

Document Name: Whistleblower Policy

Originating Department: Quality

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## 1. Introduction and purpose

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Despite its best efforts, Virtus Health Limited and its controlled entities (Virtus Health) recognises that it is not immune from the potential for misconduct. Therefore, we want to identify misconduct and respond to it properly.

This Whistleblower Policy is one plank in our wider platform of strength, structure, transparency, and integrity in accordance with Australian Standards and relevant State and Federal legislation. Other planks include Virtus Health's "Code of Conduct (General)" Virtus Health Code of Conduct Policy and Procedure, Corporate Governance Statement, Diversity & Inclusion Policy, Securities Trading Policy, and the Disclosure Policy.

Virtus Health expects that if any of our *personnel* are aware of misconduct, they will usually report it through the normal organisational channels as set out in Virtus Health Complaints and Adverse Event Policy, and it will be dealt with through those channels. It is now well established good corporate governance to acknowledge that, for a range of reasons (including perceived unresponsiveness and fear of reprisals or *victimisation*), members of an organisation may feel the need for alternative channels to report *improper workplace conduct*.

This policy aims to provide those channels, in a manner that complies with the whistleblower protections under the *Corporations Act 2001* (Cth), to which Virtus is subject. Where any of our *personnel* conclude, in good faith, that it is appropriate for them to report *improper workplace conduct* through alternative channels, this policy aims to create those channels and to provide them with important *whistleblower protections*. Those protections include seeking to prevent the identification of an *eligible whistleblower*, protecting an *eligible whistleblower* from reprisals or *victimisation* as a result of making a *whistleblower disclosure*; and Virtus Health refraining from taking disciplinary, civil, contractual or criminal action against an *eligible whistleblower* as a result of making a *whistleblower disclosure*.

In common with most whistleblower policies, this policy does not apply to any *personal work-related grievance*.

Italicised terms in this policy are defined in the Glossary, at the end of this policy.

## 2. Principles

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This policy applies to all of our *personnel* and *eligible whistleblowers*, as well as to any *whistleblower disclosures*, even if the alleged conduct that is the subject of a *whistleblower disclosure* occurred before this policy was adopted.

Our personnel:

- must refrain from engaging in *improper workplace conduct* when they are acting in the course of their employment or engagement with us;
- are usually expected to report any actual or suspected *improper workplace*

conduct through the usual channels in accordance with Virtus Health's "Code of Conduct (General)";

- may report actual or suspected *improper workplace conduct* in accordance with this policy if, in good faith, they consider that the usual channels are inappropriate;
- must cooperate with any investigation conducted by Virtus Health under this policy or that may be required by law; and
- must not *victimise* an *eligible whistleblower* for making a *whistleblower disclosure*.

All of our *personnel* and the *whistleblower investigation officer* must provide, and not undermine, all *whistleblower protections* provided in this policy and under the *Corporations Act 2001 (Cth)*.

When we receive a *whistleblower disclosure*, we will promptly review and, where appropriate, investigate. If the law requires, we will report that *whistleblower disclosure* to an *external authority* and co-operate with any official investigations.

In responding to *whistleblower disclosures*, we will provide an *eligible whistleblower* with the *whistleblower protections*. We will also aim to keep an *eligible whistleblower* informed about the progress and outcome of our response to their *whistleblower disclosure*.

If a claim of *detrimental conduct* to an *eligible whistleblower* is substantiated, we will aim to ensure that the conduct stops, as well as seeking to rectify any wrongdoing or adverse effects of that conduct. We will also consider whether there is anything systemic that we need to do, such as developing or changing our policies and procedures.

We will not *victimise* an *eligible whistleblower*, and we will aim to stop any of our *personnel* from doing so. When we receive an allegation of *victimisation*, or of a breach of the *whistleblower protections*, we will investigate the allegation promptly.

Where any of our *personnel* are found to have engaged in *detrimental conduct*, *victimisation*, or to have otherwise breached this policy, we will take appropriate disciplinary action. That action may lead us to terminate that person's employment or engagement.

### 3. Making a whistleblower disclosure

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#### *Whistleblower disclosure*

While we prefer that any concerns held by our *personnel* in relation to suspected *improper workplace conduct* be raised in accordance with the Virtus Health Complaints Policy, we also recognise that it will not always be appropriate to do so.

An *eligible whistleblower* may consider it 'not appropriate' if they (honestly and in good faith) believe that the report submitted under the Virtus Health Complaints Policy would be ineffective, or would be likely to lead to their or another's *victimisation*.

In that case, an *eligible whistleblower* may disclose any reasonable suspicion of *improper workplace conduct* verbally or in writing to:

- the *whistleblower investigation officer*;
- the *independent investigator*, or
- an *external authority*.

#### *Public interest disclosure*

An *eligible whistleblower* may make a *public interest disclosure* after making an initial *whistleblower disclosure* and:

- at least 90 days has passed since the initial disclosure was made; and
- they do not believe, on reasonable grounds, that action is being taken, or has been taken, to address the *improper workplace conduct*; and
- they have reasonable grounds to believe that making a further disclosure of the information would be in the public's interest; and
- they give written notification that includes sufficient information to the entity to which the initial disclosure was made, which identifies the initial disclosure and states that the *eligible whistleblower* intends to make a *public interest disclosure*; and
- the *public interest disclosure* is made to a member of the Commonwealth or State Parliament or the legislature of a Territory, or a *journalist*; and
- the information disclosed is no greater than necessary to inform of the *improper workplace conduct*,

upon which the *public interest disclosure* will qualify for protection under the *Corporations Act 2001 (Cth)*.

### *Emergency disclosure*

An *eligible whistleblower* may make an *emergency disclosure* after making an initial *whistleblower disclosure* if:

- they have 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; and
- they gave the entity to which the initial disclosure was made, a written notification sufficiently identifying the initial disclosure and stating that the *eligible whistleblower's* intention to make an *emergency disclosure*; and
- the *emergency disclosure* is made to a member of the Commonwealth or State Parliament or the legislature of a Territory, or a *journalist*; and
- the information disclosed is no greater than necessary to inform them of the substantial and imminent danger associated with the *improper workplace conduct*.

If all these conditions apply, then the *emergency disclosure* will qualify for protection under the *Corporations Act 2001* (Cth).

### *Reporting to the independent investigator or the authorities*

If a *whistleblower disclosure* relates to the *whistleblower investigation officer*, an *eligible whistleblower* may, as they think appropriate:

- notify the *independent investigator*; or
- report to an *external authority*,

and should cooperate with those entities (including in an investigation if necessary), so far as is lawfully authorised or required.

If the *independent investigator* has been notified, then the *independent investigator* must provide impartiality and confidentiality in the management of the receipt and processing of the *whistleblower disclosure* made to them. They must make an assessment as to whether the *whistleblower disclosure* falls within the scope of the Whistleblower Policy and what, if any, steps should be taken to address the *whistleblower disclosure*, including whether an investigation is appropriate.

### *Whistleblower investigation officer obligations*

If the *whistleblower investigation officer* receives a *whistleblower disclosure*, they must promptly review the disclosure and ensure that they, or their delegate, investigate (where appropriate) as set out in paragraph 4 of this policy. Alternatively, the *whistleblower investigation officer* may report the alleged *improper workplace conduct* to the *independent investigator*, or an *external authority* (as appropriate), and cooperate with that entity so far as is lawfully authorised or required.

If the *whistleblower investigation officer* receives a *whistleblower disclosure*, they must not *victimise* an *eligible whistleblower* following a *whistleblower disclosure*. The *whistleblower investigation officer* must also refrain from revealing the identity of the *eligible whistleblower* or any information that is likely to lead to the identification of the *eligible whistleblower*, unless the disclosure is made:

- with the *eligible whistleblower's* consent;
- to the ASIC Commissioner or a member of the Australian Federal Police;
- to a legal practitioner for the purposes of obtaining legal advice or representation in relation to a *whistleblower disclosure*; or
- to a person prescribed by law.

#### 4. Investigation by the whistleblower investigation officer

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We will investigate all *whistleblower disclosures* in accordance with this paragraph 4.

Where the *whistleblower investigation officer* receives a *whistleblower disclosure*, they must decide whether it raises an issue within the scope of this Policy, and whether to investigate, or decline to investigate, the *whistleblower disclosure*. If they decline, they must inform the *eligible whistleblower*. If they decide to investigate, the *whistleblower investigation officer*, or their delegate, will investigate the *whistleblower disclosure* promptly, fairly and impartially, and in accordance with the *whistleblower protections*.

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The *whistleblower investigation officer* will provide the person who is the subject of the *whistleblower disclosure* with sufficient time to consider and respond to the allegations, and (where appropriate for the purposes of the investigation) inform the person of the matters which are the subject of the investigation, excluding any information that may be used to identify the *eligible whistleblower*.

Where a *whistleblower disclosure* has been made, the *whistleblower investigation officer*, or delegate, must maintain a confidential record of the allegations and processes observed during the investigation into the disclosure. Following consultation with the *eligible whistleblower*, the *whistleblower investigation officer*, or delegate, must:

- provide a report to the Chair of the Board of Virtus Health, who will make a determination about whether the alleged *improper workplace conduct* is substantiated;
- report the *whistleblower disclosure* to an external authority (as appropriate) and co-operate with those entities so far as is lawfully required; and
- take all reasonable steps to ensure the *eligible whistleblower* is kept informed about the progress and outcome of their investigation, and that they receive the *whistleblower protections*.

The *whistleblower investigation officer*, or delegate, must not engage in any conduct which constitutes *victimisation*.

5. Investigation by the independent investigator

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Where the *independent investigator* receives a *whistleblower disclosure*, they must follow the same procedure in dealing with it as set out in paragraph 4.

6. Whistleblower protections

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We will not subject any *eligible whistleblower* to any civil, criminal or administrative liability (including disciplinary action) for making a *whistleblower disclosure*. We will not enforce any contractual or other right or remedy that we might otherwise enforce, on the basis of the disclosure.

*Eligible whistleblowers* must not be *victimised* by us or our *personnel*, and are protected from *victimisation* under the *Corporations Act 2001* (NSW).

Any information disclosed in accordance with paragraph 3 of this policy, which is subject to the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth), cannot be admitted as evidence against the *eligible whistleblower* in criminal proceedings or proceedings for the imposition of a penalty (unless the proceedings relate to the *whistleblower disclosure* in question being false).

We will not disclose or provide any information that will identify or lead to the identification of the *eligible whistleblower*, without the *eligible whistleblower's* consent, except where a court or tribunal requires it. In addition, an *eligible whistleblower* may also apply to the court or tribunal for an order protecting their identity.

Information that is likely to lead to identification of an *eligible whistleblower* may be disclosed if it is reasonably necessary to investigate the disclosure of *improper workplace conduct* and the discloser takes all reasonable steps to reduce the risk of identifying the *eligible whistleblower*. In this case, the information will only be disclosed to:

- an *external authority* for the purpose of assisting that authority in the performance of its functions or duties;
- such other body or authority that is prescribed by law; or
- a legal practitioner for the purpose of obtaining legal advice.

An *eligible whistleblower* may make a complaint to the *Virtus Health Whistleblower Investigation Officer*, if they are concerned about a breach of confidentiality or if they believe that they are being, or have been, *victimised*.

Any *personnel* that make a *whistleblower disclosure* against us or another member of our *personnel* on vexatious or mischievous grounds, without a good faith suspicion of *improper workplace conduct* will not be afforded any protection under this policy or under the *Corporations Act 2001* (Cth).

The making of a *whistleblower disclosure* will not prevent us from commencing or continuing with any investigation into allegations of misconduct against the *eligible whistleblower* or any management of the *eligible whistleblower's*

performance that do not relate to the *eligible whistleblower* making a *whistleblower disclosure*.

The protections in this policy and under the *Corporations Act 2001* (Cth) do not apply to allegations or complaints of *personal work-related grievances* that do not involve *victimisation*.

## 7. Support for Eligible Whistleblowers

Support available for whistleblowers includes:

- connecting the whistleblower to Virtus HealthEAP.
- appointing an independent support person from HR.
- referring to other support agencies if relevant Beyond Blue, Lifeline

The whistleblower needs to be aware that the use of support services may require the whistleblower to consent to disclosure of their identity or information.

## 8. Glossary

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**APRA** means the Australian Prudential Regulation Authority;

**ASIC** means the Australian Securities and Investments Commission;

**Detrimental conduct**, in respect of an *eligible whistleblower*, includes:

- (a) dismissal of an employee;
- (b) injury of an employee in their employment;
- (c) alteration of an employee's position or duties to their disadvantage;
- (d) discrimination against an employee in comparison with like employees;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) harm to a person's property;
- (h) harm to a person's reputation;
- (i) harm to a person's business or financial position; or
- (j) any other harm to a person.

**Eligible recipient** means any one of the following:

- (a) an officer or senior manager of Virtus Health;

**Eligible whistleblower** means any current or former *personnel*, or relative or dependant of current or former *personnel*.

**Emergency disclosure** has the meaning given to that term in paragraph 3 of this policy.

**External authority** refers to ASIC, APRA or a prescribed Commonwealth authority such as the Australian Federal Police, or a State or Territory Authority.

**Improper workplace conduct** refers to workplace practices or business activities conducted by Virtus Health, which an *eligible whistleblower* reasonably suspects to have involved misconduct or an improper state of affairs or circumstances, including but not limited to:

- (a) fraud or corruption;
- (b) illegal activity, such as theft, violence, harassment, criminal damage to property or other breaches of State, Federal or Territory legislation;
- (c) unethical activity such as acting dishonestly, or wilfully breaching Virtus Health's Code of Conduct;
- (d) seriously harmful or potentially seriously harmful conduct to a person involved with Virtus Health, including patients or *personnel*, such as deliberate unsafe work practices or wilful disregard to the safety of others in the workplace;
- (e) substantial risk to the environment;
- (f) conduct that is damaging or potentially damaging to Virtus Health's reputation or may cause serious financial or non-financial loss to Virtus Health, or be otherwise seriously contrary to Virtus Health's interests
- (g) conduct that constitutes an offence against, or in contravention of, a provision of any of the following:
  - (i) the *Corporations Act 2001* (Cth);
  - (ii) the Australian Securities and Investment Act 2001 (Cth);
  - (iii) the Banking Act 1959 (Cth);
  - (iv) the Insurance Act 1973 (Cth);
  - (v) the Superannuation Industry (Supervision) Act 1993 (Cth); and
  - (vi) any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more.



**Independent investigator** refers to Virtus Health's Legal Advisors, HWL Ebsworth. Contact details for HWL Ebsworth are available from the Virtus Health Whistleblower Investigation Officer Lee Bakerman [lee.bakerman@virtushealth.com.au](mailto:lee.bakerman@virtushealth.com.au)

**Journalist** means a person who is working in a professional capacity as a journalist for:

- (a) a newspaper, magazine, radio or television broadcasting service; or
- (b) an electronic service (including a service provided through the internet) that is operated on a commercial basis or by a body that provides a national broadcasting service, and is similar to a newspaper, magazine or radio or television broadcast.

**Personal work-related grievance** means a grievance that:

- (a) is in relation to that person's employment or engagement or former employment or engagement, having or tending to have personal implications for that person; and
- (b) does not have significant implications for Virtus Health except that it relates to that person.

**Personnel** means any current Virtus Health employee, contractor, supplier, employee of a contractor or supplier, associate, or officer (within the meaning of the *Corporations Act 2001* (Cth)) or member of the public, including (but not limited to):

- (a) doctors, visiting medical officers and their employees and associated whilst engaged on organisational work;
- (b) volunteers and unpaid workers;
- (c) work experience students;
- (d) consultants and/or consultants' employees whilst engaged on organisational work;
- (e) agents, whilst acting on behalf of the organisation; and
- (f) contractors/sub-contractors and any of their employees whilst engaged on work for the organisation.

**Public interest disclosure** has the meaning given to the term in paragraph 3 of this policy.

**State or Territory Authority** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under a law of a State or Territory.

**Victimisation** refers to a situation where a person:

- (a) engages in; or
- (b) threatens to engage in,

*detrimental conduct* against another person, on the belief or suspicion that another person has made, intends to make or could make a *whistleblower disclosure*. **Victimise** and **victimising** have corresponding meanings to *victimisation*.

**Whistleblower disclosure** means a disclosure that qualifies for protection under the *Corporations Act 2001* (Cth), on the basis that it is made:

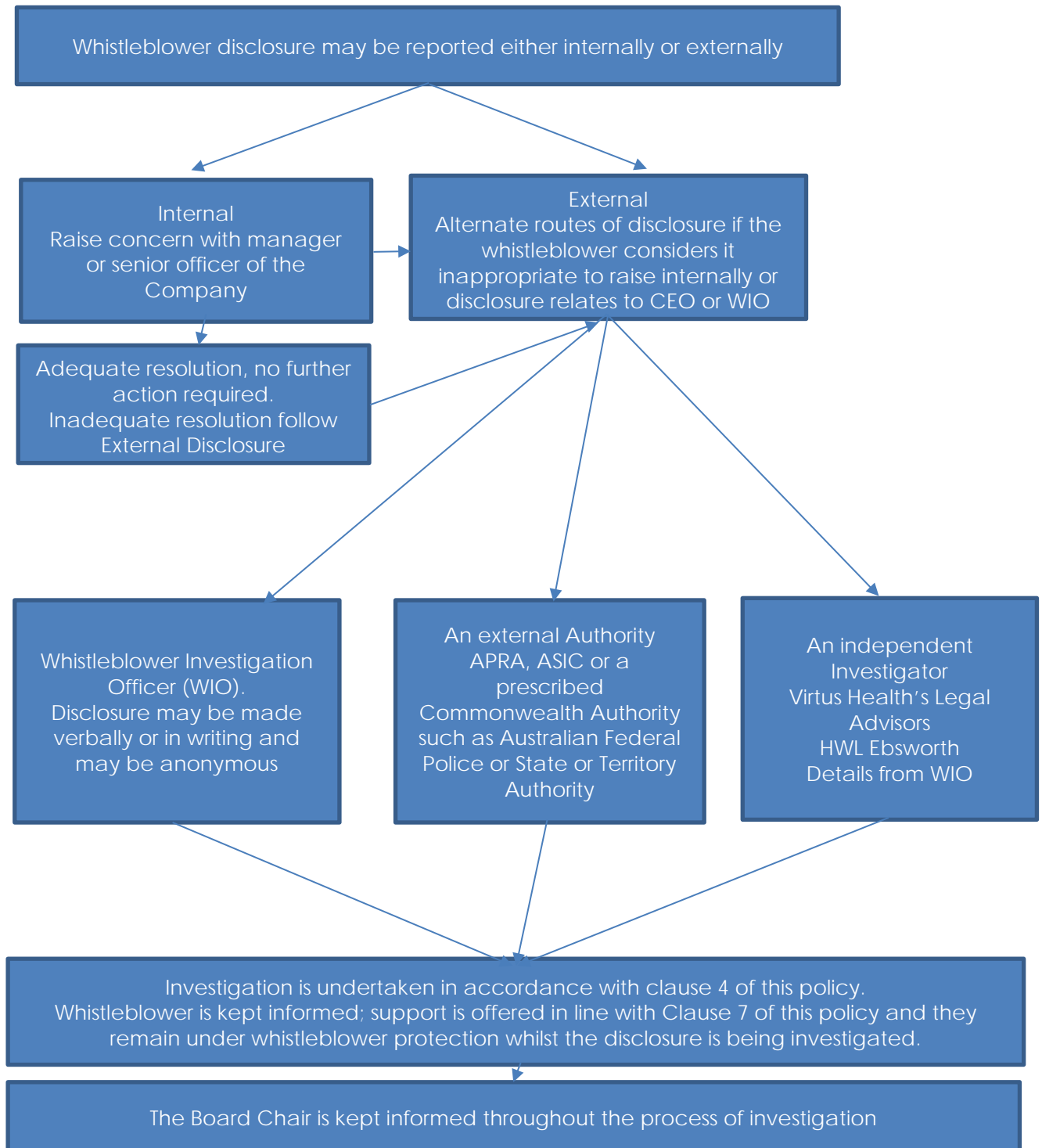
- (a) by an *eligible whistleblower*;
- (b) to an *eligible recipient*;
- (c) in relation to a reasonable suspicion of *improper workplace conduct* that is engaged in by Virtus; and
- (d) in accordance with paragraph 3 of this policy,

but does not include a disclosure regarding a *personal work-related grievance*.

**Whistleblower investigation officer** is the person in the position of Virtus Group General Manager People and Culture. At the time this policy was adopted, the Virtus Group General Manager People and Culture is Lee Bakerman, who can be contacted by email at [lee.bakerman@virtushealth.com.au](mailto:lee.bakerman@virtushealth.com.au)

**Whistleblower protections** means those protections for *eligible whistleblowers* set out in paragraph 5 of this policy and the *Corporations Act 2001* (Cth).

## Whistleblower Procedure



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