

We acknowledge the traditional custodians of this land, the Wurundjeri people, and pay our respects to the elders both past and present.

Whistleblower Protection		
Policy number: 7.19	Version: 3,0	Date of Issue: 10-12-2024
Authorised by: Chief Executive Officer	Distribution: All staff	Risk level: High
Date last reviewed: 20-10-2021	Reviewed by: Michelle Phang	Date of next review: December 2027

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COMMENCEMENT OF POLICY

This Policy will commence from 10 December 2024. It replaces all other San Carlo Whistleblower policies (whether written or not).

APPLICATION OF THE POLICY

This Policy applies to all 'workplace participants' of San Carlo, including employees, agency staff, volunteers, and contractors. This Policy does not form part of any employee's contract of employment, nor does it form part of any other workplace participant's contract for service.

DEFINITIONS

WHISTLEBLOWER

A Whistleblower is an individual who exposes and reports any illegal or unethical conduct within an organisation. Such conduct may be in violation of Federal or State laws, company Policies, or ethical guidelines. Whistleblowers can act internally, by raising concerns with Management, or externally, by raising concerns with an investigative or governing body.

Eligible Whistleblowers

Federal Legislation defines eligible whistleblowers as individuals who are:

- A current or former officer or employee of the organisation
- A paid or unpaid individual who supplies services or goods to the organisation
- Paid and unpaid employees of an individual who supplies services or goods to the organisation
- A current or former associate of the organisation
- A relative or dependant of any of the above individuals, including a dependant of the spouse of the above individuals

ELIGIBLE RECIPIENT

An eligible recipient is an organisation or an individual who is authorised to receive information from whistleblowers. They are also generally authorised to initiate and/or conduct investigations into the information provided in disclosures from whistleblowers.

Eligible recipients include:

- Directors, senior managers, or officers of the organisation;
- An auditor or a member of the team conducting an audit of the organisation;
- Regulatory authorities (e.g. Australian Securities and Investments Commission - ASIC);
- Government and law enforcement officers (e.g. Members of Parliament, police officers); and
- Any external organisation appointed by San Carlo to receive disclosures (where applicable).

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MISCONDUCT

Misconduct is defined as behaviour that goes against the accepted moral or professional standards of San Carlo, or is not in accordance with Government legislation and regulations.

Examples of misconduct include, but are not limited to:

- Violations of San Carlo's Code of Conduct and Ethics;
- Dishonest, corrupt, illegal, or fraudulent behaviour;
- Unethical or immoral behaviour;
- Non-compliance with laws and/or regulations;
- Substantial mismanagement of San Carlo's resources;
- Substantial mismanagement that causes imminent and serious risk to the health or safety of a person, or to the safety of an environment; and
- Conduct that causes imminent and serious risk to San Carlo's reputation.

DETRIMENT

A detriment is an unfair, negative act directed at a whistleblower because of their status as a whistleblower or in retaliation for information they have disclosed. This can include:

- Dismissal of the whistleblower if they are an employee;
- Alteration of the whistleblower's workplace position or duties to their disadvantage;
- Discrimination between the whistleblower and other employees;
- Harassment or intimidation of the whistleblower;
- Harm or injury to the whistleblower, including psychological harm;
- Damage to the whistleblower's property;
- Damage to the whistleblower's reputation;
- Damage to the whistleblower's business or financial position; and
- Any other form of damage to the whistleblower.

REASONABLE GROUNDS

'Reasonable grounds' refers to an objective, reason-based standard for judging how a situation or circumstance can be interpreted. A person has reasonable grounds to believe misconduct has occurred or is occurring if those grounds (e.g. circumstances, evidence, etc) can be judged objectively as sensible or realistic, even if they are subsequently found to be false or non-existent.

WHISTLEBLOWER PROTECTION OFFICER (WPO)

The person to whom whistleblowers are encouraged to report under this Policy and who has the responsibility to safeguard the interests of the whistleblower(s).

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POLICY

San Carlo aims to create an environment free from unacceptable behaviour and misconduct at all levels. We are committed to addressing, investigating, and resolving all reports of misconduct that arise within the organisation. San Carlo's Code of Conduct and Ethics outlines the standards of behaviour that are expected from all staff.

If a workplace participant becomes aware of misconduct and is an eligible whistleblower, they are encouraged to report the misconduct to an eligible recipient, such as the Whistleblower Protection Officer (WPO). Eligible whistleblowers who make disclosures to an eligible recipient are entitled to protection from penalties and detriments that could result from the disclosure.

In the context of aged care, workplace participants are required to report any known or suspected abuse of a resident, whether the abuse come from another workplace participant; a director or officer of San Carlo; or a person external to the organisation.

Whistleblowers who report elder abuse within the aged care sector are protected under the *Aged Care Act 1997*. Further details can be found in the Mandatory Reporting policy and procedure (Policy 8.6)

RESPONSIBILITIES

It is the responsibility of **all workplace participants** to:

- Report misconduct when they are aware of it;
- Ensure any information they disclose is factual and based on reasonable grounds;
- Only report misconduct to the eligible recipients outlined in this Policy; and
- Treat whistleblowers fairly and without discrimination.

It is the responsibility of **all directors, officers, and senior managers** to:

- Ensure any reports of misconduct they receive are appropriately investigated;
- Maintain confidentiality of the identity of whistleblowers and the information they provide; and
- Treat whistleblowers fairly and without discrimination.

It is the responsibility of the nominated **Whistleblower Protection Officer** to:

- Provide support to whistleblowers;
- Ensure the identity of whistleblowers remains confidential;
- Ensure the information provided by whistleblowers is only provided to appropriate parties during an investigation; and
- Protect whistleblowers from unfair treatment and discrimination.

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WHISTLEBLOWER PROTECTION OFFICER

To maintain independence from San Carlo operations, the main Whistleblower Protection Officer (WPO) is an external consultant designated by San Carlo to receive disclosures.

If the WPO is unavailable, or if the whistleblower does not feel comfortable making the disclosure to the WPO, an alternate WPO can be nominated to receive the disclosure.

MAKING DISCLOSURES

Where an eligible whistleblower suspects on reasonable grounds that any employee, director, volunteer, or contractor of San Carlo has violated any requirement of the law, that individual can report their concern to any of the following:

- An officer of San Carlo or member of Senior Management;
- The CEO;
- The San Carlo Board;
- An external regulatory body (e.g. Aged Care Quality and Safety Commission, ASIC);
- Any external organisation or individual appointed by San Carlo to receive disclosures; and
- Government and law enforcement officers (e.g. Members of Parliament, police officers).

Whistleblowers must ensure that information they provide in a disclosure is unbiased and factually accurate, as far as reasonably possible.

Disclosures can also be made as above if an eligible whistleblower suspects on reasonable grounds that any employee, director, volunteer, or contractor of San Carlo has violated any part of San Carlo's regulations, policies, code of conduct, or generally recognised principles of ethics.

Any person within the organisation to whom such a disclosure is made must:

- Ensure that the claim is investigated, a finding is made, and the person making the claim is informed of the finding, providing they believe the disclosure to be factual.
- Dismiss the claim and notify the person making the claim of their decision if they believe the disclosure to be unquestionably false or trivial.

If a recipient dismisses the claim and the whistleblower believes that this dismissal is unfounded, the whistleblower can report their disclosure and the subsequent dismissal to a different eligible recipient.

Information provided by a whistleblower can only be passed on to other parties if it is necessary for investigating the matter. All reasonable efforts must be made to reduce the risk of the whistleblower being identified from the information when passing it on.

Employees are not authorised to make disclosures to commercial media unless:

- It is **not** possible or reasonable for the employee to make a report internally; or

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- Existing reporting channels have failed to effectively deal with the issues raised by the employee.

External Disclosures

The Board of San Carlo can nominate an external person or agency to whom disclosures can be made under the protections offered by this Policy. Where such a nomination is made, all staff and volunteers are informed of the appropriate method of making an external report.

Where an external person or agency has not been nominated, external disclosures can be directed to the appropriate regulatory body and/or to appropriate law enforcement officers.

Anonymity

Disclosures can be made anonymously, and this anonymity will be preserved as far as possible by San Carlo. Anonymity can sometimes hinder investigations and the process of natural justice; this must be considered by any whistleblower when deciding to remain anonymous. Anonymous whistleblowers are still provided the same protections as other whistleblowers.

CONDUCTING INTERNAL INVESTIGATIONS

Any internal investigations following a report of misconduct will observe the rules of natural justice and procedural fairness. The whistleblower is kept informed of any findings or updates from the investigation.

The purpose of the investigation is to gather and consider any evidence that supports or refutes the claims made by the whistleblower.

The employee, director, volunteer, or contractor claimed to have engaged in misconduct can be suspended or prohibited from entering the workplace while the investigation takes place if the information indicates that there is a risk to workplace and/or resident safety.

No assumptions of guilt apply and the person under investigation is given the chance to respond.

All internal investigations are fair and independent, without bias towards anyone involved. If the person who received the disclosure believes they have a conflict of interest, they must pass the investigation on to an appropriate senior member of the organisation.

The identity of the whistleblower must remain confidential throughout this process.

PROTECTIONS AND SUPPORT

Whistleblowers are protected from any civil, criminal, or administrative liability (including disciplinary action) for making the disclosure. Any information that is part of a disclosure cannot be used as evidence against a whistleblower in criminal trials or cases involving a penalty, except in cases about the falsity of the information.

The identity of eligible whistleblowers is protected under federal legislation. Individuals or organisations who reveal the identity of a whistleblower or provide information that could lead to the identification of the whistleblower without their consent can face both civil and criminal penalties.

The person making a disclosure will not suffer any penalties from the organisation based on their disclosures, provided that their actions:

- Are based on reasonable grounds, and
- Conform to the designated procedures.

Any staff member who penalises or disadvantages a whistleblower or witness in an investigation as a form of retribution will be subject to disciplinary measures.

Any whistleblower who suffers detriments due to their status as a whistleblower can be entitled to any of the following:

- Court-ordered apologies;
- Injunctions;
- Financial compensation; and/or
- Reinstatement (if their employment was terminated).

Evidence of detriments or of the possibility that a detriment has occurred is required for such entitlements.

Whistleblowers who are found to have intentionally made false claims will be subject to disciplinary measures.

Unprotected Disclosures

Disclosures relating to personal work-related grievances do not count as protected disclosures for the purpose of this Policy and under Federal whistleblower protection laws. A disclosure regarding a personal work-related grievance is any disclosure that:

- Concerns the discloser's current or former employer with implications for the discloser personally;
- Does not have significant implications for San Carlo (or any other organisations) that don't relate directly to the discloser; and
- Does not concern misconduct, unethical practice, or a breach of the law.

Such disclosures can be protected if they are disclosed to a legal practitioner for the purpose of seeking legal advice or representation.

PROCEDURE

SYSTEMS FOR PREVENTING MISCONDUCT

The following systems are in place and implemented by the Board and Senior Management to aid in preventing misconduct within San Carlo:

- Corporate Governance policies and processes;
- Clear organisation purpose, vision and values;
- Established Code of conduct that is signed by all staff on commencement of employment;
- Culture of openness and transparency supported by Board and Leadership;
- Complaints and Human Resources (HR) procedures that support procedural fairness ;
- System for recruitment and employment based on legislative compliance and best practice;
- System for maintaining legislative compliance;
- Education system, including education on staff conduct and rights; and
- Quality management system that includes a multilayered approach to resident consultation.

MAKING A REPORT

Employees are encouraged to follow normal reporting channels and discuss the matter with their supervisor in the first instance, before taking action under this Policy.

Supervisors receive training to manage disclosures and to understand their roles and responsibilities in addressing these in accordance with procedures.

If an employee does not wish to report to their supervisor to a reasonable concern, they are encouraged to make the disclosure directly to the WPO. To qualify for protection under legislation reports must be made to an eligible recipient.

Reports can be completed anonymously via the Complaint and Feedback form by addressing the form to the WPO and placing this into the locked box located at reception. The whistleblower should recognise that anonymity may slow down, or even prevent, the timely resolution of the investigation process.

Anonymity may also mean that it is difficult to provide feedback on the status of the investigation to the whistleblower and also to provide the protection afforded to whistleblowers under this Policy.

If the source happens to be identified by the WPO, confidentiality must be applied.

In accordance with organisational values and code of conduct, whistleblowers should ensure, as able, that their report:

- Is factually accurate;
- Contains as much necessary detail as possible;

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- Is based on their own, first-hand knowledge;
- Does not omit key details; and
- Is presented in an unprejudiced way.

The report should be as detailed as possible and include (but not be limited to):

- The exact nature of the alleged misconduct that is believed to have occurred;
- Where the alleged misconduct took place, if known;
- When the alleged misconduct took place, if known;
- Who was involved in the alleged misconduct; and
- The names of any witnesses who may know information that is relevant to investigating the alleged misconduct.

Whistleblower Protection Officer

San Carlo has a nominated external WPO to whom staff can make disclosures. The contact details for the WPO are:

Fleur Hannan

Email: fleur@cssconsulting.com.au

Mobile: 0414 888 795

Face-to-face meetings can be arranged upon requested.

CONDUCTING INVESTIGATIONS

All reports made under this Policy are investigated with the objective of obtaining evidence that either substantiates or refutes the claims made by the whistleblower.

Investigations are carried out by the WPO or an appropriate person nominated by the WPO. The practice of procedural fairness is applied in all investigations.

If the Investigator believes they may have a conflict of interest by acting as Investigator in the matter, they must notify the WPO. The WPO ensures the matter is addressed without conflict of interest.

Any person who is accused of misconduct or connected to the allegations must not act as the WPO or Investigator.

Where appropriate (e.g. where this is a potential risk to resident or staff safety), the person alleged to have engaged in misconduct can be stood down from duty pending investigation. Where a person is stood down while the investigation takes place, there is no inference of guilt or wrongdoing until the investigation is complete.

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Any person against whom an allegation has been made must be given opportunity to respond. Their response is considered during the investigation and when courses of action are decided.

As soon as practicable after the investigation is complete, the Investigator prepares a report providing a summary of the facts of the suspected misconduct and of the findings of the investigation (i.e. whether the allegations were substantiated or unsubstantiated).

This report is then provided to the WPO, who ensures that appropriate measures are taken in light of the findings in the report (e.g. notification to regulatory and/or enforcement agencies).

In cases where the allegations are substantiated, disciplinary measures can be applied to the staff members involved in the misconduct.

The whistleblower must not be subject to any detriment as a result of their disclosure.

PROTECTIONS FOR WHISTLEBLOWERS

The identity of the whistleblower must be kept confidential.

If a whistleblower makes a report under this Policy, the whistleblower must not face any detriment because they have reported a matter, except where:

- The whistleblower is disclosing conduct that prohibits them from legally working in aged care (under the Aged Care Act 1997); and/or
- An investigation finds that the whistleblower knowingly provided false information.

If the Investigator finds that the whistleblower has not made the disclosure on reasonable grounds of suspecting misconduct or intentionally made a false, malicious, or vexatious report of alleged misconduct, this is reported to the WPO and may result in the whistleblower being the subject of disciplinary measures.

Staff must not victimise, harass or discriminate against a whistleblower who raises a concern under this Policy or who participates in an investigation. Such behaviour is considered serious misconduct and may result in disciplinary measures.

A whistleblower or person participating in an investigation associated with a protected disclosure who believes they have been penalised or disadvantaged as a result of their report should immediately report this to the WPO.

Any manager or supervisor who is found to have punished, penalised or disadvantaged a whistleblower or person participating in an investigation associated with a protected disclosure may be subject to disciplinary measures.

See the Counselling and Discipline policy and procedure for more details on disciplinary actions.

RELATED POLICIES AND LEGISLATION

POLICIES AND PROCEDURES

- 7.16 Counselling and Discipline
- 8.3 Financial Governance
- 8.6 Mandatory Reporting
- 8.7 Corporate Governance
- Code of Conduct and Ethics

LEGISLATION AND AGREEMENTS

- *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)*
- *Crimes Act 1914 (Cth)*
- *Protected Disclosure Act 2012 (Vic)*
- *Corporations Act 2001 (Cth.)*
- *Aged Care Act 1997 (Cth)*

DOCUMENT VERSION CONTROL AND REVIEW HISTORY

Version	Date	Sections Modified	Author	Approved By	Next Review
1.0	01-10-2019	All	San Carlo	Rhonda Joiner	October 2020
2.0	20-10-2021	All	San Carlo	Rhonda Joiner	October 2023
3.0	10-12-2024	All	San Carlo	Rhonda Joinder	December 2027

AUTHORITY

This policy is authorised under delegation by:



Rhonda Joiner
Chief Executive Officer

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