




# Whistleblower Policy

GRPCORP1009

Version 1 : Created December 2019



## Revision and Authority

Revision #	Detail of Revisions	Authority	Signature	Date
1	Policy Created	Director Commerical Projects & External Relations		December 2019

## 1. Aim of policy

LifeFlight Australia Limited and its associated entities (including LifeFlight Retrieval Medicine Ltd, LifeFlight Commercial Ltd and LifeFlight Foundation Ltd) (**LifeFlight**) strives to operate with a culture of ethical and appropriate corporate behaviour in all its business activities. This includes ensuring that LifeFlight acts with integrity, honestly and in accordance with good governance principles. This policy is extremely important because it has been designed to protect individuals who report conduct which they reasonably believe to be corrupt, illegal or unethical on a confidential basis, without fear of victimisation, reprisal, dismissal or discriminatory treatment. If a person is aware of a wrongdoing, they are encouraged to speak up.

## 2. Scope of policy

This policy sets out:

- a) how this policy will be made available to officers and employees of LifeFlight;
- b) information about the protections available to whistleblowers;
- c) how disclosures that qualify for protection may be made and to whom;
- d) how LifeFlight will support whistleblowers and protect them from detriment;
- e) how LifeFlight will investigate disclosures that qualify for protection; and
- f) how LifeFlight will ensure employees related to or mentioned in a disclosure that qualifies for protection will be treated fairly.

Nothing in this policy is intended to alter the protections which may be available at law.

This policy is not intended to create any contractually binding obligation on LifeFlight and does not form part of any contract of employment or other contract of engagement with LifeFlight.

## 3. Application

This Policy applies to LifeFlight's current and former:

- a) officers;
- b) employees;
- c) suppliers of services or goods, and their employees (paid or unpaid); and
- d) associates,

and their relatives, spouse and dependants (**Eligible Whistleblower**).

## 4. Accessibility of policy

This policy is to be made available on LifeFlight's external website for people outside the entity to access, and on SharePoint for LifeFlight's employees to access.

It will be communicated to all officers and employees.

A written copy of the policy will also be made available upon request.

## 5. Disclosures protected under the *Corporations Act 2001 (Cth)*

### What can be disclosed?

An Eligible Whistleblower may make a disclosure of information when they have reasonable grounds to suspect that the information disclosed concerns misconduct, or an improper state of affairs or circumstances, in relation to LifeFlight (**Disclosable Matters**). For example, the information may indicate that LifeFlight, or an officer or employee of LifeFlight (or a related body corporate) have engaged in conduct that:

- a) constitutes an offence against, or a contravention of, a provision of the *Corporations Act 2001 (Cth)* (**Corporations Act**) or legislation listed in section 1317AA of the Corporations Act. For example, dishonest, fraudulent or corrupt activity, or illegal activity (ie theft);
- b) constitutes an offence against other laws of the Commonwealth that are punishable by imprisonment for a period of 12 months or more;
- c) represents a danger to the public or financial system; or
- d) as otherwise prescribed by the law.

Disclosable Matters may include conduct that may not involve a contravention of a particular law. For example, information which indicates a significant risk to public safety or the stability of, or confidence in, the financial system, even if it does not involve a particular law being contravened.

Disclosures that are not about Disclosable Matters do not qualify for protection under the Corporations Act, however they may be protected under other legislation.

### Personal work-related grievances

A Disclosable Matter generally does not include personal work-related grievances that do not concern victimisation (which involves detriment caused to, or a threat made to, a discloser).

Personal work-related grievances are grievances that:

- a) relate to a person's current or former employment, and have (or tend to have) implications for the discloser personally;
- b) do not have significant implications for LifeFlight; and
- c) do not concern conduct, or alleged conduct, referred to as a Disclosable Matter above.

Examples of personal work-related grievances may include interpersonal conflicts between the discloser and other employees, decisions regarding engaging, transferring or promoting a discloser and decisions to discipline a discloser or suspend or terminate the engagement of a discloser.

A disclosure relating to personal work-related grievances may qualify for protection under the Corporations Act if:

- a) it includes information about misconduct, or information about misconduct which includes or is accompanied by a personal work-related grievance (ie a mixed report);
- b) LifeFlight has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public,

- or the disclosure relates to information that suggests misconduct beyond the Eligible Whistleblower's personal circumstances;
- c) the Eligible Whistleblower suffers from or is threatened with detriment for making a disclosure; or
  - d) the Eligible Whistleblower seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act.

If you would like to raise a grievance that is not covered by this policy, please refer to LifeFlight's GRPHR1006 Grievance Policy.

### **Who can receive a disclosure?**

An Eligible Whistleblower may disclose information of a Disclosable Matter either:

- a) internally – to any of the following persons within LifeFlight:
  - i) an officer or senior manager;
  - ii) an auditor or member of an audit team conducting an audit of LifeFlight;
  - iii) an actuary;
  - iv) Brian Guthrie (**Whistleblowing Officer**);
- b) externally – to any of the following:
  - i) Australian Securities and Investments Commission (**ASIC**);
  - ii) Australian Prudential Regulation Authority (**APRA**);
  - iii) a Commonwealth authority prescribed by law; or
  - iv) a legal practitioner for the purposes of obtaining legal advice or legal representation, even if the legal practitioner concludes that the disclosure is not in relation to a Disclosable Matter (**External Recipient**).

A "senior manager" is a person who is generally a senior executive within LifeFlight (other than a director or company secretary) and:

- a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of LifeFlight; or
- b) has the capacity to significantly affect LifeFlight's financial standing.

### **Disclosures to Parliamentarians and Journalists**

A 'Public Interest Disclosure' or 'Emergency Disclosure' (as defined by the Corporations Act) may be made to a Journalist or a Parliamentarian in certain circumstances, including a disclosure having previously been made.

It is important for an Eligible Whistleblower to understand the criteria for making a Public Interest Disclosure or an Emergency Disclosure. An Eligible Whistleblower should contact an independent legal advisor before making a Public Interest Disclosure or an Emergency Disclosure.

### **Public Interest Disclosures**

A disclosure of a Disclosable Matter to a Parliamentarian or Journalist may qualify for protection if all of the following requirements are satisfied:

- a) the discloser has previously made a disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
- b) at least 90 days have passed since the previous disclosure was made;
- c) the discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to the previous disclosure;
- d) the discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest;
- e) prior to making a Public Interest Disclosure, the discloser has given notice to the body (to which the previous disclosure was made) that provides sufficient information which identifies the previous disclosure and states that the discloser intends to make a Public Interest Disclosure; and
- f) the extent of information disclosed is no greater than is necessary to inform the Journalist or Parliamentarian of the relevant Disclosable Matter.

### **Emergency Disclosures**

A disclosure of a Disclosable Matter to a Journalist or Parliamentarian may qualify for protection if all of the following requirements are satisfied:

- a) the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation;
- b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- c) prior to making the Emergency Disclosure, the discloser has given notice to the body (to which the previous disclosure was made) that provides sufficient important which identifies the previous disclosure and states that the discloser intends to make an Emergency Disclosure; and
- d) the extent of information disclosed is no greater than is necessary to inform the Journalist or Parliamentarian of the substantial and imminent danger.

### **Protected disclosures**

If an Eligible Whistleblower makes a disclosure of information relating to a Disclosable Matter to an Eligible Recipient or External Recipient, the person may qualify for protection under the Corporations Act (**Protected Disclosure**).

Eligible Whistleblowers may receive protection under Part IVD of the *Taxation Administration Act 1953* (Cth) (**Taxation Act**) for disclosures relating to information which may assist the Commissioner of Taxation perform its duties under taxation law, or if they have reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs (or circumstances) in relation to LifeFlight's tax affairs (including non-compliance with tax laws or tax avoidance behaviour). Please note such a disclosure must comply with the Taxation Act.

## **6. How to make a disclosure**

Before making a disclosure, Eligible Whistleblowers:

- a) are encouraged to read this policy to ensure the disclosure falls within the scope of a Disclosable Matter and is protected under the Corporations Act; and
- b) may contact Whistleblowing Officer to obtain additional information.

### **Disclosures to Internal Recipients**

LifeFlight encourages Eligible Whistleblowers to make disclosures to the Whistleblowing Officer. This can be done by contacting the Whistleblowing Officer:

- a) in person;
- b) by post: PO Box 15166, City East QLD 4002
- c) by email: [Brian.Guthrie@lifeflight.org.au](mailto:Brian.Guthrie@lifeflight.org.au) or
- d) by phone: (07) 3037 2299

Eligible Whistleblowers should provide all information and supporting documentation relating to the Disclosable Matter to the Eligible Recipient.

Disclosures may be made anonymously and still receive protections under the Corporations Act. An Eligible Whistleblower may choose to remain anonymous while making a Protected Disclosure, over the course of the investigation, and after the investigation is finalised. An Eligible Whistleblower may refuse to answer questions that they feel may reveal their identity at any time, including during follow-up conversations.

If an Eligible Whistleblower chooses to remain anonymous, they should maintain ongoing two-way communication with LifeFlight so that LifeFlight can ask follow-up questions or provide feedback.

To protect an Eligible Whistleblower's anonymity, an Eligible Whistleblower may adopt a pseudonym for the purpose of the Protected Disclosure.

LifeFlight will treat all anonymous Protected Disclosures seriously, however there may be limitations on LifeFlight's investigation process if it cannot contact the Eligible Whistleblower.

### **Disclosures to External Recipients**

If an Eligible Whistleblower wants to make a Protected Disclosure to an External Recipient, LifeFlight encourages them to follow the External Recipient's guidance. For example, to follow ASIC's information sheet if they want to make a disclosure to ASIC: [How ASIC manages whistleblower reports](#).

## **7. Investigation procedure**

Upon receipt of a disclosure, the recipient must contact the Whistleblowing Officer who will handle the disclosure. The Whistleblowing Officer will conduct enquiries to determine whether the disclosure qualifies for protection.

If the Whistleblowing Officer determines that the disclosure does not qualify for protection under the Corporations Act (or Taxation Act), the enquiry will be concluded, and no further steps will be taken unless the disclosure is determined to be malicious or vexatious. This does

not prevent the disclosure from being referred elsewhere in the organisation to be dealt with (ie personal grievances).

If the Whistleblowing Officer considers that the disclosure qualifies for protection, they will determine the next steps within seven days. The next steps include:

- a) the appointment by the Whistleblowing Officer of:
  - i) an external Investigator to conduct a formal investigation; or
  - ii) an internal Investigator to conduct a formal investigation;
- b) the need to preserve any evidence (such as hard drives); or
- c) if a suspension of employees or officers allegedly involved in the substance of the disclosure (**Respondents**) is required pending the outcome of any investigation.

Any investigation process should be carried out as soon as practicable in the circumstances. This will ensure the preservation of evidence, and fairness to the Eligible Whistleblower. LifeFlight will endeavour to conduct investigations within two months, unless the circumstances prevent this. In any case, the Eligible Whistleblower will be notified of the expected timeframes.

### **Formal investigation**

Where it is determined by the Whistleblowing Officer that a formal investigation is appropriate to deal with the Protected Disclosure, the Whistleblowing Officer will provide the Investigator with the terms of reference for the investigation and any other relevant material.

The Whistleblowing Officer will write to any Respondents and witnesses advising them of the investigation and the outline of the process to be followed by the Investigator, unless LifeFlight is prevented by the circumstances.

The investigation process will follow the Principles of Natural Justice (as far as possible, without disclosing the Eligible Whistleblower's identity) and may include:

- a) interviewing relevant witnesses; and/or
- b) gathering and assessing relevant documents/evidence or other material.

Interviews may be recorded for note-taking purposes, and witnesses may be required to sign a written statement confirming their evidence.

### **Witness evidence**

Any relevant evidence gathered in the course of an investigation must be provided to the Respondent, so the Respondent has a fair opportunity to respond to the allegations.

It is rarely possible to 'de-identify' witnesses (except for the Eligible Whistleblower whose identity will not be disclosed), as this affects the evidence when put to the Respondent, and offends the Principles of Natural Justice.

In certain circumstances, witness statements may be redacted to de-identify the witness, however, this will only be possible where the validity of the evidence is not impacted, and disclosing the identity of the witness, will result in the risk of a real harm or injury to the witness.



New witnesses may be identified throughout the investigation and require interviewing. Original witnesses may need to be re-interviewed to clarify any contradictory information.

### **Responsibilities**

The Respondents, witnesses and any other persons involved in an investigation into the Protected Disclosure must:

- a) keep all matters relating to the investigation strictly confidential (except for disclosure to an advisor or support person, who must also agree to keep the information confidential);
- b) obey all lawful directions by LifeFlight and the Investigator in relation to the investigation;
- c) participate in any investigation honestly; and
- d) not victimise, harass or take any other adverse action against any person because of their participation in the investigation.

### **Outcome**

Once all of the evidence has been gathered and the Respondent has been provided with an opportunity to review that evidence and provide their response, the Investigator will confidentially provide the Whistleblowing Officer with an investigation report in accordance with the terms of reference.

The Whistleblowing Officer will confidentially discuss the report and any recommendations with the Board, and determine an appropriate outcome. The method of documenting and reporting the findings may vary depending on the nature of the findings. The investigation report should indicate the information which will be provided to the Eligible Whistleblower, which may include that it would not be appropriate to provide details of the outcome to them.

### **Discloser**

The Investigator will be responsible for providing feedback to the Eligible Whistleblower directly unless they have remained anonymous and LifeFlight does not have contact details for them. In situations where the Eligible Whistleblower is not anonymous, or LifeFlight has the contact details for an anonymous person, contact will be made within a maximum of seven business days of the Protected Disclosure being made.

An Eligible Whistleblower will be provided with regular updates (ie at key stages), if the Eligible Whistleblower can be contacted, including the investigation findings (if appropriate). The frequency and timeframe of updates will vary depending on the nature of the Protected Disclosure.

LifeFlight will treat all Protected Disclosures made under this policy in a confidential, sensitive and secure manner.

## **8. Fair treatment**

LifeFlight is committed to ensuring all employees related to/mentioned in a Protected Disclosure are treated as fairly as possible. This includes by:

- a) handling disclosures confidentially (when practical and appropriate in the circumstances);
- b) assessing each disclosure and whether it will be the subject of an investigation;

- c) ensuring the objective of investigations is to determine whether there is enough evidence to substantiate or refute the reported matters;
- d) conducting investigations in a fair, objective and independent manner; and
- e) advising employees who are the subject of a Protected Disclosure of the subject matter and the Principles Of Natural Justice and procedural fairness (if required) prior to actions being taken against them. However, LifeFlight will determine the most appropriate time to do this.

The Investigator will treat each Protected Disclosure very carefully by considering all relevant information, facts and evidence without bias before making a conclusion or decision. The Investigator will also ensure that the employees or officers mentioned in a Protected Disclosure are given an opportunity to respond to any allegation and share their perspective.

It should be noted however that disciplinary action may be taken against an individual found to have engaged in wrongdoing and where appropriate, may be referred to authorities.

## **9. Confidentiality of whistleblower identity**

LifeFlight is legally obliged to protect the confidentiality of an Eligible Whistleblower's identity, which means no person can disclose the identity of a discloser or information that is likely to lead to the identification of the discloser (whether obtained directly or indirectly from the discloser making the Protected Disclosure). However, this does not apply if:

- a) the disclosure is made to a member of the Australian Federal Police, ASIC, APRA, a legal practitioner (for the purpose of obtaining legal advice or legal representation) or other person, body or authority in accordance with the law;
- b) the disclosure is required by law; or
- c) the discloser provides their consent.

Information contained in a Protected Disclosure can be disclosed (with or without the Eligible Whistleblower's consent), including in an investigation, if:

- a) the information does not include the Eligible Whistleblower's identity;
- b) LifeFlight has taken all reasonable steps to reduce the risk that the Eligible Whistleblower will be identified from the information; and
- c) it is reasonably necessary to investigate the issues raised in the Protected Disclosure.

These disclosures may include disclosures to:

- a) the Director of Finance, the Chief Executive Officer or the Chairperson of the Board;
- b) delegated to HR or other managers to make inquiries or to conduct investigations;
- c) order external investigations as is deemed appropriate; and
- d) disclosures to Respondents to complaints to ensure that the person/s against whom allegations are made are given the opportunity to respond to any allegations.

It is illegal for any person to identify the Eligible Whistleblower or disclose information that will likely lead to the identification of the Eligible Whistleblower, unless the above exceptions apply. If a breach of confidentiality has occurred, an Eligible Whistleblower can lodge a complaint, or alternatively an Eligible Whistleblower can lodge a complaint with a regulator for investigation (ie ASIC, APRA or the Australian Taxation Office).

To reduce the risk that an Eligible Whistleblower will be identified from the information contained in the Protected Disclosure, LifeFlight will take the following reasonable steps:

- a) all personal information or reference to the Eligible Whistleblower witnessing an event will be redacted;
- b) the Eligible Whistleblower will be referred to in a gender-neutral context;
- c) where appropriate, the Eligible Whistleblower will be contacted to assist with identifying items in their Protected Disclosure which may inadvertently identify them;
- d) Protected Disclosures will be handled and investigated by qualified staff and/or service providers;
- e) all paper and electronic documents and other materials relating to Protected Disclosures will be stored securely;
- f) access to all information relating to a Protected Disclosure will be limited to those directly involved in managing and investigating the disclosure; and
- g) each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of an Eligible Whistleblower's identity may be a criminal offence.

Please note an Investigator may disclose information provided that it is reasonably necessary to investigate the Protected Disclosure and they have taken reasonable steps to reduce any risks that the Eligible Whistleblower will be identified as a result of the Protected Disclosure.

## **10. Support and protection from detriment**

### **Protection from detriment**

LifeFlight will take all reasonable steps to:

- a) prevent a person (eg officer, employee or third party) from engaging in detrimental conduct, or threatening to engage in detrimental conduct; and
- b) ensure that a person (eg officer, employee or third party) does not engage in detrimental conduct, or threaten to engage in detrimental conduct,

towards an Eligible Whistleblower because the person believes or suspects that the Eligible Whistleblower had made, may make, proposes to make or could make a Protected Disclosure.

Examples of how LifeFlight will protect Eligible Whistleblowers who make Protected Disclosures are as set out below.

LifeFlight will:

- a) assess the risk of detriment against the Eligible Whistleblower and other person, after receiving a Protected Disclosure;
- b) provide strategies to the Eligible Whistleblower to minimise their stress and challenges from making the Protected Disclosure;
- c) perform actions that protect the Eligible Whistleblower from the risk of detriment.

Detrimental conduct includes, but is not limited to, dismissing an employee, altering an employee's position or duties to their disadvantage, or damaging a person's reputation or property.

However, detrimental conduct does not include:

- a) administrative action that is reasonable for the purpose of protecting an Eligible Whistleblower from detriment (eg moving the Eligible Whistleblower who has made a Protected Disclosure about their immediate work area to another office to prevent them from detriment);
- b) an Eligible Whistleblower's unsatisfactory work performance being managed, if the action is in line with LifeFlight's performance management framework; or
- c) taking action against the Eligible Whistleblower, including termination of their employment if they are an employee, for reasons not related to their Protected Disclosure.

LifeFlight encourages any Eligible Whistleblower who thinks they are suffering from detrimental conduct to contact any Eligible Recipient. If an Eligible Whistleblower is not comfortable with this, they may also seek independent legal advice or contact a regulatory body.

### **Support**

If a Protected Disclosure is made in accordance with this policy and the subsequent investigation confirms that there was no wrongdoing by LifeFlight, the Eligible Whistleblower will be protected from any form of victimisation or action by LifeFlight.

If an Eligible Whistleblower who has made a Protected Disclosure suffers less favourable treatment than any other person because of the Protected Disclosure, then the person treating the Eligible Whistleblower inappropriately may be subject to disciplinary action.

If an Eligible Whistleblower makes a malicious, slanderous or vexatious disclosure, they may be subject to disciplinary action.

If the Eligible Whistleblower is involved in the disclosed conduct they may be provided with some degree of immunity from disciplinary action if agreed by the Board. The Board however has no power to provide immunity from criminal prosecution.

### **16. Whistleblower protections**

If an Eligible Whistleblower makes a Protected Disclosure in accordance with this policy, they may receive protections under the Corporations Act including, but not limited to:

- a) the person's identity will be kept confidential, unless the person provides their consent or any exceptions above apply;
- b) the person will not be subject to any civil, criminal or administrative liability for making the Protected Disclosure. For example, they will be protected from:
  - i) any legal action against them for breach of an employment contract, duty of confidentiality or another contractual obligation;
  - ii) attempted prosecution for unlawfully releasing information, or other use of the disclosure against them in a prosecution (other than for making a false disclosure); and
  - iii) disciplinary action for making the Protected Disclosure;
- c) no contractual or other remedy may be enforced, and no contractual or other remedy may be exercised, against the person on the basis of the Protected Disclosure;

- d) the information disclosed will not be admissible in evidence against the person in criminal proceedings, or proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information;
- e) the person will not be required to disclose their identity, or information that is likely to lead to their identification, to a court or tribunal, unless it is necessary to do so under the Corporations Act or if the court or tribunal thinks it is necessary in the interests of justice;
- f) the person will not be required to produce to a court or tribunal a document containing their identity or information that is likely to lead to their identification, unless it is necessary to do so under the Corporations Act or if the court or tribunal thinks it is necessary in the interests of justice;
- g) protections from victimisation that causes a detriment to the person because of a belief or suspicion that the person or any other person, may have made, proposes to make or could make a Protected Disclosure. This also applies to protection from threats to cause detriment because the person makes, or may make, a Protected Disclosure; and
- h) the person (or any other employee or person) may seek compensation and other remedies from a court:
  - i) for loss, damage or injury suffered because of a Protected Disclosure; and
  - ii) if LifeFlight failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct. However, the person should seek independent legal advice.

These protections apply to both internal Protected Disclosures and to Protected Disclosures made to external parties, such as legal practitioners, regulatory and other external bodies, and Public Interest and Emergency Disclosures made in accordance with the Corporations Act.

Please note these protections do not grant immunity for any misconduct an Eligible Whistleblower has engaged in that is revealed in the Protected Disclosure.

## **17. Breaches of this policy**

All employees and contractors of LifeFlight are required to comply with this policy (and its related laws) at all times.

Non-compliance with this policy (and its related laws) may result in disciplinary action up to and including termination of employment or engagement.

## **18. Review of the policy**

This policy will be reviewed at least every two years by LifeFlight, to ensure any issues are identified and rectified. A report will be made to the Board of the outcome of each review and all recommended changes to the policy.

This policy may be varied, amended, replaced or terminated, at the absolute discretion of LifeFlight, from time to time and in accordance with the law.

## **19. Further Information & Resources**

Australian Federal Police

[www.afp.gov.au](http://www.afp.gov.au)

Australian Securities and Investments Commission

[www.asic.gov.au](http://www.asic.gov.au)

1300 300 630

Australian Prudential Regulation Authority

[www.apra.gov.au](http://www.apra.gov.au)

1300 558 849