract.

- **Anonymity** – People who make disclosures can choose to:
 - remain anonymous (i.e. not reveal their identity)
 - keep any other persons named in the request anonymous.
- **Confidentiality** – For people who do not want to be anonymous, we (as the receiver of the disclosure) treat their identity, and anything that may lead to their identification, as



confidential by default. We cannot share confidential information outside the Commission, unless we are authorised to do so under the Aged Care Act.

- **Legal remedies available** – If someone who has made a disclosure experiences or is threatened with harm or retaliation because of their disclosure, they can apply through the courts for:
 - compensation
 - injunctions
 - other legal remedies or actions.

The Commission's focus is on safeguarding older people to prevent and respond to the risk that providers, responsible persons and aged care workers will not comply with their obligations under the Aged Care Act, including as they relate to whistleblower disclosures. We have a range of regulatory powers which we will use if we become aware of non-compliance with obligations, including those related to whistleblowers.

In circumstances where people other than older people make whistleblower disclosures, such as aged care workers, and as a result, experience detriment, victimisation or reprisal, we recommend they seek independent legal advice about the process of enforcing their rights and protections under the Aged Care Act. See our Compliance and Enforcement Policy.

2 Policy detail

Our whistleblower protection functions

Our role as a receiver of disclosures under Aged Care Act

As an eligible **receiver** of disclosures that qualify for whistleblower protections, we:

- help older people and their supporters, advocates, registered providers, responsible persons, aged care workers and others to understand how they can make disclosures
- offer multiple ways for people to share concerns with us, including spoken, in writing, digitally and anonymously
- collect, store and use protected information in ways that safeguard that information and only share it where we are authorised under the Aged Care Act and in accordance with the *Privacy Act* (Cth) 1988 (Privacy Act).
- support people who make disclosures to make informed decisions about preserving their anonymity
- provide support to people who share concerns with us including access to advocates and language services
- ask whether a person wants to remain anonymous in how we handle and respond to their disclosure and follow this unless exceptions apply



- may share disclosure information with other entities, where we are authorised under the Aged Care Act

Our role as the regulator to protect people who make disclosures

As the **regulator** of registered aged care providers, responsible persons and aged care workers, we have a role in:

- educating older people and the aged care sector about the rights and protections for people who make disclosures that qualify for whistleblower protections
- helping people considering making a disclosure to understand their options and the possible implications of sharing information with us
- clearly communicating how we regulate provider and worker obligations to protect people who make disclosures
- using the information people share in disclosures to identify and respond to risks to older people receiving aged care services
- supporting and – where necessary – enforcing providers, responsible persons and aged care workers to comply with their obligations to protect people who make disclosures.

Our approach to receiving disclosures

When a person first contacts us, we aim to understand the nature of their concerns and the outcome they want from us. If we are speaking with them directly, either in person when on site at a registered provider or during a phone call with us, we ask questions. This helps us to get a clear understanding about whether they reasonably suspect aged care law is not being complied with.

If people make disclosures through our webforms, we make sure we tailor our forms to be clear about the details of a disclosure. Where we receive information about a concern and it is unclear, we will try to contact the person to get the clarity we need. This is not always possible, and, in these situations, we treat the information shared as a disclosure that qualifies for whistleblower protection.

Disclosures shared with us are dealt with by us (in consultation with the person making the disclosure) as either a complaint or feedback. See our Intake Information Management Policy.

How we receive and support people who make disclosures

Commission staff are trained to recognise and respond to disclosures under the Aged Care Act. We explain the protections in the Aged Care Act to anyone who wants to share a disclosure with us, particularly when someone seems afraid of retaliation or being victimised.

Most disclosures will be made to Commission staff who have direct contact with older people, aged care workers, and members of the public, through things like:



- our Customer Contact Team, which receives calls, emails and webforms from older people, supporters, advocates, aged care workers and legal representatives
- regulatory officers doing desk-based activities, like investigations
- site visits we make to providers for our regulatory functions, like audits.

We help people to make informed choices about how we manage the concerns they have shared with us and explain possible risks and benefits of a complaint or feedback pathway with us. We ask how involved they want to be in resolving the concern/s shared in their disclosure and how much they want us to contact them. Depending on their answers, this will help decide whether their disclosure should be dealt with as a complaint or feedback about a registered provider, responsible person or aged care worker.

If the person has not asked to be anonymous, we confirm that we will keep their identity -and information that could lead to their identity being revealed - confidential and that we cannot share it unless authorised under the Aged Care Act. For further information, please see 'Where we may need to share identity information with others' for more information on this.

As part of this process, we provide support, including access to advocates and language services. We also follow an accessible, person-centred and rights-based approach to older people making disclosures.

Anonymous disclosures

People can contact us anonymously from the beginning and never share their identity with us. The Aged Care Act also allows people to share their identity with us when making a disclosure, but then choose for themselves, and anyone else they identify in the disclosure, to remain anonymous. Where possible, we will offer people this option before they share any identifying information with us.

When someone wants to share a concern with us, we will explain that they can do this anonymously if they want, as well as the limitations of this approach in terms of ongoing involvement with us.

When we may need to share identity information with others

When a person makes a disclosure, they (or any other person they specify in the disclosure) can request to remain anonymous. As the receiver of the disclosure, we take reasonable steps to maintain the anonymity of the people wanting to remain anonymous in any of our subsequent regulatory activities.

However, even where someone wishes to remain anonymous, there are certain circumstances where we are authorised to act if we need to which could lead to the identity of an anonymous discloser being revealed. The Aged Care Act authorises us to share confidential information with



other organisations or people to protect people, meet legal obligations or fulfil our regulatory functions. This includes:

- sharing within the Commission
- sharing with authorised external bodies or people, including the Department of Health and Aged Care, police officers, legal practitioners, courts, tribunals and Royal Commissions
- if we need to share it to prevent serious risks to safety, health or wellbeing
- if the person making the disclosure consents to sharing it.

However, even where the person making the disclosure does not ask to remain anonymous, as required the Aged Care Act and the Privacy Act (as applicable) we still treat identity and disclosure information confidentially by default. This means, we must not share identity information of the discloser or information that may lead to their identity being known unless authorised under the Aged Care Act. Contravening (failing to comply) this part of the Aged Care Act attracts a civil penalty.

How we manage some disclosures as complaints

We can deal with a disclosure to us as a complaint or as feedback. Choosing to have a disclosure dealt with as a complaint (where confidential and not anonymous) allows us to continue to engage with and involve the person making the disclosure throughout the process to resolve the complaint.

We encourage people who make disclosures and are not worried about being victimised or facing retaliation to consider making a complaint. This means we may share their identity with the provider in question, with their consent. If we are not able to share all details about the complaint with the registered provider, responsible person or aged care worker that is the subject of their disclosure, it affects how we manage the complaint, and it can affect the outcomes we can achieve.

See our Complaints Handling Policy.

How we manage disclosures that are not complaints

Some people who make disclosures to us do not want to take part in a complaints process. They would rather just let us know something may be wrong without continuing to be involved, which we treat as feedback about a registered provider, responsible person or aged care worker. Feedback can be given anonymously or the identity of the person giving feedback will by default, be treated confidentially by us.

If a person making a disclosure is not sure:

- if they want to make a complaint or give feedback about a registered provider, responsible person or aged care worker; or
- needs more detailed information about whistleblower rights and protections under the Act before making a disclosure we will temporarily classify the disclosure as feedback and



organise for a complaints officer to contact the person to discuss the matter further to help them decide about how they want to proceed.

Disclosures that we classify as feedback will be logged by us as intelligence. Once logged by us, we check whether it adds to existing concerns about the registered provider, responsible person or aged care worker or whether it is a new disclosure. We review all disclosures, and we may:

- use the information to help us to decide whether to urgently inspect the registered provider or bring forward a planned quality audit
- raise the issue directly with the registered provider. We will protect the confidentiality of the person who made the disclosure when we do, unless we have permission to share their confidential information with them
- notify another regulator or official body if it is appropriate for them to investigate the disclosure instead of, or as well as us
- notify the police if the information is about possible illegal activity. We can do this as well as any of the above actions.

See our Intake Information Management Policy.

How we use disclosures to help us regulate aged care

Disclosures are an important source of intelligence about possible contraventions of the Aged Care Act by registered providers, responsible persons or aged care workers. Without the protections and rights for people who make disclosures, the information shared with us may never have been reported and may have gone undetected by us.

This critical information allows us to work with people who make complaints to resolve them and to fulfill our safeguarding functions to:

- uphold older peoples' rights
- make sure they receive safe and high-quality care and services that meet their needs.

Based on the level of risk to older people we identify in disclosures, we tailor proportionate regulatory responses to compel and – where necessary – ensure providers and workers remedy any non-compliance.

Throughout all our regulatory activities, we take steps to protect a discloser's identity, unless given consent to share it. This may include changing our usual approach to regulating provider risk to ensure how we engage with registered providers is not likely to reveal the identity of the person who made the disclosure.

In most circumstances where we use disclosed information to regulate registered providers, responsible persons and aged care workers, we respond in line with our Regulatory Strategy 2025–2026. However, when someone makes a disclosure and is confidential, we tailor our regulatory



approach to protect the person's identity. Especially for any follow-up regulatory action we take (like monitoring) that could lead to the identity of the person who made the disclosure being revealed.

Enforcing whistleblower protections and rights

Aged care providers, responsible persons and aged care workers have obligations under the Aged Care Act to protect people who make disclosures. Registered providers must have systems, policies, procedures and training in place that meet their requirements under the Aged Care Act and Aged Care Rules 2025 to protect people making disclosures. Providers must also train their staff about these obligations under the Aged Care Act.

People should not be threatened with or suffer detriment, victimisation or retaliation because they make (or are suspected of having made) a disclosure to us. If they have, the person can seek legal advice and pursue legal action under the Aged Care Act. We recommend that anyone in this situation seek independent legal advice.

Legal remedies or actions a court may consider include:

- an injunction or interim injunction, to prevent, stop or remedy the effects of the contravention of the law
- compensation for loss, damage or injury suffered because of the contravention
- reinstatement of a person in their job
- an order for exemplary damages.

When we become aware that a registered provider, aged care worker or responsible person contravenes their obligations to protect whistleblowers, we respond using our range of regulatory powers and tools to hold the relevant provider, aged care worker and/or responsible person to account.

However, the primary scope and focus of our powers and resources when intervening in non-compliance is on protecting the older people who receive aged care services. As a result, where it is someone other than an older person who is victimised, retaliated against or is threatened with detriment, our role will primarily be to target the non-compliance of the relevant provider, aged care worker or responsible person, with the aim of protecting older people.

It is not our primary focus to seek to enforce the rights and protections available to other parties – such as an aged care worker or other person – where they qualify for whistleblower protections. For example, if an aged care worker's employment or employment conditions suffer because they make a disclosure and the registered provider retaliated, this may be covered by workplace law. In those circumstances, the aged care worker who is an employee of the registered provider will need to get independent legal advice about enforcing their whistleblower protections and rights under the Aged Care Act.



It is also not our role to help remedy termination of employment because of a disclosure made to us against the person's employer who is a registered provider. However, like any other non-compliance, we will take risk-based, proportionate regulatory interventions against providers and workers who breach their whistleblower protection obligations under the Aged Care Act. This includes taking enforcement actions, where appropriate.

See our Compliance and Enforcement Policy.

3 Appendix

Legislative and Policy Framework

Relevant legislation and subordinate legislation

This policy is supported by the following legislation and subordinate legislation:

- [Aged Care Act 2024](#)
- Aged Care Rules 2025
- [Privacy Act 1988](#)

Relevant Commission policies

This policy must be read with, and is supported by:

- Complaints Handling Policy
- Compliance and Enforcement Policy
- Decision Making Framework
- Intake Information Management Policy
- Privacy Policy
- Complaints About Us Policy



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