



WHISTLEBLOWER POLICY

Purpose:	To outline the policy and procedures involved to provide whistleblower protections and reporting channels in our Foundation.
Relevant to:	Marist College Canberra Foundation
Responsible Officer(s):	Chair of Foundation Headmaster – Marist College Canberra Director of Business Services – Marist College Canberra
Date of Introduction:	1 st January 2020
Date of Review:	
Modification History:	11 th November 2019– First draft 20 th November 2019 – Second draft
Version:	1.0
Related Policies:	Complaints and Dispute Resolution Guide Child Protection Policy Codes of Conduct

PURPOSE

Over time, episodes of misconduct can be expected to occur in organisations, both large and small. Sometimes, those episodes will be grave and involve drugs, threats to child safety, or corrupt conduct. Despite its best efforts, The Marist College Canberra Foundation (**the Foundation**) recognises that it is not immune from the potential for misconduct – therefore, we want to identify misconduct and respond properly to it.

This Whistleblower Policy is one plank in our wider platform of transparency and accountability in service of promoting a high standard of lawful and ethical conduct within the Foundation. Related Marist College Canberra policies under which the Foundation Board personnel and functions operate include:

- Complaints and Dispute Resolution Guide
- Child Protection Policy
- Codes of Conduct

The Foundation expects that if our Foundation Board *personnel* are aware of misconduct, they will usually report it through the normal organisational channels as set out in the Marist College Canberra Complaints Handling and Dispute Resolution Policy and guide, and it will be dealt with through those channels. It is, however, 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. 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 the Foundation 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.

OUR POLICY

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.

It is our policy that all our personnel:

- must refrain from engaging in *improper 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 conduct* through the usual channels in accordance with the Marist College Canberra Complaints Handling and Dispute Resolution Policy;

- may report actual or suspected *improper 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 the Foundation 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 any *eligible recipients* or *whistleblower investigation officers* must provide, and not undermine, all *whistleblower protections* in this policy.

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* or independent service, 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*.

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.

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. Where *detrimental conduct* to an *eligible whistleblower* is substantiated, and that *detrimental conduct* may breach the law, the matter will also be referred to the relevant external authority.

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.

At the end of the investigation process, we will submit a report outlining the incident, the findings and the corrective actions to the Chair of the Foundation to allow overarching monitoring of the effective operation of this Policy.

PROCEDURES

Making a whistleblower disclosure

WHISTLEBLOWER DISCLOSURE

While we prefer that any concerns held by our *personnel* in relation to suspected *improper workplace conduct* be reported to the Chair of the Foundation, we also recognise that it will not always be appropriate to do so.

The above may be considered 'inappropriate' in the event that our *personnel* (honestly and in good faith) believe that the report submitted to the Chair of the Foundation 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:

- an eligible recipient; 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;
- they do not believe, on reasonable grounds, that action is being taken, or has been taken, to address the *improper workplace conduct*;
- they have reasonable grounds to believe that making a further disclosure of the information would be in the public's interest;
- 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*;
- 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*.

EMERGENCY DISCLOSURE

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

- 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;
- 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*;
- 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*.

REPORTING TO AUTHORITIES

If a *whistleblower disclosure* relates to an individual who qualifies as an *eligible recipient*, an *eligible whistleblower* may notify another eligible recipient or report the alleged *improper workplace conduct* to an *external authority* (as appropriate) and cooperate with such entities (including in an investigation if necessary), so far as is lawfully required.

ELIGIBLE RECIPIENT OBLIGATIONS

An *eligible recipient* who receives a whistleblower disclosure must promptly review the disclosure and ensure the disclosure is investigated (where appropriate) by a *whistleblower investigation officer* in the way set out in the investigation procedures of this policy. Alternatively, an *eligible recipient* may report the alleged *improper workplace conduct* to an *external authority* (as appropriate) and cooperate with those authorities so far as is lawfully required.

An *eligible recipient* who receives a *whistleblower disclosure* must not *victimise* an *eligible whistleblower* following a *whistleblower disclosure*. An *eligible recipient* 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.

Investigation

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

An *eligible recipient* who receives a *whistleblower disclosure* must report the *whistleblower disclosure* to a *whistleblower investigation officer* to investigate the *whistleblower disclosure*. The *whistleblower investigation officer* must be a different person to the *eligible recipient*.

Our nominated *whistleblower investigation officer* is:

Elizabeth Gallagher, MSA Child Safeguarding & Compliance Officer

Our nominated eligible recipients are:

- Matthew Hutchison, Headmaster Marist College Canberra
- John Gillespie, Chair of Marist College Canberra Foundation

Where a *whistleblower disclosure* involves the *whistleblower investigation officer* nominated by the *eligible recipient* as above, the disclosure must instead be investigated by the person holding the position of:

- MSA Regional Director; or
- MSA National Director.

The nominated *whistleblower investigation officer* will investigate a *whistleblower disclosure* promptly, fairly and impartially, and in accordance with the *whistleblower protections*.

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*.

We will also refer any *whistleblower disclosure* (as appropriate) made under this Policy to the MSA Regional Director in accordance with the MSA Reportable Incident Framework.

Where a *whistleblower disclosure* has been made, the *whistleblower investigation officer* 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* must:

- provide a report to the Chair of the Foundation, 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* must not engage in any conduct which constitutes *victimisation*.

Whistleblower Protections

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*.

We will use our best efforts to prevent any information disclosed in accordance with procedures of this policy from being 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; or
- a legal practitioner for the purpose of obtaining legal advice.

An *eligible whistleblower* may make a complaint to *eligible recipient* or *whistleblower investigation officer* or to any of the attached support services, if they are concerned about a breach of confidentiality or if they believe that are being, or have been, *victimised*.

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

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 also do not apply to allegations or complaints of personal work-related grievances that do not involve *victimisation*.

IMPLEMENTATION

This policy is implemented through a combination of communication and training of the Foundation personnel.

DISCIPLINE FOR BREACH OF POLICY

Where a member or affiliate of the Foundation breaches this policy Marist College Canberra may take disciplinary action.

RELATED POLICIES

Complaints and Dispute Resolution Guide
Child Protection Policy
Codes of Conduct

DEFINITIONS

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

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

- dismissal of an employee;
- injury of an employee in their employment;
- alteration of an employee's position or duties to their disadvantage;
- discrimination against an employee in comparison with like employees;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm;
- harm to a person's property;
- harm to a person's reputation;
- harm to a person's business or financial position; or
- any other harm to a person.

Eligible recipient means any one of the following:

- an officer or senior manager of the Foundation;
- an auditor, or a member of an audit team conducting an audit, of the Foundation;
- an actuary of the Foundation;
- an individual employed by the Foundation from time to time; or
- a legal practitioner for the purpose of obtaining legal advice or legal representation.

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 the procedures 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 the Foundation, which an *eligible whistleblower* reasonably suspects to

have involved misconduct or an improper state of affairs or circumstances, including conduct which:

- results in an improper loss of Foundation assets;
- improperly causes, or is reasonably likely to cause, material harm to personnel of the Foundation, or any other person.

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

- a newspaper, magazine, radio or television broadcasting service; or
- 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:

- 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
- does not have significant implications for the Foundation except that it relates to that person.

Personnel means any current member of the Foundation's governance body, officer, employee, contractor, supplier, employee of a contractor or supplier, or associate.

Public interest disclosure has the meaning given to the term in the procedures of this policy.

Victimisation refers to a situation where a person:

- engages in; or
- 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** has a corresponding meaning to Victimisation.

Whistleblower disclosure means a disclosure that is made:

- by an *eligible whistleblower*;
- to an *eligible recipient*;
- in relation to a reasonable suspicion of *improper conduct* that is engaged in by the Foundation; and

- in accordance with the procedures of this policy,

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

Whistleblower investigation officer is an employee or officer of the Foundation responsible for investigating a *whistleblower disclosure* in accordance with the procedures of this policy. The current *whistleblower investigation officer* will be listed on the Foundation website.

Whistleblower protections means those protections for *eligible whistleblowers* set out in the procedures of this policy.