



National
Psychotrauma
Centre

Whistleblower regulations

Whistleblower regulations

Preamble

These regulations contribute to ensuring that care organisations deal carefully with (suspected) wrongdoing. The intention behind these regulations is the protection of reporters of (suspected) wrongdoing who act in good faith. For a care organisation, a facility for internal reporting of a suspicion of malpractice is an important instrument to adhere to its social responsibility where necessary. A good set of regulations also contributes to an open and safe organisational culture in which employees feel involved with and responsible for their organisation.

The affiliated organisations in the care sector have included the application of the Governance code Care (*Governancecode Zorg*) as a membership obligation. With the application of these model regulations, which have been slightly modified and translated to the situation of ARQ, ARQ implements article 2.5.2. of the Governance code Zorg that has been in force since 1 January 2017.

On the basis of the WOR, a right of consent of the works council applies to this arrangement. This model is also in line with the House of Whistleblowers Act (*Act HvK*) which came into force on 1 July 2016.

Article 1: Definitions

For the purposes of this scheme, the following definitions shall apply:

1. *employee*: the employee who performs or has performed work by virtue of a contract of employment under civil or public law, or the person who performs or has performed work other than by virtue of a contract of employment for a (care) organisation.
2. *A suspicion of wrongdoing*: the suspicion of an employee that within the (care) organisation in which they work or have worked or at another (care) organisation if they have come into contact with that organisation as a result of their work, there is a case of malpractice in so far as:
 - a. the suspicion is based on reasonable ground arising from the knowledge that the employee has acquired from their employer or arising from the knowledge that the employee has acquired through their work in another company or other organisation, and
 - b. the interests of society are at stake in the case of:
 - i. an (imminent) violation of a statutory regulation, including an (imminent) criminal offence,
 - ii. an (imminent) danger to public health,
 - iii. an (imminent) danger to the safety of persons,
 - iv. an (imminent) danger to the environmental degradation,
 - v. an (imminent) danger to the proper functioning of the public service or the enterprise as a consequence of an improper act or omission,
 - vi. a (threat of) deliberately misinforming public bodies,
 - vii. an (imminent) waste of social/collective resources,
 - viii. (a threat of) knowingly withholding, destroying or manipulating information about the facts mentioned under (i) to (vii);
3. *reporter*: the employee who reports a suspicion of wrongdoing in accordance with this scheme;
4. *Board of Directors*: the person(s) appointed as (member of) the board of directors of the (care) organisation;
5. *Supervisory board*: those appointed as member of the Supervisory board of the (care) organisation;
6. *advisor*: the advisor is any natural person who enjoys the confidence of the reporter and on whom, by virtue of his profession or office, a duty of confidentiality rests with regard to the report reported to him/her;
7. *trusted person*: the person appointed by the Board of Directors to function as such for the (care) organisation and of whom it has been made known internally that he or she functions as such; this may be an internal and/or external trusted person.
8. *external third*: every organisation or representative of an organisation which, in the reasonable opinion of the reporter, may be considered the most capable of directly or indirectly solving the suspected malpractice or having it solved, and is therefore the most likely to add to the external report of the suspected malpractice;
9. *House*: House for whistleblowers as defined in article 1 sub a of the Law House for whistleblowers;
10. *Advice Section of the House for Whistleblowers*: the advice section of the House, referred to in Article 1 sub of the Whistleblowers' House Act;
11. *Research Department of the House for Whistleblowers*: the research department of the House, referred to in Article 1 sub c of the Whistleblowers' House Act.

Article 2: Information, advice and support for the employee or reporter

1. The employee or the reporter can consult an advisor in confidence about a suspicion of wrongdoing and, if desired, be represented by this advisor.
2. With regard to the suspicion of malpractice, the employee or reporter may ask the confidential adviser for information, advice and support regarding the suspicion of malpractice. The confidential advisor functions with authority, credibility and in that capacity is independent of (the management of) the (care) organisation.
3. If the trusted person is an employee or reporter who is employed by the (care) organisation, then the legal protection of article 21 of the Works Councils Act applies to the trusted person.
4. With regard to the suspicion of wrongdoing, the employee or the reporter may request information, advice and support from the Whistleblowers' House Advice Division regarding the suspicion of wrongdoing.

Article 3: Internal reporting

1. Unless there is a ground for exception as referred to in article 7 paragraph 2 of this regulation, the reporter must report suspected malpractice within the (care) organisation in which he works or has worked or at another (care) organisation internally to the Chairman of the Board of Directors in accordance with the internal procedure described in these regulations or to report to the other (care) organisation concerned in accordance with the applicable whistleblowing regulations there.¹
2. If the reporting of a suspicion of malpractice concerns the functioning and/or the actions of the Board of Directors, this will take place to the Chairman of the Supervisory Board of the (care) organisation.
3. If the reporting of a suspicion of malpractice concerns the functioning and/or the actions of the Chairman of the Supervisory Board, this will take place to the Chairman of the audit committee of the Supervisory Board of the (care) organisation.
4. The reporter can also report the suspicion of malpractice internally via the confidential advisor of the (care) organisation.

Article 4: Record of the internal reporting

1. The reporter does the reporting (preferably in writing) to the Chairman of the Board of Directors, and in case of paragraph 2 of article 3 being applicable, the Chairman of the Supervisory Board.
2. If the reporter reports a suspicion (partly) orally to the Chairman of the Board of Directors, and in case paragraph 2 of article 3 applies, to the Chairman of the Supervisory Board, he or she, in consultation with the reporter, is responsible for maintaining a written record of this and submitting it to the reporter for approval and signature. The reporter will receive a copy of the written record.

¹ These regulations have decided against appointing every manager as the reporting body, because the suspicion of wrongdoing is always the responsibility of the Board of Directors and therefore direct reporting is preferable. For reporters who do not wish to report directly to the Executive Board, the confidential advisor is available.

3. The Chairman of the Board of Directors or the Supervisory Board, respectively, shall send an acknowledgement of receipt to the reporter within one week of receipt of the report. The acknowledgement of receipt shall refer to the original (verbal) report and the whistleblower regulations.
4. If the reporter reports a suspicion of wrongdoing via the trusted person, the trusted person will forward the report, in consultation with the reporter and in the manner agreed with the reporter, to the Board of Directors, and in case paragraph 2 of article 3 applies, to the Chairman of the Supervisory Board, stating the date of receipt. If the reporter makes the report of an abuse (partly) verbally, the trusted person, in consultation with the reporter, ensures a written record of this, and submits this record to the reporter for approval and signature. The reporter will receive a copy of the report and the written record.

Article 5: Confidentiality reporting and identity of the reporter

1. The Board of Directors, the Supervisory Board and/or the trusted person shall ensure that the information about the report is kept by an external party and is kept in such a way that it is physically and digitally accessible only to those involved in the handling of the report.
2. All those involved in handling a report will not disclose the identity of the reporter without the explicit written consent of the reporter and will treat the information about the report confidentially.
3. If the suspicion of wrongdoing has been reported through the trusted person and the reporter has not given permission to disclose their identity, all correspondence about the report will be sent to the trusted person and the trusted person will immediately forward it to the reporter.

Article 6: Point of view

1. After the report has been made, the Board of Directors or the Supervisory Board, respectively, conducts a careful investigation into the reported suspicion of malpractice. During the investigation, the Board of Directors will hear the reporter.
2. If the reporter has made the report to the trusted person and the reporter does not wish to reveal his or her identity, the Executive Board or the Supervisory Board, respectively, can put his or her questions to the reporter in writing via the trusted person. The trusted person will forward the questions to the notifier, who can answer the questions in writing and anonymously. Subsequently, the trusted person will forward the answers to the questions to the Board of Directors or the Supervisory Board, respectively, anonymously.
3. Within a period of eight weeks from the moment of the internal report, the reporter will be informed in writing by the Board of Directors or by the Supervisory Board or confidential advisor of the substantive position regarding the reported suspicion of an abuse. The steps to which the internal report has led will also be indicated. The position will be formulated taking into account the possible confidential nature of the (business) information to be provided and the applicable legal provisions, such as privacy regulations.

4. The Board of Directors or the Supervisory Board, as the case may be, will, in a discussion with the notifier or the confidential adviser, explain the substantive position regarding the reported suspicion of wrongdoing and enable the notifier to respond to it.
5. If the position cannot be given within eight weeks, the reporter will be notified in writing by the Executive Board or the Supervisory Board, respectively, or by the trusted person before the expiry of the eight-week period. The period within which the reporter can expect the position to be given will be indicated. This additional period may not exceed four weeks.

Article 7: External reporting

1. The reporter may report a reasonable suspicion of malpractice externally after completing the procedure for internal reporting as referred to in articles 3 and 6, if:
 - a. the reporter does not agree with the point of view referred to in article 6 and is of the opinion that the suspicion of wrongdoing has been wrongly set aside and, in line with article 6 paragraph 4, has informed the Board of Directors and the Supervisory Board respectively;
 - b. the reporter does not agree with the manner in which the employer has behaved towards the reporter following a report of a suspicion of wrongdoing and has informed the Board of Directors or the Supervisory Board of this in line with article 6 paragraph 4.
 - c. the reporter has not received an opinion within the period(s) referred to in article 6, paragraphs 3 and 5.
2. The reporter can immediately make an external report of a suspicion of wrongdoing if he cannot reasonably be asked to make an internal report first. This is in any case the case if this is the result of any legal requirement or if it is a matter of law:
 - a. imminent danger, whereby a serious and urgent social interest requires immediate external notification;
 - b. a reasonable suspicion that one or more members of the Board of Directors and one or more members of the Supervisory Board within the organisation of the employer are involved in the suspected malpractice;
 - c. a situation in which the reporter may reasonably fear countermeasures as a result of the internal reporting;
 - d. a clearly identifiable threat of embezzlement or destruction of evidence;
 - e. a previous notification in accordance with the procedure of the same malpractice, which has not eliminated the malpractice;
 - f. a legal obligation for direct external reporting
3. The reporter can make the external report to an external third party. In this case, the suspicion of wrongdoing should be reported to the external third party/external authority that, in reasonable opinion, is the most appropriate. The reporter takes into account, on the one hand, the effectiveness with which that external third party can intervene and, on the other hand, the (care) organisation's interest in minimising the damage resulting from that intervention. External third parties means, in any case:
 - a. an authority charged with the investigation of criminal offences;
 - b. a body charged with the supervision of compliance with the provisions under or pursuant to any legal regulation

- c. any other competent authority where suspicion of wrongdoing may be reported, including the investigation department of the House of Whistleblowers.

Article 8: Legal protection reporter²

1. The reporter of a suspicion of wrongdoing who, in good faith, acts with due care, both formally and materially, is protected in their legal position. This means that the reporter is not disadvantaged in any way in his or her legal position towards the (care) organisation by or because of their report of a suspicion of wrongdoing.
2. Legal decisions, if and in so far as they relate to the reporting of a reasonable suspicion of wrongdoing, which in any case fall under the legal protection referred to in paragraph 1, are decisions aimed at it:
 - a. granting dismissal, other than at one's own request;
 - b. interim termination or non-renewal of a temporary employment contract;
 - c. not converting a temporary employment contract into a permanent employment contract;
 - d. moving or transferring or refusing a request to do so;
 - e. arranging a disciplinary measure;
 - f. withholding of salary increase;
 - g. withholding of promotion opportunities;
 - h. rejecting holidays.
3. Formal due diligence is involved if:
 - a. the reporter has first raised the relevant facts internally as referred to in article 3, unless this could not reasonably be demanded of him/her as provided for in these regulations;
 - b. in the event of an external report as provided for in this regulation, the reporter discloses the facts in an appropriate and proportionate manner.
4. There is question of material care if:
 - a. the reporter has a reasonable suspicion based on reasonable grounds that the facts in question are correct;
 - b. the external disclosure concerns a social interest as referred to in Article 1 paragraph 2 under b is the issue;
 - c. the importance of external disclosure from a social point of view prevails over the interest of the (care) organisation in confidentiality.

² The legal protection of the bona fide reporter is at the heart of this arrangement. This protection means that this reporter may not be disadvantaged in any way in his or her legal position within the care organisation as a result of reporting a suspicion of wrongdoing. Anonymous reporting should be avoided as much as possible. The reason for this is that this makes it impossible to address the reporter and ask for further explanation of the abuse. Also, an anonymous reporter cannot be offered legal protection due to their anonymity. Incidentally, this legal protection does not mean that employment law measures can no longer be taken with respect to a reporting agent. This is only not permitted if and insofar as such a decision is related to a report of a reasonable suspicion of wrongdoing.

Article 9: Concluding provisions

1. These regulations are adopted by the Board of Directors with the approval of the Supervisory Board. The works council has given its approval.
2. These regulations shall enter into force on November 3, 2020
3. These regulations shall be made public and can be found on intranet and website