

Dealing with allegations of misconduct and protecting whistleblowers

For child and family, community building, domestic and family violence, and homelessness programs



FUNDED CONTRACT MANAGEMENT | Fact sheet | 8 January 2019

About this fact sheet

This fact sheet describes how FACS handles allegations of misconduct made to FACS about FACS-funded service providers, identifying the other parties which may become involved and when.

It also outlines the requirements for service providers to have an effective whistleblowing program, and includes links to resources to assist with developing and implementing the program.

What constitutes an allegation of misconduct?

An allegation of misconduct is a claim made by one party about something wrong, improper or illegal that has or has not been done by another party.

Misconduct refers to any conduct, of any person, that involves serious or persistent harassment, bullying, fraud, corruption or conflict of interest.

Allegations of misconduct made to FACS usually involve acts or omissions by a service

provider's staff or member of the governing body due to negligence or intent.¹

Examples include:

- fraud, forgery, misappropriation, misuse, misdirection, misapplication, maladministration or waste of funds
- conflicts of interest, nepotism, favouritism
- theft, embezzlement, tax evasion
- corruption, dishonesty involving influence
- assault, blackmail, taking or offering bribes
- abuse of public trust
- other criminally prosecutable offences directly related to employment
- failure to report or concealment of an indictable offence
- unreasonable danger to health or safety of clients
- failure to act in accordance with the applicable professional and ethical standards
- blatant disregard for policies
- other serious acts such as refusing to carry out lawful and/or reasonable actions required under a contract.



Note that to report a child at significant risk of harm from abuse or neglect, contact the Child Protection Helpline on 13 2111.

Information about [making a child protection report](#) is available on the FACS website.

¹ Note that allegations of misconduct are handled separately from complaints, although they may be reported to FACS as or within a complaint.

Alleging misconduct to FACS

You can allege misconduct to FACS when it involves:

- a FACS contract manager
- members of your own organisation (also known as whistleblowing)

by contacting your FACS contract manager, or their manager.

You can ask your FACS contract manager for, and they are obliged to give you, contact details for their line manager, or the manager or director of their unit.

If you are not comfortable with this approach, you can allege misconduct in the form of a complaint, via the [FACS website](#).

We are mindful that whistleblowers may fear reprisal if they speak out against their work colleagues or organisation. FACS will always treat the matter with sensitivity, and protect the person's identity and confidentiality to the extent possible.

If we believe it is appropriate to send the matter to the service provider for investigation, we will consult with the whistleblower beforehand.

How FACS deals with allegations of misconduct

The FACS Prudential Oversight unit is responsible for providing direction, assistance

and support to FACS contract managers in relation to managing the key risks associated with contracted service delivery. This includes reviewing high risk, complex and escalated complaints, and investigating allegations of misconduct.

If the allegation is about a **non-senior** staff member (that is, not a senior manager or executive), then Prudential Oversight may refer the matter to the service provider's organisation to investigate and manage, by sending a *Contracting complaint referral* form for completion. This form explains the allegation, and identifies the information the service provider is required to return to FACS when it has investigated and resolved the matter.

If the allegation is about a **senior** staff member (a senior manager or executive), a member of the governing body, or the organisation is very small (with no distinct separation between strategic and operational roles), then Prudential Oversight will be involved in the investigation.

The Prudential Oversight unit may refer the allegation to another state, territory or federal government agency if the service provider also receives funding from the other government agency, making that agency an interested party.

Prudential Oversight may also be required to refer the matter to one or more regulatory agencies, depending on the nature of the service provider's organisation and the allegations made. This includes the regulatory agencies listed in the following table.

| Regulatory agency | When allegations may be referred to the agency |
|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Australian Charities and Not-for-profits Commission | Organisation is a registered charity and a serious governance or compliance issue has been identified. |
| Australian Securities and Investments Commission | Organisation is registered under the <i>Corporations Act 2001</i> and if a serious governance or compliance issue has been identified. |
| Fair Trading Commissioner | Organisation is registered under the <i>Associations Incorporations Act</i> and a serious governance or compliance issue has been identified. |
| NSW Independent Commission Against Corruption | There is reasonable suspicion that fraud or corruption has occurred. |
| NSW Ombudsman | <p>Organisation provides community and/or disability services funded by FACS, including:</p> <ul style="list-style-type: none"> • assisted boarding houses, child protection and out-of-home-care services, including foster care, early intervention services, refuges for young people, women, families and men • neighbourhood and family support services. |
| NSW Police or Australian Federal Police, as applicable | There is reasonable suspicion that serious criminal activity has occurred. |
| Office of the Children’s Guardian | There are matters which may affect the service provider’s accreditation under the <i>Children and Young Persons (Care and Protection) Act 1998</i> , including casework management practices, governance, working with children checks, adoption services and the standards of accreditation for statutory out-of-home care. |
| Office of the Registrar of Indigenous Corporations | Organisation is registered under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> (CATSI Act) and a serious governance or compliance issue has been identified. |
| Registrar of Community Housing | Organisation is a community housing provider and a serious governance or compliance issue has been identified. |
| SafeWork NSW | There is reasonable suspicion that there has been a breach of work health and safety legislation. |

Your whistleblowing program — responsibilities of FACS-funded service providers

A whistleblower is a person who provides information and exposes corrupt conduct within an organisation in the hope of stopping it.

Whistleblowing plays a crucial role in managing risk and cultivating an ethical culture, and is an effective way of uncovering fraud.

FACS is subject to two pieces of legislation in relation to whistleblowers:

- the *Public Interest Disclosures Act 1994* protects public officials who report public sector wrongdoing under certain circumstances
- the *Independent Commission Against Corruption Act 1988* protects individuals who provide the Commission with information about suspected corrupt conduct or assist it in other ways.

As an organisation funded by FACS, it is expected that your policies are consistent with the intent of this legislation, and that you maintain a whistleblowing program that aligns to better practice (AS 8004-2003, *Corporate governance – Whistleblower protection programs for entities*).

This includes:

- a clear statement of commitment to enable the reporting of wrongdoing and to encourage whistleblowing
- multiple reporting options, including senior and non-senior staff, a direct line to the governing body, and/or an accessible and independent external contact
- provisions to protect whistleblowers, including confidentiality of information

provided, maintaining their anonymity, and protecting them against litigation, reprisals and victimisation

- a process for investigating allegations and referrals from external parties
- communicating to staff that they may make allegations of fraud or corruption within the organisation directly to FACS.

Note that, at any time, FACS may request, and you are expected to provide, copies of the documents related to your whistleblowing program, together with any other relevant material.

Resources

These resources will assist your organisation to develop a fit-for-purpose whistleblowing program that accords with best practice.

[Whistleblowing at your Not-for-profit: A Leaders Guide](#), Institute of Community Directors Australia

[Guidelines for public interest disclosures](#), NSW Ombudsman

[Whistleblowing program checklist](#), Your Call Whistleblowing Solutions