

## Speak Up Policy

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QUALITY AREA		
4.2	Staffing arrangements	Management, educators and staff are collaborative, respectful and ethical.
7.1	Governance	Governance supports the operation of a quality service.
7.1.1	Service philosophy and purpose	A statement of philosophy guides all aspects of the service's operations.
7.1.2	Management systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.1.3	Roles and responsibilities	Roles and responsibilities are clearly defined, and understood, and support effective decision making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.

### Introduction

Lipscombe Child Care Services Inc. (***the Service***) is committed to maintaining sound governance, operating legally (in accordance with applicable legislation and regulation), properly (in accordance with Service policy and procedures), and ethically (in accordance with recognised ethical principles). This policy documents the framework for reporting and investigating unacceptable conduct while ensuring the person raising the report can do so without any fear of intimidation or reprisal. All relevant parties are expected to cooperate with the Service in maintaining legal, proper, and ethical operations, including by if necessary speaking up about non-compliant actions by other people.

The Service's Board is responsible for approving this policy, and for nominating a Speak Up Protection Officer.

The Service's Director (Centre Director) is responsible for the implementation of this policy.

### Target Audience:

All employees (full time, part time or casual), directors and all volunteers are responsible for speaking up and making reports where there is reportable conduct (as defined below). Other interested parties such as advisors, suppliers, families or contractors are also encouraged to speak up. The target audience will qualify for protection under this policy where making a disclosure that qualifies for such protection.

### Reportable Conduct

Reportable conduct is anything which is unlawful, improper or unethical. Some examples of this are:

- dishonest, fraudulent or corrupt conduct such as falsification of records, contracts or data, adopting questionable or improper accounting practices, kickbacks from suppliers or bribery;

- illegal conduct such as fraud or theft, violence (actual or threatened) harassment or intimidation, criminal damage to property, taking or dealing in illegal drugs, forgery or other breaches of the law or relevant regulatory requirements;
- anything that is potentially damaging to an employee or other person such as practices endangering health, safety or the environment;
- employment issues such as discrimination, harassment, bullying, or retaliation for reporting a matter;
- serious breach or breaches of any Policy or Procedure including the Staff Code of Conduct and Family Code of Conduct;
- breaches of the Service's governance framework including the National Child Care Law, Constitution, the Associations Incorporation Act, the ACNC Act and ACNC Governance standards.

The following are not suitable for reporting under this Policy:

- a complaint about the conduct or behaviour of an individual you merely do not like / get on with;
- a complaint about employment terms and conditions or industrial matters; or
- a family complaint about dissatisfaction with service.

These matters are to be dealt with in accordance with the relevant policies and procedures and will not qualify for protection under this policy

### **Purpose**

The purpose of this policy and procedure is to:

- a) provide employees, directors and volunteers with a supportive working environment in which they feel able to raise issues of legitimate concern about any unacceptable conduct;
- b) encourage the reporting of matters that may cause harm to individuals or financial or non-financial loss to the Service or damage to its reputation;
- c) enable the Service to deal with reports in a way that will protect the identity of the person speaking up and provide for the secure storage of the information provided;
- d) help ensure that any Reportable Conduct is identified and dealt with appropriately;
- e) establish the policies and procedure for protecting people speaking up against reprisal by any person internal or external to the entity;
- f) help to ensure the Service maintains the highest standards of lawful, compliant and ethical behaviour.

### **Policy**

#### **Obligation to Speak Up**

Where a person believes in good faith, based on reasonable grounds (such as first hand knowledge) that an incident of Reportable conduct has occurred they must report their concern to:

- their Room Coordinator;
- the Centre Director;
- the Service's Board Chairperson; (only if they feel this to be necessary); or

- a person or office independent of the Service nominated by the Services' Board to receive such information.

The person speaking up in accordance with this Policy will not suffer any adverse impact on their position or relationship with the Service as a result of making the report.

It is not the reporting persons job to investigate or prove a case of illegal, corrupt, improper or unethical behaviour.

### **External review**

For issues of such sensitivity that a person does not feel able to use the internal options, or they feel the concern they have raised has been inadequately addressed or the parties involved may not be impartial, an external service will be nominated to report to or receive guidance from in respect of actual or suspected Reportable conduct. Such external services may include the Services external auditor and relevant regulatory bodies. You may also obtain legal advice or legal representation from a Legal Practitioner.

### **Managing the Process**

Any person within the Service to whom such a disclosure is made or referred will:

- if they believe the behaviour complained of to be unquestionably trivial or fanciful, after discussions with the Centre Director, dismiss the allegation and notify the person making the allegation of their decision;
- if they believe the behaviour complained of to be neither trivial nor fanciful after discussions with the Centre Director, ensure that the allegation is referred to the appropriate level as follows (given the categorisations in Schedule 1):
  - Minor Report– can be investigated / handled by a Room coordinator or leader;
  - Major Report – must be referred to the Centre Director, or Board Chairperson;
  - Serious Report – must be referred to the Board Chairperson.

Any person speaking up about a matter must be informed that:

- as far as lies in Service's power, the person will not be disadvantaged for the act of making such a report; and
- if the complainant wishes to make their complaint anonymously, this will be honoured to the extent possible as outlined below;
- reporting such a breach does not necessarily absolve the complainant from the consequences of any involvement on their own part in the reportable conduct complained of.

Any report should where possible be in writing and should contain details of:

- the nature of the reportable conduct;
- the person or persons responsible for the reportable conduct;
- the facts on which the person is basing their belief that reportable conduct has occurred, and has been committed by the person named;

- the nature and whereabouts of any further evidence that would substantiate the allegations, if known.

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 the Service's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.

In contemplating the use of this policy a person should consider whether the matter of concern may be more appropriately raised under the Service's Grievance Policies.

Where English is a second language and a person is not confident making a disclosure in English, the Service will make an interpreting service available.

### **Anonymity**

If the person speaking up wishes to make their complaint anonymously, the Service will endeavour to ensure that the person's identity is protected from disclosure. The anonymity of a person will not affect a person's protection under this policy. The person's identity will not be disclosed unless the:

- Person making the report consents to the disclosure;
- Disclosure is required by law;
- Disclosure is made to a Legal Practitioner for the purpose of obtaining advice;
- Disclosure is necessary to prevent or lessen a serious threat to a person's health and safety; or
- Disclosure is necessary to protect or enforce the Services legal rights or interests or defend itself against any claims.

Any unauthorised disclosure will be regarded as a disciplinary matter and will be managed in accordance with the Service's Counselling and Discipline policy.

The person speaking up should, however, be informed that the maintenance of such anonymity may make it less likely that the alleged reportable conduct can be substantiated in any subsequent investigation.

Where anonymity has been requested the person speaking up is required to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorized persons.

### **Investigation Process**

The person to whom the disclosure was made shall first notify the Centre Director, who shall be responsible for ensuring that an investigation of the charges is established and adequately resourced. An investigation of a Major or Serious Report must have different persons overseeing, investigating and finally making decisions on the matter.

Terms of reference for the investigation will be drawn up by the person investigating, in consultation with the Centre Director, to clarify the key issues to be investigated.

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.

Strict confidentiality 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.

Notes of all discussions, phone calls and interviews will be made.

Where possible, interviews will be recorded.

The principles of procedural fairness (natural justice) will be observed<sup>1</sup>. In particular, where adverse comment 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.

### **Findings**

A report will be prepared when an investigation is complete. This report will include:

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

The report will be provided to the person who spoke up (with, if necessary, any applicable confidentiality stipulations).

### **Protections**

Where the investigation has found that the person speaking up made it in good faith on reasonable grounds (even if it turns out the concerns were a mistake), the Centre Director shall designate an officer to be responsible for ensuring that the person suffers no detriment (such as harassment, intimidation, injury or harm) or employment-related disadvantage on account of their actions in this matter and to provide additional support for the person where necessary. The person will receive protections as required by law and these may include legal protections such as protection from civil, criminal or administrative legal action and/or compensation or other legal remedies.

### **Policy Exclusion**

This Policy does not authorise any person to inform commercial media or social media of their concern, and does not offer protection to any person who does so, unless:

- it is not feasible for staff to report internally, or
- existing reporting channels have failed to deal with issues effectively.

### **Breaches and false reporting**

Protected disclosures must be made on reasonable grounds. Anyone who knowingly makes a false report/disclosure of Reportable Conduct may be subject to disciplinary action, which may include termination of employment.

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<sup>1</sup> Natural justice and procedural fairness do not require that the person affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.

Any breach of this Policy may result in disciplinary action in accordance with the Counselling and Discipline Policy and Procedure the consequences of which may include termination of employment.

Any relevant party who becomes aware of a breach of this Policy must disclose this breach to service management.

In extreme circumstances an individual may be concerned that a serious breach of this Policy has occurred but considers that it would be personally damaging to pursue it through normal channels, in such a case they should report it under this Policy.

**Links to other Policies:**

Staff Induction

Mentoring

Performance Appraisal and Performance Management

Staff Code of Conduct

Grievance Staff

Counselling and Discipline policy

Lipscombe Child Care Services Inc. Constitution

**References:** National Quality Framework, Fair Work Australia, Childrens Services Award 2010, Our Community Policy Bank, ASIC Regulatory Guide 270: *Whistleblower policies*

**Policy Review:**

Lipscombe Early Years Education & Care will review this policy and related documents, every 2 years, or more often as required when new information becomes available

Families are encouraged to collaborate with the Service to review the policy and procedures.

It is essential for all staff to be involved in the policy review process and familiarise and acknowledge in writing any changes to policy made at review.

**Changes made at review:**

October 2018 – initial Policy developed

June 2022 – Added table with link to NQF, wording added to align with ASIC Regulatory Guide 270: *Whistleblower policies*, minor wording changes.

## Schedule 1

### Examples of Reports and their categorisation:

<b>Minor Report</b>	<b>Major Report</b>	<b>Serious Report</b>
Failure to carry out duties and tasks considered appropriate and reasonable for the job concerned.	Breach of Compliance requirements.	Dishonesty, theft or fraud.
Persistent lateness.	Persistent unauthorised absence.	Misuse of confidential information.
Unauthorised absence.	Negligence or behaviour likely to cause offence to other employees, customers or the general public.	Violent, abusive or threatening behaviour, inside or outside of the Centre.
Breach of operational practices.	Breach of Service's policies, rules, standards and procedures including Staff or Family Code of Conduct.	Flagrant disregard of the Services policies, rules, standards and practices including Staff or Family Code of Conduct.
Minor Breach of Staff or Family Code of Conduct	Conduct that is likely to bring the Service's name into disrepute.	Discrimination, harassment, bullying or victimisation.
		Serious incapability through alcohol or being under the influence of illegal drugs.
		Serious negligence which causes unacceptable loss, damage or injury.
		Gross insubordination.
		Gross incompetence causing unacceptable financial loss.
		Charged/Convicted of criminal offence.
		Flagrant disregard of any legislation
		Practices endangering the health or safety of a child or other family member, staff, volunteers or the general public