WHISTLEBLOWER POLICY

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Policy approved by: Sue Boyce - CEO

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# INTRODUCTION & PURPOSE

**ABILITY WORKS AUSTRALIA LTD** **(“the Company”)** strives to operate with a culture of ethical and appropriate corporate behaviour in all our business activities. This includes ensuring that the Company acts with integrity, honestly and in accordance with good governance principles.

This purpose is supported by:

* ensuring that the Company has sound procedures to allow all workers, their families and other Disclosers to identify and report genuine concerns about illegal conduct or any improper state of affairs pertaining to the Company, without fear of reprisal; and
* ensuring all employees and officers of the Company are aware of the protections available under this policy and Whistleblower Laws; and
* providing transparency around the Company's framework for receiving, handling and investigating disclosures; and
* deterring wrongdoing and ensuring that Disclosers can disclose their concerns safely and with confidence.

In this policy:

**Discloser(s)** refers to the persons eligible to make a disclosure protected by Whistleblower Laws. These persons are identified in section 5 below.

**Protected Matters** refers to the types of matters outlined at section 4 below, which are protected by Whistleblower Laws and the terms of this policy.

**Relative** means the spouse, parent, child, sibling or any other relative of the person defined by the Corporations Act 2001 (Cth)"

**Whistleblower Laws** refers to the protections contained in Part 9.4AAA of the Corporations Act 2001 (Cth).

**Whistleblowing Officer** is: **COO**

# COMMENCEMENT AND SCOPE

This version of the policy will commence on 24/6/22. It replaces all other policies dealing with Whistleblowers and Whistleblower Laws.

This policy applies to the Company, all persons/entities who are Disclosers or eligible to receive a disclosure under sections 6 or 7 below, and any person who is responsible for enforcing or ensuring compliance with any part of this policy.

The policy is not intended to create any contractually binding obligation on the Company and does not form part of any contract of employment or other contract for engagements with the Company.

# TYPES OF DISCLOSURES PROTECTED BY WHISTLEBLOWER LAWS

A disclosure is protected by Whistleblower Laws if:

1. the disclosure relates to Protected Matters identified in section 4 below;
2. the information is disclosed by a Discloser identified in section 5 below; and
3. the disclosure is made to one of the persons/entities identified in section 6 below or section 7 below (provided the pre-requisites in section 7 have been satisfied).

All of the above 3 conditions must be satisfied for a disclosure to be protected by Whistleblower Laws ("**Disclosure"**).

A disclosure can still qualify for protection under Whistleblowing Laws even if the disclosure turns out to be incorrect (for example, that the misconduct did not occur).

1. PROTECTED MATTERS

The types of disclosures which are protected by Whistleblower Laws are those where the Discloser has reasonable grounds to suspect that the information disclosed concerns misconduct, or an improper state of affairs or circumstances, in relation to the Company or its related bodies corporate.

This includes (but is not limited to) concerns that the Company, its related bodies corporate or employees or officers of the Company or its related bodies corporate, have engaged in conduct that:

1. constitutes a contravention of the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001*, the *Superannuation Industry (Supervision) Act 1993*, the *Banking Act 1959* or any insurance or life insurance statutes;
2. constitutes an offence against a law of the Commonwealth which is punishable by imprisonment for 12 months or more; and/or
3. represents a danger to the public or the financial system.

Examples of such Protected Matters include:

* illegal conduct, such as theft, dealing in or use of illicit drugs, violence or threatened violence, and criminal damage against property;
* fraud, money laundering or misappropriation of funds;
* offering or accepting a bribe;
* financial irregularities;
* failure to comply with, or breach of, legal or regulatory requirements; and
* engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure.

The disclosure of information related to a personal work-related grievance is not generally protected by Whistleblower Laws. A personal work-related grievance relates to information where:

* the information concerns a grievance in relation to the Discloser’s employment or former employment which has implications for the Discloser personally; and
* the information does not have significant implications for the Company that do not relate to the Discloser; and
* the information does not concern conduct or alleged conduct referred to in the three examples cited at sections 4(a) to (c) earlier above.

Examples of personal work-related grievances 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.

1. WHO MAY MAKE DISCLOSURES ABOUT PROTECTED MATTERS?

Each of the following persons may make a protected disclosure:

* Company employees and officers;
* suppliers of goods or services to the Company (for example, contractors and suppliers);
* employees of suppliers of goods or services to the Company;
* the Company's related bodies corporate (and their directors/secretaries) and any other associates of the Company; and
* any Relative or dependant of any of the persons listed above, or a dependent of the person's spouse.

It is sufficient that a person has held one or more of the above statuses in the past even if they do not hold that status at the time of making a disclosure (for example, former employees, former suppliers).

1. WHO CAN A PROTECTED MATTER BE DISCLOSED TO?

In order to be protected by Whistleblower Laws, the disclosure of a Protected Matter must be made to:

* an officer or senior manager of the Company or its related bodies corporate;
* an auditor or member of an audit team conducting an audit on the Company or its related bodies corporate;
* an actuary of the Company or its related bodies corporate; and/or
* the Whistleblowing Officer.
* ASIC or APRA; or
* a legal practitioner for the purposes of obtaining legal advice or representation in relation to Whistleblower Laws.

Generally, an "officer" includes a director or company secretary of the Company.

A “senior manager” is a person who:

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

# DISCLOSURES TO POLITICIANS AND JOURNALISTS

A disclosure of a Protected Matter to a journalist or member of State/Territory or Federal Parliament will be protected by Whistleblower Laws only if it qualifies for the public interest requirements or emergency requirements outlined below.

**Public interest disclosures**

A disclosure of Protected Matters to a member of State/Territory or Federal Parliament or a journalist will be protected by Whistleblower Laws if all of the following requirements are satisfied:

* the Discloser has previously made a disclosure of the information to ASIC or APRA pursuant to this policy or the Whistleblower Laws;
* at least 90 days have passed since the previous disclosure was made;
* the Discloser does not have reasonable grounds to believe that action is being or has been taken to address the previous disclosure;
* the Discloser has reasonable grounds to believe that making a further disclosure of the information to a member of Parliament or journalist would be in the public interest;
* the Discloser has given written notification to the entity that received their previous disclosure (eg ASIC or APRA) that identifies the previous disclosure and states that the Discloser intends to make a public interest disclosure; and
* the extent of information disclosed is no greater than is necessary to inform the journalist or member of Parliament of the relevant misconduct or improper state of affairs.

**Emergency disclosures**

A disclosure of Protected Matters to a journalist or member of State/Territory or Federal Parliament will be protected by Whistleblower Laws if all of the following requirements are satisfied:

* the Discloser has previously made a disclosure of the information to ASIC or APRA pursuant to this policy or the Whistleblower Laws;
* 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;
* the Discloser has given written notification to the entity that received their previous disclosure (eg ASIC or APRA) that identifies the previous disclosure and states that the Discloser intends to make an emergency disclosure; and
* the extent of information disclosed is no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.

# CONFIDENTIALITY

There is no requirement for a Discloser to identify themselves to be protected by Whistleblower Laws. That is, Disclosures may be made anonymously. A Discloser can refuse to answer questions that they feel could reveal their identity at any time, and may choose to use a pseudonym. However, unless the Discloser establishes a method of two-way communication at the time of making the Disclosure, the Company may be unable to investigate or handle the Disclosure without a way to contact the person.

Where a Disclosure is protected by Whistleblower Laws, the Whistleblower Laws prohibit persons from disclosing the identity of a Discloser or information that is likely to lead to the identification of the Discloser.

Persons may only disclose the identity of a Discloser (or information that is likely to lead to their identification) with the Discloser’s consent, or to ASIC, APRA, the AFP or a legal practitioner for the purposes of obtaining legal advice about the Whistleblower Laws.

Persons may also disclose the existence of the Protected Matters (without disclosing the identity of the Discloser) to the extent necessary for the matters to be investigated, provided all reasonable steps are taken to reduce the risk that the Discloser’s identity can be discovered. These disclosures may include disclosures to:

* the Director, Finance and Strategy, the Chief Executive Officer or the Chairman of the Audit and Compliance Committee;
* HR or other managers to make inquires or to conduct investigations or order external investigations as is deemed appropriate; and
* disclosures to respondents to complaints to ensures that the person/s against whom allegations are made are given the opportunity to respond to any allegations.

Any breach of these confidentiality protections attract significant fines for both individuals and companies. Confidentiality is taken extremely seriously by the Company, and any breach of these confidentiality obligations may result in disciplinary action up to and including termination of employment or engagement (including without notice).

# IMMUNITY FOR DISCLOSER

If a Discloser makes a Disclosure protected by Whistleblower Laws, the Discloser cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for making the Disclosure and cannot be subject to any contractual remedy or other civil claim because they have made the Disclosure.

No contract of employment or contract for services can be terminated on the basis that a Disclosure constitutes a breach of contract.

This immunity does not prevent a person from being subject to any civil, criminal or administrative liability (including disciplinary action) for conduct of the person that is revealed by the Disclosure.

# VICTIMISATION PROHIBITED

Whistleblower Laws prohibit any person or company ("first person") from:

* engaging in any conduct that causes detriment to any person ("second person") because of a belief or suspicion that the second person made or proposes to make a Disclosure pursuant to Whistleblower Laws; or
* makes any threats to cause detriment to any person ("second person") (whether express or implied threats) because a person (including a different person to the second person) made or may make a Disclosure pursuant to Whistleblower Laws, and the first person intends the second person to fear that the threat will be carried out or is reckless as to causing the second person such fear.

Where a person or company engages in breaches of these protections, significant fines apply and persons who are adversely affected may obtain compensation orders from a Court in relation to any detriment caused.

# HOW TO MAKE A DISCLOSURE

A Discloser may make a Disclosure by taking any of the following steps:

1. Submit a written complaint or report and any relevant documentation on the Disclosure to the Whistleblowing Officer by way of any of the following:
   1. By email to [knair@abilityworks.com.au](mailto:knair@abilityworks.com.au)
   2. By phone at 0407 364 785.
   3. By post to 1 Yarra Boulevard, Kew 3101. Please mark the envelope as "To the Whistleblowing Officer" to ensure it is only opened by the intended recipient; or
   4. <https://www.abilityworks.com.au/about/governance/> scroll down the page to Whistleblower Policy and Disclosure
2. If a Discloser has a concern with Step 1 (for example the Discloser reasonably believes that the Whistleblowing Officer is involved in the Protected Matters or the Discloser does not feel comfortable reporting it to the Whistleblowing Officer for any other reason), then the Discloser may submit a report directly to an officer or senior manager of the Company.
3. The Discloser may alternatively disclose the matters to any other person identified in sections 6 and 7 (subject to the conditions outlined in section 7) above.

If the Discloser wishes to make a Disclosure anonymously, it is recommended that they provide a method by which two-way communication can be established (for example, an anonymised email address or mobile number).

# INVESTIGATING PROTECTED MATTERS

The Company will refer Disclosures received under the Whistleblowing Laws to its Whistleblower Officer to:

* assess whether the Disclosure qualifies for protection; and
* determine if an investigation is required (for example, if there is sufficient information to undertake an investigation);
* maintain contact with the Discloser (unless the Disclosure was made anonymously without a method of return contact) regarding the timeframe and regular updates on the investigation; and
* document and report the findings of the investigation to the Discloser. The method of doing so will depend on the nature of the Disclosure, and there may be circumstances where it is not appropriate to provide details of the outcome.

If appropriate, the Whistleblowing Officer may investigate the relevant matters in a manner compliant with the confidentiality obligations outlined in Section 8 of this policy.

The Whistleblowing Officer may alternatively:

* appoint an appropriately qualified and impartial person or entity to investigate the Disclosure; or
* refer the Disclosure directly to ASIC, APRA or the Australian Federal Police.

Whilst every investigation process will differ according to the relevant circumstances, the Whistleblowing Officer will ordinarily ensure that appropriate enquiries are made to determine whether:

* the allegations are substantiated; and
* responsive action needs to be taken in order to address any established misconduct or other improper state of affairs.

In the event that the Whistleblowing Officer is not an appropriate person to investigate the matter (for example, if the Whistleblowing Officer is the Discloser or the subject of the Disclosure), an appropriate senior manager or officer of the Company will assume the responsibilities under this section.

# SUPPORTING WHISTLEBLOWERS, PROVIDING FAIR TREATMENT AND PROTECTION FROM DETRIMENT

The Whistleblower Laws provides protections for Disclosers who make Disclosures, including:

* identity protection (confidentiality);
* protection from detrimental acts or omissions;
* compensation and remedies; and
* civil, criminal and administrative liability protection.

The Company will support Disclosers making Disclosures and persons named in Disclosures to promote fair treatment and protect them from detriment, by:

* Providing access to confidential EAP counselling services to all Disclosers and persons named in Disclosures. These services may be accessed by contacting the Company's EAP on Prima 1800 316 686 and [eap@prima-group.com.au](mailto:eap@prima-group.com.au) .
* Investigating all Disclosures in accordance with the procedures outlined in this policy.
* Implementing investigation processes which are procedurally fair to both Disclosers and persons named in Disclosures.
* In circumstances where a Discloser consents, having an appropriate senior manager or human resources officer monitor the Discloser’s treatment in the workplace for relevant periods to ensure no victimisation takes place.
* Communicating this policy to the Company employees and officers.
* Taking appropriate disciplinary action against any employees or contractors that breach the victimisation or confidentiality provisions of the Whistleblower Laws or any term of this policy.
* Protecting the Discloser's identity by:
  + restricting the number of people who will be made aware of the Disclosure to those who are reasonably required to investigate, handle or report on/be reported to about Disclosures;
  + only revealing the Discloser's identity where it is permitted or required by the Whistleblower Laws. This may mean, for example, that a person investigating or handling the Disclosure is made aware of the nature of the Disclosure but not the Discloser's identity;
  + ensure, as far as is reasonably practicable, the security (digital and physical) of all information relating to Disclosures including by storing such information securely and not using an email address or device that can be accessed by other staff.
* Performing regular reviews of this policy and Disclosure handling processes to identify and implement improvements.

# ACCESS TO THIS POLICY

This policy will be made available by the following means:

* On implementation and amendment, the policy will be communicated to all employees and officers by way of email, website and Ability Works’ “Public” directory on SharePoint.
* The policy will otherwise be disclosed to employees on commencement of employment.

# BREACHES OF THIS POLICY

All employees and contractors of the Company are required to comply with this policy at all times as well as with Whistleblower Laws.

Non-compliance with this policy or Whistleblower Laws may result in disciplinary action up to and including termination of employment or termination of a contractor’s services (with or without notice).

A person who deliberately makes a false report under this policy (for example, where the discloser knows the allegations are untrue) may be subject to disciplinary action.

# POLICY REVIEW

This policy may be varied, amended, replaced or terminated from time to time and at any time at the absolute discretion of the Company.