

Protected Disclosures Policy

Purpose

To outline the procedures to be followed in relation to protected disclosures under the terms of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (“the Act”).

This policy details how Anglican Family Care receives and deals with information about serious wrongdoing in or by Anglican Family Care, including setting out who a disclosure of that information may be made to within Anglican Family Care.

This policy is aligned with Anglican Family Care’s values and Code of Conduct. Accordingly, all disclosures of serious wrongdoing made to Anglican Family Care will be taken seriously and dealt with respectfully and in a timely way.

Procedures/Guidelines

- Section 29(3) of the Act requires Anglican Family Care to publish information about the existence of this policy and adequate information about how to use this policy. This information will be available on the Anglican Family Care website.
- Every person has the right to representation, advice, advocacy, and support at all stages of any of the processes under this policy. This includes the right to be accompanied by a person or persons of their choice at any meeting.
- **Who can make a protected disclosure?**
 - A disclosure can be made under this policy if the person has or has had an employment type relationship with Anglican Family Care. This includes current or former employees, contractors, volunteers, or board members. And they have reasonable grounds to believe that someone has engaged in conduct related to Anglican Family Care which is serious wrongdoing as described in this policy and the Act.
- **When is a disclosure of serious wrongdoing protected?**
 - A discloser is entitled to protection under the Act for a protected disclosure made to Anglican Family Care or an appropriate authority.
 - A discloser is entitled to protection for a protected disclosure made to Anglican Family Care if it is made in accordance with this policy to the Chairperson or General Manager of Anglican Family Care.
 - A discloser is entitled to protection for a protected disclosure made to an appropriate authority at any time. (This applies whether or not the discloser has also made the disclosure to Anglican Family Care or another appropriate authority.)
 - A discloser is entitled to protection even if the disclosure turns out to be incorrect, as long as they have reasonable grounds for making the disclosure and not acting in bad faith. A disclosure is not protected if the discloser makes a false allegation or acts in bad faith.
 - A discloser may also make a confidential disclosure to another person to seek advice about disclosing under the Act.
 - Another discloser that discloses information in support of, or relating to, a protected disclosure is also entitled to protection under the Act if the discloser does not disclose in bad faith and discloses to Anglican Family Care, or an appropriate authority, in accordance with section 11 of the Act.
 - No contract, agreement, or internal policy or procedure may change the application of the Act.
- **What protections apply to the discloser**

- If there is a protected disclosure made under the Act about serious wrongdoing in or by Anglican Family Care, Anglican Family Care will not retaliate or threaten to retaliate against a discloser who is an employee or treat or threaten to treat a discloser less favourably than others. In the unlikely event of victimisation or retaliatory action by Anglican Family Care against the discloser for making or referring the disclosure, the referrer may have grounds for a personal grievance action against Anglican Family Care (this applies only to employees within the meaning of the Employment Relations Act 2000 and amendments), or they can make use of the anti-victimisation provision of the Human Rights Act.
- If the discloser makes a protected disclosure in accordance with the Act, they will be immune from civil, criminal, or disciplinary proceedings. A discloser may not be immune if they were personally involved in the serious wrongdoing they disclosed. However, their cooperation in reporting the wrongdoing will be considered in decisions on any action that may be taken against them.
- Anglican Family Care will make best endeavours to keep confidential information that might identify the discloser. However, Anglican Family Care will not keep a discloser's identity confidential if:
 - The discloser consents to the release of the identifying information in writing; or
 - There are reasonable grounds to believe that the release of the identifying information is essential to:
 - Ensure an effective investigation or
 - Prevent a serious risk to public health, public safety, the health or safety of any individual, the environment, or
 - Have regard to the principles of natural justice
 - An investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

Anglican Family Care must consult with the discloser prior to releasing their identity if it is being released in relation to an investigation or for natural justice reasons. If it is being released for the other listed reasons above, they must be consulted if it is practicable. Either way, the discloser must be informed after their identity has been released. The discloser may make a complaint to the Privacy Commissioner if they think Anglican Family Care has disclosed their identity in breach of the Act. A release of any identifying information that is not in line with the Act will also be a breach of the Privacy Act.

- While this policy describes the steps that can be followed to make a protected disclosure to Anglican Family Care, the Act also anticipates the situation where someone might want to make an anonymous disclosure. However, if someone is thinking about making an anonymous disclosure, it is important to think about whether Anglican Family Care will be able to investigate the information if it does not know who they are or cannot ask them further questions.
- **Reporting serious wrongdoing within Anglican Family Care / making a protected disclosure**
 - Procedure for making a disclosure:
 - Disclosures should be in writing to the Chairperson, or the General Manager of Anglican Family Care, or appropriate authority. If made orally, the receiver will summarise understanding of the disclosure and provide it to the discloser for confirmation
 - The disclosure should include the nature of the serious wrongdoing, the name/s of people involved, including the name of the person making the disclosure, and relevant facts such as time and place of wrongdoing if known or relevant. Contact details should also be provided if not a current employee
 - If the discloser believes on reasonable grounds that the Chairperson is involved in the wrongdoing or has an association with the person committing it, it would be inappropriate to disclose it to the Chairperson. In that case, the disclosure may be made to the General Manager

- If the discloser believes on reasonable grounds that the General Manager is also involved in the wrongdoing, disclosure may be made to an appropriate authority.
- **How Anglican Family Care will investigate the protected disclosure**
 - Where the disclosure is made to the Chairperson or the General Manager, they will within 20 working days of receiving the disclosure (unless it is anonymous):
 - Formally acknowledge to the discloser the date the disclosure was received, including summarising the disclosure in writing if the disclosure was made verbally
 - Consider the disclosure and whether it warrants investigation; and discuss the matter only where appropriate, such as seeking independent legal advice (including an assessment of whether or not the complaint is a potential disclosure under the Act) or other specialist independent advice
 - Check with the discloser whether the disclosure has been made elsewhere and any outcome
 - Deal with the matter by doing one or more of the following:
 - Investigating the disclosure
 - Addressing any serious wrongdoing by acting or recommending action
 - Referring the disclosure to an appropriate authority (a referral should be made if another appropriate authority listed in Schedule 2 of the Act is better placed to respond to the disclosure). Before referring a disclosure, the discloser and the intended recipient must be consulted on the proposed referral, and upon referring, inform the receiver what has been done or is being done
 - Deciding that no action is required. Reasons that may be appropriate for deciding that no action is required include that:
 - The requirements of sections 8 and 10 of the Act are not met
 - The length of time between the alleged serious wrongdoing and the disclosure makes an investigation impractical
 - The matter is being addressed by other means
 - Inform the discloser (with reasons) about what they have done or are doing to deal with the matter. If a meeting is required with the discloser, inform them that they can have a representative or support person present at the meeting.
 - However, where the Chairperson or the General Manager cannot or when it is impractical to complete these actions within 20 working days, they will use all reasonable endeavours to inform the discloser how long they expect to take to deal with the matter and keep them updated on progress.
 - Where it is considered that the disclosure meets the Act's criteria, an investigation must be conducted. It will either be undertaken by the Chairperson or the General Manager or referred to an appropriate person or authority for investigation. Before referring a protected disclosure, the Chairperson or General Manager must consult the discloser and the intended recipient of the referral. The organisation or authority that has received a referral becomes the receiver of the disclosure, and the Act applies accordingly.
 - In accordance with the principles of natural justice, and as far as reasonably practicable, any person/s about whom a disclosure is made has a right to be heard before the complaint is resolved or any outcome is determined. In particular:
 - The person will be fairly advised of all allegations, with sufficient details and time given to enable them to prepare a response, and
 - The person will have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held), and
 - Anglican Family Care will consider their written statement or submissions (if any) before the outcome is determined.
 - Once the investigation has been completed, written advice on the outcome and details of any proposed action resulting from the allegation will be given to the discloser. If appropriate, a

report with the recommendations for action will be sent to Anglican Family Care Board and/or General Manager.

- Anglican Family Care may receive referrals from another organisation, and thereby becoming the disclosure receiver under the Act.
- The Chairperson or the General Manager will ensure that appropriate supports are offered to any employee who reports serious wrongdoing, whether or not the report is assessed to meet the threshold of a protected disclosure under the Act, for example, Employee Assistance Programme (EAP).
- Documentation concerning protected disclosures will be managed confidentially. Where physical documents are received, they will be digitalised. No information will be kept on an employee's personnel file.
- **Alternative method of making a protected disclosure to an appropriate authority**
 - A disclosure may be made to an appropriate authority at any time.
 - An appropriate authority (to whom a protected disclosure has been made about serious wrongdoing in or by Anglican Family Care) may also refer the disclosure to Anglican Family Care or another appropriate authority. Before referring a protected disclosure, the appropriate authority must consult the discloser and Anglican Family Care.
 - Disclosures to the media are not protected under the Act (journalists' protection of their sources is covered by other legislation).
 - A discloser could believe on reasonable grounds that Anglican Family Care has not acted as it should or has not dealt with the matter to address the serious wrongdoing. Under section 14 of the Act, the discloser is entitled for protection under this Act for a protected disclosure to be made to the Attorney General.

References

AFC Code of Conduct
AFC Complaints - Workers/Clients Policy
AFC Health and Safety Policy
AFC Supervision Policy
AFC Workplace Bullying and Harassment Prevention Policy
Protected Disclosures (Protection of Whistleblowers) Act 2022
Employment Relations Act 2000 and amendments
Human Rights Act 2003
Privacy Act 2020

Definitions

Appropriate Authority: (s25 of the Act) Includes:

- The head of any public sector organisation
- Any officer of Parliament
- The persons or bodies listed in the second column of Schedule 2 of the Act
- The membership body of a particular profession, trade, or calling with the power to discipline its members, for example, the Social Work Registration Board New Zealand or the New Zealand Association of Counsellors.

But does not include:

- A minister or a member of Parliament.

Appropriate authorities, as receivers of protected disclosures, should handle a protected disclosure in accordance with the requirements in the Act. Where a disclosure is made to an appropriate authority, the appropriate authority may refer the disclosure to Anglican Family Care or another appropriate authority (in which case, the discloser will be consulted first).

Discloser: (s8 of the Act) A person who has or has had an employment type relationship with Anglican Family Care. This includes current and former employees, contractors, volunteers, or board members.

Protected Disclosure: (s9 of the Act) A disclosure of information is a protected disclosure if the discloser:

- Believes on reasonable grounds that there is, or has been, serious wrongdoing in or by Anglican Family Care; and
- Discloses information about that in accordance with the Act; and
- Does not disclose it in bad faith.

Nothing in the Act authorises a person to disclose information protected by legal professional privilege. Disclosure of such information is not a protected disclosure.

Retaliate: (s21 of the Act) Means doing any of the following things:

- Dismissing an employee
- Refusing or omitting to offer the same terms of employment, conditions of work, benefits, or opportunities than offered to other employees (of similar qualifications, skills, and experience who were employed in similar circumstances) being subjected to disadvantage or being required to resign or retire.

Serious Wrongdoing: (s10 of the Act) Includes any act, omission, or course of conduct in (or by) Anglican Family Care that is one or more of the following:

- An offence
- A serious risk to public health, public safety, the health or safety of any individual, or to the environment
- A serious risk to the maintenance of the law, including the prevention, investigation, and detection of offences, or the right to a fair trial
- An unlawful, corrupt, or irregular use of public funds or public resources
- Oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement that is done (or is an omission) by a public sector employee or a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government.

Things like dissatisfaction with the leadership of Anglican Family Care, or more minor misconduct matters, may not amount to serious wrongdoing and so may not be covered by the Act. A serious wrongdoing also does not include things like employment issues that are more properly covered by the Employment Relations Act 2000 or any wrongdoing external to Anglican Family Care.

Victimisation: (s22 of the Act) Includes the discloser or one of their relatives or associates being treated less favourably than others in the same or similar circumstances are treated.