

LCAQD Whistleblower Protection Policy

1 Purpose and Scope

The Queensland District of the Lutheran Church of Australia (**LCAQD**) is an expression of the mission of God in the Lutheran Church of Australia and New Zealand. The people of the Lutheran Church in Queensland seek to share God's love by serving in Congregations, Education, Youth, Aged Care and Community Care.

The LCAQD has a Biblical mandate that all our words and actions are to be truthful: "These are the things you are to do: Speak the truth to each other, and render true and sound judgment in your courts;" (Zech 8:16 NIV)

Lutheran Services also is required to comply with the earthly authorities set above us by God for good order, and thus with legislation that protects whistle-blowers: "Love does not delight in evil, but rejoices with the truth." (I Cor 13:6 NIV). Thus, a disclosable matter within this policy is to be appropriately responded to, rather than suppressed.

However the requirements for investigation of a protected disclosure and protection for whistle-blowers require a very careful discipline of responsibilities, some of which are articulated in this Policy. So the appropriate response needs to be considered and measured by the requirements spelled out in this Policy and – ultimately – in the relevant legislation.

Expressed theologically: In our call to love and serve those around us, we need to take care that in responding to a whistle-blower we do not by our words, actions or inactions fail to love and serve the vulnerable, the whistle-blower, the God-given authorities; and, in and behind all of these, God himself.

The policy is developed and implemented in accordance with the requirements of Part 9.4AAA of the *Corporations Act 2001* (Cth) (the Act). Whilst some parts of LCAQD are not regulated by the Act, LCAQD recognises that the Act provides important protections for certain whistleblowers in certain circumstances, reflecting public expectations and benchmarks which LCAQD is committed to recognising and upholding.

Individuals with concerns are encouraged to come forward quickly before problems escalate. To qualify for protection under this policy, disclosures must:

- i. Be made by an eligible whistleblower;
- ii. Be made to a prescribed authority; and
- iii. Be a disclosable matter.

This policy applies to LCAQD and all of its associated entities, departments and service providers. Any reference to LCAQD in the policy is also a reference to the below departments and their trading entities:

- Lutheran Services;
- Lutheran Education Queensland;
- Lutheran Youth of Queensland;
- LCAQD Department of Ministry & Mission.

2 Application

A number of policies are already in place at LCAQD to address issues of concern relating to Code of Conduct, Conflict of Interest, Grievances, Disputes, and Work Health and Safety. This policy covers

matters that may need to be addressed separately, at least initially, even if other policies are subsequently invoked in response to the outcome of an investigation.

This policy is not designed to provide a mechanism through which individuals can publicly question financial or business decisions taken by LCAQD, and it offers no protection to such individuals.

This policy cannot be used to obtain a rehearing of personal work-related grievances (i.e. allegations of misconduct, grievances etc.), which have already been addressed under other Company procedures.

This policy applies if any eligible person knows of information and has reasonable grounds to suspect the information concerns misconduct, or an improper state of affairs or circumstances, in relation to LCAQD.

Each of the associated entities of LCAQD which this policy applies to will have their own procedure for making a protected disclosure, including who the relevant Whistleblower Protection Officer is, what information should be included when making a disclosure, and how a protected disclosure will be investigated and reported.

This policy must be read concurrently with the applicable procedure.

2.1 Who is an eligible whistleblower

A 'whistleblower' is a person related to LCAQD who reports information that might show misconduct or other inappropriate activity that has occurred within LCAQD. A person working for LCAQD who falls in to one or more of the following categories may be eligible for whistleblower protection under the Act (eligible person):

- i. Current and former employees, directors and officers of LCAQD and its departments and service providers;
- ii. Contractors and suppliers of LCAQD (whether paid or unpaid) and their employees;
- iii. An individual who is an associate of LCAQD; and
- iv. Spouses, dependants and relatives of any of the above individuals.

Individuals can make an anonymous disclosure and the principles of this policy will still apply. There is no requirement for a discloser to identify themselves for a disclosure to qualify for protection.

2.2 What is a disclosable matter

A reference to a 'disclosable matter' in this policy means information that falls into one of the following categories:

a) Misconduct

Information that an individual has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances, relating to LCAQD. Misconduct may include without limitation:

- Failure to comply with a legal duty;
- Failure to take proper care (negligence);
- Dishonest or unethical behaviour by an individuals; and
- Fraud or other type of criminal behaviour;

b) Contravention of a Commonwealth and State law

Information that an individual has reasonable grounds to suspect indicates that LCAQD, or an officer or employee of LCAQD, has engaged in conduct that would:

- i. constitute an offence against, or a contravention of, any of the following Commonwealth and state laws:
 - *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*

- the *Australian Securities and Investments Commission Act 2001* (Cth);
 - the *Banking Act 1959* (Cth);
 - the *Corporations Act 2001* (Cth);
 - the *Financial Sector (Collection of Data) Act 2001* (Cth);
 - the *Insurance Act 1973* (Cth);
 - the *Life Insurance Act 1995* (Cth);
 - the *National Consumer Credit Protection Act 2009* (Cth);
 - the *Superannuation Industry (Supervision) Act 1993* (Cth);
 - an instrument made under an Act referred to in any of paragraphs above; or
- ii. constitute an offence against a Commonwealth law that is punishable by imprisonment for a period of 12 months or more.
 - iii. Constitute an offence against, or a contravention of, any state laws that govern the activities of a LCAQD Department, as set out in the relevant departmental Whistleblower Protection Procedure.

c) Danger to the public or financial system

Information that an individual has reasonable grounds to suspect indicates that LCAQD, or an officer or employee of LCAQD, has engaged in conduct that would represent a danger to the public or the financial system.

2.3 What is not a protected disclosure

a) Personal work-related grievances

It will not be a protected disclosure if the information disclosed to a LCAQD authorised contact or a prescribed Commonwealth authority concerns a personal work-related grievance of the individual.

For the purpose of this policy, a reference to a 'personal work-related grievance' means information that:

- i. concerns a grievance about any matter in relation to the individual's employment, or former employment, having (or tending to have) implications for the individual personally;
- ii. does not have significant implications for LCAQD that do not relate to the individual and does not concern conduct, or alleged conduct, about a disclosable matter; and
- iii. does not concern a grievance that involves detriment caused, or a threat made, to the individual because it is believed or suspected that that individual has made, may have made, proposes to make or could make a protected disclosure and that belief or suspicion is the reason, or part of the reason, for their conduct that causes the detriment.

Examples of personal work-related grievances may include, but not limited to:

- i. an interpersonal conflict between the individual and another employee;
- ii. a decision relating to the engagement, transfer or promotion of the individual;
- iii. decision relating to the terms and conditions of engagement of the individual; and
- iv. decision to suspend or terminate the engagement of the individual, or otherwise to discipline the individual.

b) False and misleading information

Information that is deliberately false or misleading will not constitute a protected disclosure.

LCAQD may take disciplinary action against an individual when, after carrying out its internal investigation fairly and reasonably, it believes that the discloser did not have reasonable grounds to suspect that the allegation was substantially true or a protected disclosure.

An individual making malicious or vexatious allegations may face disciplinary action, particularly if he or she persists in making them when they have been declared, after due process, to be without foundation. A disclosure may be declared malicious or vexatious at any stage during the investigation.

2.4 Making a protected disclosure

LCAQD encourages individuals who have concerns, based on evidence or reasonable suspicion, that serious wrongdoing (disclosable matters) may have occurred within LCAQD to come forward and express those concerns. A suspicion is likely to be reasonable if it is not fanciful, illogical or irrational.

For a disclosure to be protected under this policy it must be made to an authorised person or body. A whistleblower can disclose their concerns to the below people in varying circumstances:

- i. any person authorised by LCAQD to receive disclosures ('Whistleblower Protection Officer'), this may include an officer or director, senior manager and will be appointed by the relevant LCAQD department or procedure;
- ii. an Auditor of LCAQD;
- iii. regulators such as the Australian Charities and Not-for-profits Commission; Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Australian Health Practitioner Regulation Agency, Aged Care Quality and Safety Commission;
- iv. legal practitioners;
- v. where the information relates to the tax affairs of the entity, an registered tax or BAS agent of the entity or an employee who has functions or duties that relate to the tax affairs of LCAQD; and/or
- vi. in limited circumstances, a member of Parliament or a journalist where there is an emergency disclosure or public interest disclosure.

A whistleblower can make an "emergency disclosure" where they believe there is a substantial and imminent danger to the health and safety of one or more persons or to the natural environment.

A whistleblower can make a "public interest disclosure" where 90 days have passed after making a disclosure and the whistleblower still reasonably believes that action has not been taken and further disclosure is in the public interest. The whistleblower must give written notice to the organisation first.

3 Investigating a protected disclosure

All disclosures made by a person under this policy will be investigated in the most appropriate way, as soon as reasonably practicable after the disclosure has been made.

While the particulars of the investigation process will be determined by the nature and substance of the disclosure, if the disclosure is not anonymous, a Whistleblower Protection Officer or investigator will contact the whistleblower as soon as practicable upon receipt of the disclosure to discuss the investigation process including who may be contacted and such other matters as are relevant to the investigation.

The investigation will be conducted independently of any person who is the subject of the disclosure. Where LCAQD recognise an appearance of a conflict of interest, LCAQD will outsource the investigation of the disclosure.

4 Protection for Whistleblowers

4.1 Confidentiality

LCAQD is committed to ensuring confidentiality in respect of all matters raised under this policy. If the individual making the protected disclosure has asked to remain confidential, LCAQD will do everything it reasonably can to respect this and their identity will be kept confidential in so far as this is compatible with conducting an effective investigation.

a) Protection of identity of whistleblower

An individual is not required to disclose his or her identity when making a protected disclosure. If an individual makes a protected disclosure, then any person who has obtained information about the individual's identity from that protected disclosure is required to keep confidential:

- i. the identity of the individual who made the protected disclosure; and
- ii. information that is likely to lead to the identification of the individual who made the protected disclosure.

b) Exclusions to protection of identity of whistleblower

Sometimes it may be necessary to reveal certain information in the interests of fairness and/or to meet the requirements of an external agency. The investigation process may have to reveal the source of the information, and the discloser may need to make a statement as part of the evidence required.

The protection of an individual's identity will not apply in the following circumstances:

- i. where their identity, or information that is likely to lead to the identification of their identity the information, is disclosed to ASIC, APRA, the Australian Federal Police or a legal practitioner for the purpose of obtaining advice in relation to the operation of the whistleblower protection laws;
- ii. where the individual has consented to the disclosure of their identity or information that is likely to lead to the identification of their identity; or
- iii. where:
 - a. the information is not of the identity of the individual who made the protected disclosure;
 - b. the information is reasonably necessary for the purpose of investigating a disclosable matter to which the protected disclosure relates; and
 - c. all reasonable steps are taken to reduce the risk that the individual who made the protected disclosure will be identified.

c) Penalties

There are civil and criminal penalties for breaches of the protection of an individual's identity under the applicable whistleblower protection laws.

4.2 Victimization

LCAQD is committed to ensuring that those who make a protectable disclosure are treated fairly and do not suffer 'detriment'. LCAQD will support concerned individuals and protect them from reprisals or victimisation.

a) No civil, criminal or administrative liability for making a protected disclosure

LCAQD will not take any disciplinary action or exercise any contractual or other right against an individual for making a protected disclosure.

b) No detriment, or threat of detriment, for making a protected disclosure

LCAQD will not, and will take all reasonable steps to ensure its employees and officers will not, engage in conduct that causes, or threatens to cause, any detriment to an individual where it is believed or suspected that that individual has made, may have made, proposes to make or could make a protected disclosure and that belief or suspicion is the reason, or part of the reason, for their conduct that causes the detriment.

An employee or elected office bearer of LCAQD who causes, or threatens to cause, a detriment to an individual for making a protected disclosure will be subject to disciplinary action which may include summary dismissal and/or removal from office.

c) Penalties

There are civil and criminal penalties for breaches of the protection of an individual from victimisation under the applicable whistleblower protection laws.

4.3 Discouraging an individual from making a protected disclosure

Any individual who attempts to discourage another person from coming forward to express a concern, based on evidence or on reasonable suspicion, that serious wrongdoing may have occurred, will be subject to disciplinary action by LCAQD. In the same way, LCAQD may take disciplinary action against anyone who criticizes or victimises an individual after a concern has been expressed.

4.4 Relocation of individual making protected disclosure

An individual making a protected disclosure has the right to make a request to the Whistleblower Protection Officer to be relocated to remove the danger of reprisals if it is not practicable for matters to be resolved in some other way.

5 Responsibilities

a) Employees' responsibilities

Everyone at LCAQD has a responsibility to ensure this policy is carried out. All employees have a responsibility to:

- i. disclose all misconduct, or improper state of affairs or circumstances, relating to LCAQD they are aware of. This obligation is made clear in the Code of Conduct; and
- ii. make the disclosure where they have reasonable grounds to suspect that the information they have is substantially true.

b) Whistleblower Protection Officers responsibilities

Whistleblower Protection Officers may be a number of suitable people throughout the process, and collectively, the role and responsibility of the Whistleblower Protection Officer is to:

- i. protect employees who make a protected disclosure in accordance with this policy;
- ii. provide advice on making a protected disclosure;
- iii. support employees during the process of investigating a protected disclosure;
- iv. protect the confidentiality of the process and people concerned;
- v. respect the principles of natural justice;
- vi. ensure correct procedures are followed so that the relationship between the person making the disclosure and the investigating officer is not contaminated and does not prejudice the integrity of the process;
- vii. ensure proper records are made and securely maintained; and

- viii. set positive ethical standards.

c) Senior managers' responsibilities

Senior Managers within LCAQD have a particular responsibility to:

- i. ensure all employees and officers are aware of, and understand, this policy and correct procedure; and
- ii. encourage employees to make these disclosures and promote a culture that maintains the highest standards of ethics, professionalism and performance.

6 Related Documents

- Lutheran Services Whistleblower Procedure
- Lutheran Education Queensland Whistleblower Procedure
- Lutheran Youth of Queensland Whistleblower Procedure
- Queensland Lutheran Early Childhood Services Whistleblower Procedure
- Policies in force in the departments of LCAQD that address issues of concern relating to Code of Conduct, Conflict of Interest, Grievances, Disputes, and Work Health and Safety

7 Legislation and associated information

- the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)
- the *Australian Securities and Investments Commission Act 2001* (Cth);
- the *Banking Act 1959* (Cth);
- the *Corporations Act 2001* (Cth);
- the *Financial Sector (Collection of Data) Act 2001* (Cth);
- the *Insurance Act 1973* (Cth);
- the *Life Insurance Act 1995* (Cth);
- the *National Consumer Credit Protection Act 2009* (Cth);
- the *Superannuation Industry (Supervision) Act 1993* (Cth);
- the *Privacy Act 1988* (Cth).

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