

	Whistleblowing	
	<b>Type:</b> Policy/Procedure	<b>Revision:</b> 1.0
	<b>Document Owner:</b> Governance	<b>Date Reviewed:</b> N/A
	<b>Approved By:</b> Board Meeting	<b>Approval Date:</b> 14/05/2019
	<b>Effective Date:</b> 21/05/2019	<b>Document No:</b> OP-05

## 1.0 INTRODUCTION

Our Rainbow House Inc. is committed to ensuring accountability and transparency is instilled in all areas of its operations. The ability to report any wrongdoing is seen as a critical element of the internal controls for corporate governance of the organisation. All employees are expected to assist the organisation in meeting its legal and ethical responsibilities which includes, where necessary, the reporting of nonconforming decisions and actions of others. Similarly, those who take action to report should be protected and not vilified in any way for ensuring that these principles are upheld and protecting the organisation’s long-term wellbeing and reputation.

## 2.0 REFERENCE

*Public Interest Disclosure Act 2013*  
*Corporations Act 2001*  
*Anti-Discrimination Act 1991*  
*Australian Human Rights Commission Act 1986 (Cwth)*  
*Crime and Corruption Act 2001*  
*Criminal Code Act 1899*  
*Work Health and Safety Act 2011*  
*Workplace Gender Equality Act 2012 (Cwth)*  
*and associated Regulations and Codes of Practice*

## 3.0 DEFINITIONS

**Discloser** shall mean any person making a report of actual or suspected misconduct that reveals fraud, corruption, illegal activities, gross mismanagement, malpractice or any other serious wrongdoing.

**Employee** shall mean any board member, employee, student placement, apprentice, contractor, sub-contractor or volunteer.

**Frivolous complaint** shall mean a complaint which is considered to be:

- made without evidence to cause annoyance;
- regularly focused on a trivial matter to the extent which is out of proportion to its significance and the person raising the complaint continues to focus on this matter;
- continually lodged to invoke a desired response; or
- on a matter which the person persists in pursuing despite the board’s reasonable efforts to help them specify their concerns, and/or where the concerns identified are not with the realm of the board to investigate, and/or where the board has advised the person that the matter has been investigated and resolved.

**Our Rainbow House Inc. Community** shall mean all board members, employees and volunteers and student placements. Any person who is caused to undertake tasks or duties on behalf of Our Rainbow House Inc.

**Vexatious complaint** shall mean a complaint which is considered to be:

- made maliciously to damage a person's career or reputation, or the reputation of Our Rainbow House Inc.;
- a threat of violence against others or property; or
- collusion between others, in an effort to discredit others or take retribution or to have an employee removed from the workplace.

**Whistleblowing** shall mean the disclosure by or for a witness of actual or suspected misconduct that reveals fraud, corruption, illegal activities, gross mismanagement, malpractice or any other serious wrongdoing.

#### **4.0 SCOPE**

This policy applies to board members, all staff, including full-time, part-time or casual, temporary or permanent staff, job candidates, student placements, apprentices, contractors, sub-contractors and volunteers.

#### **5.0 PURPOSE**

The purpose of this policy is to ensure all members of the Our Rainbow House Inc. community have a clear understanding of the organisation's expectations and their own obligation in reporting misconduct within or by Our Rainbow House Inc. and their right to do so without fear of reprisal.

#### **6.0 POLICY STATEMENT**

Our Rainbow House Inc. has arrangements in place that provide for persons to confidentially raise concerns about possible misconduct in relation to financial or other matters. These provisions also provide for the confidential and independent investigation of such matters and associated follow-up actions. Additionally, consideration has also been given to ensure the well-being, safety and protection of whistleblowers or disclosers to allow persons to report concerns without fear of retribution or reprisal. The principles of this policy are aimed at:

- Encouraging persons to report matters that may cause:
  - harm to individuals
  - organisational financial or non-financial loss; or
  - damage to the organisation's reputation.
- Enabling Our Rainbow House Inc. to deal with disclosures from whistleblowers in an appropriate manner ensuring the protection of the whistleblower/s as far as reasonably possible.

#### **What is whistleblowing?**

Any member of the Our Rainbow House Inc. community who believes in good faith on reasonable grounds that any other employee has breached any of the organisation's legal, moral or ethical principles, that employee must report their concern.

#### **Who can make a disclosure?**

Any member of the Our Rainbow House Inc. community who believes in good faith on reasonable grounds that any other employee has breached any of the organisation's legal, moral or ethical principles, that employee must report the breach in line with this policy.

#### **How do I make a disclosure?**

Any member of the Our Rainbow House Inc. community may make a disclosure in writing to any member of the board. External parties may also make a disclosure through either of the following methods:

- By contacting the duly constituted authority responsible for the enforcement of the law in the relevant area (e.g. police, governing body, etc); or
- By lodging a report of the breach in line with this policy.

### **What types of breaches can be reported?**

Whistleblower disclosures can be used to report issues or concerns that cannot be resolved through normal channels and may include:

- Illegal acts
- Unsafe practices
- Unconstitutional actions
- Breaches of the organisation's policies and procedures
- Unethical behaviours
- Serious wrongdoing

### **Can my identity remain anonymous?**

Every effort will be made to protect the identity of whistleblowers. In situations where the disclosure is about a matter where the evidence is able to prove the allegation, the identity of the discloser will be protected as far as reasonably possible. For matters where the allegation is based on personal allegations (of one person or several people) it may not be possible to address the complaint without revealing the identity of the discloser. Likewise when addressing some complaints, it may become apparent to the respondent who the whistleblower is.

In some instances Our Rainbow House Inc. may be legally bound to make further reports to constituted authorities for alleged breaches of the law. In these cases our legal obligations will take precedence and therefore the identity of the discloser may need to be divulged to these bodies (i.e. police).

Overall we will not disclose the identity of the whistleblower unless:

- The whistleblower consents
- We are required to provide the whistleblower's identity by law
- The disclosure of the whistleblower's identity is necessary to prevent a serious threat to a person's health or safety

Where a disclosure of a whistleblower's identity is necessary, all efforts will be taken to protect them from any retaliation, retribution or reprisal.

### **Can I make an anonymous disclosure?**

Anonymous written disclosures will be accepted by the board however whistleblowers must be aware that this may impede the organisation's ability to effectively investigate any wrongdoing. In this instance all efforts will be made to determine the accuracy of any allegations however without a complainant we may be unable to further gather evidence through an interview process. No communication of outcomes will be made for anonymous complaints.

### **What will happen if the complaint against the respondent is not upheld?**

Any person/s making a complaint shall be protected from any retribution or reprisal as a result of their actions providing that their complaint:

- was made in good faith;

- was based on reasonable grounds; and
- conforms to these procedures.

### **What do I include in my complaint?**

All complaints must be made in writing and forwarded to the board (or board individual where you believe that another board member may be complicit in the matter). You should include as much information as possible about the suspected wrongdoing including:

- who was involved
- what happened
- when it happened
- where it happened
- whether there were any witnesses, and if so who
- any evidence that supports your complaint
- the location of any further evidence
- any other information that supports your complaint or would assist in the investigation
- your contact details

### **Is there anything else I need to know?**

As a whistleblower it is important to note that you have a responsibility to:

- maintain your confidentiality about the complaint
- keep copies of correspondence secure
- report any reprisal if it occurs
- not post any details on social media
- not make any false or misleading disclosures
- make disclosures in a timely manner

## **7.0 PROCEDURE STATEMENT**

Our Rainbow House Inc. will treat all concerns and complaints quickly, fairly and seriously. The objective of this procedure is to provide a mechanism for complaints to be raised without fear of retribution and for corrective actions to be taken where necessary.

No person will be penalised or disadvantaged as a result of raising legitimate concerns or complaint. Where a complaint is substantiated it may result in disciplinary action up to and including termination of employment for involved parties. If unsubstantiated or found to be false or vexatious it may also result in disciplinary action against the complainant.

### **Responding to Complaints**

Effectively responding to issues when they are raised is key in ensuring that unacceptable behaviour is addressed promptly and eliminated. In addressing complaints the following principles should be applied at all times.

Actions	Principle
Act promptly	All complaints should be responded to quickly and within the documented timeframes. Relevant parties should be kept informed of the progress of the process to reassure them that their issue is being addressed.
Treat all matters seriously	All complaints/reports should be treated as serious and based on their merit and facts.
Maintain confidentiality	The confidentiality of all involved parties must be maintained at all times. Only those directly involved in assessing/investigating/resolving the matter should be privy to the facts.
Ensure procedural fairness	<p>The respondent to the allegations should be treated as innocent unless the allegations are proven to be true. Respondents must be apprised of the content of the allegations and be given an opportunity to respond.</p> <p>The person raising the complaint/issue must be given due diligence and be given the opportunity to have their concerns heard. All allegations are to be treated as credible and reliable unless proven otherwise.</p> <p>Both parties are to be advised of the opportunity to have decisions reviewed.</p>
Remain neutral	Avoid any personal or professional bias by remaining neutral at all times. Ensure those tasked with managing and responding to complaints are not involved in the matter.
Support all parties	Parties to the matter should be advised what support mechanisms are in place for them to access. Ensure all parties are provided with the opportunity to bring support persons to interviews or meetings.
Protect disclosers from victimisation	Protection of disclosers is critical to ensure they are not victimised for speaking out. Witnesses should also be protected from victimisation.
Communicate	All parties should be informed of the process, how long it will take and what they can expect will happen during and at the end of the process. Should the process be delayed for any reason, all parties should be made aware of the delay and advised when the process is expected to resume. Finally, reasons for actions that have been taken and in some circumstances not taken should be explained to the parties.

## Procedure

The intent of the process outlined below is to assist Our Rainbow House Inc. in determining whether inappropriate conduct has occurred and, if so, to take appropriate disciplinary action and implement measures to prevent any further inappropriate conduct from occurring.

### Stage 1 – Preliminary assessment

The complaint must be immediately discussed with the board during a special meeting (excluding any member/s that are mentioned in the complaint either as the respondent or as a witness). The board will assign a delegate who will manage the process. The delegate must:

1. Immediately acknowledge receipt of the complaint and notify the person raising the complaint of the process that will be undertaken;
2. Obtain all relevant information pertaining to the complaint from the person.
3. Discuss how the matter will be handled where the person requests their identity is not disclosed.
4. Assess how the matter will be progressed. This may include:
  - a) Collecting and reviewing all provided materials
  - b) Assessing the complaint to determine whether it is trivial, frivolous or vexatious or requires investigation.
  - c) Providing advice to the board on whether the matter is deemed appropriate for investigation.

Any party meeting with the board's delegate for the purposes of assessing a complaint is entitled to bring a support person that is not a witness or a person involved in the complaint in any way. All persons required for interviewing must be interviewed separately and all parties advised of the requirement for confidentiality.

Prior to progressing to investigation, the board may decide the matter is trivial, frivolous or vexatious or not suitable for progression under this policy. This may be the case where the board has a legal obligation to report to an authorised body (e.g. police) and in this case no further investigation will be undertaken internally. In this instance the discloser will be advised of the outcome and the reasons for dismissal of the complaint.

### Stage 2 – Investigation

An investigation may be initiated from the outset based on the content of the complaint and reasons for proceeding may include:

- for more serious complaints (as determined by the board taking into consideration the content of the complaint and circumstances surrounding the complaint);
- where further information is required to adequately make an assessment about the complaint;  
or
- where the board's delegate determines that further investigation is appropriate.

Where a formal investigation is required, the board may choose to delegate a separate investigator or continue with the delegated assessor. In conducting the investigation the delegate will assess how the matter will be progressed. This may include:

- Meeting with all relevant parties and any witnesses
- Taking individual statements
- Researching and collaborating the accusations made

- Collecting and reviewing all statements and evidentiary materials

Any party meeting with the board's delegate for the purposes of investigating a complaint is entitled to bring a support person that is not a witness or a person involved in the complaint in any way. All persons required for interviewing must be interviewed separately.

Prior to contacting the respondent for an interview, they must be given a copy of the allegations made. The respondent should then be provided with an adequate timeframe prior to any scheduled interview to allow them to adequately form their response and prepare for the interview.

All investigations shall observe the rules of natural justice and the provisions of procedural fairness.

Upon conclusion of the investigation the investigator must make a finding of the facts and where appropriate provide a recommendation for resolution of the complaint to the board. The finding of the facts must be provided in writing and include the reasons for each of the findings.

All attempts should be made to conclude the investigation within 30 days of the conclusion of the board delegate's preliminary assessment (where applicable) or meeting with the person raising the complaint. In the instance where the 30 day timeframe is not reasonable, both parties must be advised of the reasons and the anticipated timeframe for conclusion of the investigation.

Depending on the content of the complaint the board may decide to stand down the employee on full pay (where applicable) until the investigation is concluded.

### **Stage 3 – Resolution**

If a complaint is found to be unsubstantiated, no further action will be taken against the respondent. The reason/s for this decision must be communicated to both parties in writing. Other instances where no further action is to be taken may include:

- Insufficient detail or evidence of the allegation is able to be provided to enable the matter to be properly investigated;
- The complaint is deemed frivolous, vexatious or malicious;

If a complaint is substantiated the decision and actions to be taken must be communicated in writing to both parties.

### **Withdrawing a Complaint**

Complaints may be withdrawn at any time with no further action taken, except where the Board feels that a breach of this policy has occurred. In that instance the Board may decide to continue to investigate the complaint to determine if follow-up action is needed.

### **Vexatious Complaints and False Accusations**

Our Rainbow House Inc. views all complaints as serious. As such any person making intentionally false accusations or those that are deemed frivolous or vexatious in nature may be investigated using this same procedure. If the complaint is found to be intentional or malicious the board may then decide to take disciplinary action as a result.

### **Record keeping**

Matters dealt with in accordance with this procedure must be documented and stored confidentially. The record must include:

- a copy of the original complaint;
- any correspondence sent to involved parties;
- all evidence gathered;
- statements from all persons interviewed;
- an outline of the process;
- a copy of the fact of findings and recommendation to the board (where applicable);
- outcomes and further actions taken; and
- copies of correspondence finalising the matter.

### **Reviewing systems of work**

Upon completion of addressing any matter involving a disclosure made by a whistleblower, the workplace should be examined to identify and address any underlying actors that may have contributed. This includes reviewing workloads, staff levels and existing policies, procedures and training for effectiveness.

To assist with prevention of unacceptable behaviours, all matters should be recorded in a register that can be used to analyse trends and determine required training and improvements. All records must be kept confidential.

## **7.0 REVIEW**

Date of next review: 21/05/2021 or after any serious incident, to determine if the policy and associated procedure has been effective.