

Whistleblower Policy & Complaints Handling

Policy

1. Introduction

1.1 Purpose and scope

This policy applies to Saint Mary MacKillop College Albury in protecting eligible whistleblowers and managing qualifying disclosures made regarding misconduct in relation to the school.

This policy will be published on the Saint Mary MacKillop College Albury website and made available to Board members and employees.

1.2 Related policies

Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with the school's *Complaints Handling Policy and Procedures*.

Disclosures about reportable conduct will be addressed in accordance with the school's *Child Protection Policy*.

Disclosures regarding a grievance between staff members about work matters, including work relationships and decision made by other staff members which impact on their work, may be addressed in accordance with the school's *Staff Grievance Policy*.

Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the school's *Discrimination, Harassment and Bullying Statement*.

2. What is a qualifying disclosure?

A **qualifying disclosure** is when an **eligible whistleblower** makes a disclosure to an **eligible recipient**, and the eligible whistleblower has **reasonable grounds to suspect** that the information concerns a **disclosable matter**.

3. Who can make a qualifying disclosure?

3.1 Eligible whistleblowers

An eligible whistleblower is an individual who is or has been any of the following, in relation to the school:

a Board member;

an employee;
a person who supplies goods or services (paid or unpaid);
an employee of a person who supplies goods or services (paid or unpaid);
an individual who is an associate of the School (as defined in the Corporations Act); and
a relative or dependent (or dependents of a spouse) of any individual described above.

3.2 Anonymous disclosures

A disclosure can be made anonymously.

However, this may make it difficult to investigate the reported matter. The school encourages disclosers to provide their names. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated and the school encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

4. Disclosable matters that qualify for protection

4.1 Disclosable matters

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the School or a related company concerns:

misconduct;

an improper state of affairs or circumstances;

illegal activity (including conduct of officers and employees) – meaning activity in breach of the Corporations Act or specified financial services legislation, or an offence against any law of the Commonwealth punishable by imprisonment of 12 months or more; or

conduct (including conduct of officers and employees) that represents a danger to the public or financial system.

This may include any conduct in relation to the operation of the school that involves:

fraudulent activity;

unlawful or corrupt use of school funds;

improper accounting or financial reporting practices;

systemic practices that pose a serious risk to the health and safety of any person on school premises or during school activities.

4.2 Reasonable grounds to suspect

A discloser would have ‘reasonable grounds to suspect’ if the discloser has a suspicion that could

reasonably be formed based on the facts and information available to them.

If a disclosure is made without 'reasonable grounds to suspect' (e.g. where the disclosure is unfounded), the disclosure will not be a qualifying disclosure and the discloser will not have the protections provided for under this policy and the Corporations Act.

4.3 Personal work-related grievances

Generally, disclosures that concern personal work-related grievances do not qualify for protection.

A disclosure will concern a personal work-related grievance of the discloser if the information: concerns a grievance about any matter in relation to the discloser's employment, or former employment, having or tending to have implications for the discloser personally; and does not have significant implications for the school that do not relate the discloser; and does not concern conduct that is:

- an alleged contravention of the Corporations Act and specified financial services laws;
or
- an offence against another law of the Commonwealth, which is punishable by imprisonment of 12 months or more; or
- a danger to the public or financial system; or

Examples of disclosures regarding personal work-related grievances that may not qualify for protection include:

- an interpersonal conflict between the discloser and another employee;
- a decision relating to the engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise discipline the discloser.

These matters will be addressed in accordance with the school's Staff Grievance Policy.

A disclosure **could** qualify for protection if it concerns a personal work-related grievance and also concerns alleged detriment (or a threat of detriment) to the discloser.

5. Who can receive a qualifying disclosure

5.1 Eligible recipients

An eligible recipient is an individual who occupies any of the following roles, in relation to the school or a related company:

- a Board member or Principal or Business manager
- an auditor, or member of an audit team of the school or a related company;

- an actuary of the school or a related company

5.2 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the School encourages them to make a disclosure in writing to the Principal, via email at principal@smmc.nsw.edu.au

If it is not appropriate for the disclosure to be made to the principal, the eligible whistleblower is encouraged to make the disclosure, in writing, to the Chair of the School Board, via email at admin@smmc.nsw.edu.au.

Where a disclosure is made to an eligible recipient who is not the Principal, then subject to the confidentiality protections set out at Section 7 below, it will generally be passed onto the Principal and dealt with in accordance with Section 6 below.

5.3 External disclosures

Disclosures may also qualify for protection if they are made to ASIC, APRA or a prescribed Commonwealth authority, or if an eligible whistleblower makes a disclosure to a legal practitioner to obtain advice about the operation of the whistleblower provisions.

Public interest disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:

90 days has passed since the time of the first disclosure; and

the eligible whistleblower does not have reasonable grounds to believe action is being, or has been, taken to address the information in the disclosure; and

- the eligible whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest; and
- the eligible whistleblower informs the original recipient they intend to make a public interest disclosure; and
- extent of information disclosed is no greater than necessary to inform the recipient of the disclosable matter.

Emergency disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and :

- the eligible whistleblower 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; and

- the eligible whistleblower informs the original recipient they intend to make an emergency disclosure; and
- the disclosure of information is no greater than necessary to inform the recipient of the substantial and imminent danger.

Eligible whistleblowers who make a 'public interest disclosure' or an 'emergency disclosure' also qualify for protection.

6. Investigating a qualifying disclosure

6.1 Receiving a disclosure

Upon receiving a disclosure, the recipient (generally the Principal/Delegate or Chair of the School Board) will assess the disclosure to determine whether it qualifies for protection under the *Corporations Act* and is to be managed in accordance with this policy (qualifying disclosure) or the disclosure concerns matters that should be managed in accordance with related policies (see section 1.2).

6.2 Investigating a qualifying disclosure

How the school investigates a qualifying disclosure will depend on the nature of the disclosure.

An investigation will generally involve the making of inquiries or collection of evidence for the purpose of assessing the disclosure made by the whistleblower.

External professionals may be engaged to assist or conduct the investigation process.

In instances where the school reports the allegations within the disclosure to a third party, such as NSW Police, Australian Federal Police or Australian Securities and Investments Commission (ASIC), the investigation procedures of the relevant third party will generally take precedence.

The timing of an investigation will depend on the circumstances of the matter and whether the school is the primary investigator of the disclosure.

Employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

An eligible whistleblower and the relevant parties that the disclosure is about may choose to have an appropriate support person present at any meeting with representatives of the school.

7. Confidentiality and records

Under the *Corporations Act*, the identity of the discloser of a qualifying disclosure and information which is likely to lead to the identification of the discloser must be kept confidential.

Exceptions to this are disclosures to ASIC, the Australian Federal Police, a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or made with the consent of the discloser.

The discloser's identity and information which is likely to lead to the identification of the discloser can also be provided to any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties. This could include NSW Police, the NSW Ombudsman, NSW Education Standards Authority or the NSW Department of Education.

It is also permissible to disclose information which could lead to the identification of the discloser if the disclosure is reasonably necessary for the purpose of investigating the matter, if all reasonable steps are taken to reduce the risk that the discloser will be identified as a result of the information being disclosed.

Breach of these confidentiality protections regarding the discloser's identity and information likely to lead to the identification of the discloser is a criminal offence and may be the subject of criminal, civil and disciplinary proceedings.

Confidentiality must be observed in relation to handling and storing records.

8. Whistleblower protections

Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, should be kept confidential, subject to relevant exceptions as set out in section 7 above.

Eligible whistleblowers making a qualifying disclosure cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other remedy or right may be enforced or exercised against the person on the basis of the disclosure.

Whistleblowers who make some types of qualifying disclosures (generally external to the school) are also provided immunities to ensure that information they disclose is not admissible in evidence against them in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

These immunities do not prevent an eligible whistleblower being subject to criminal, civil or other liability for conduct that is revealed by the whistleblower, only that the information the person has disclosed is not admissible in certain proceedings against them.

Eligible whistleblowers are also protected from victimisation - suffering any detriment by reason of the qualifying disclosure. It is unlawful for a person to engage in conduct against another person that causes, or will cause detriment, where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure.

Threats of detriment are also unlawful.

Detriment has a very broad meaning and includes dismissal of an employee, injuring an employee in their employment, alteration of an employee's position or duties to their disadvantage; discrimination between an employee and other employees; victimisation of a dependent of the discloser, harassment or intimidation of a person or harm or injury to a person, including psychological harassment; damage to a person's property, reputation or business or financial

position.

Remedies for being subjected to detriment could include:

- compensation
- injunctions and apologies
- reinstatement of a person whose employment is terminated
- exemplary damages

Schools and individuals may face significant civil and criminal penalties for failing to comply with confidentiality and detrimental conduct provisions.

If an eligible whistleblower believes they are being subjected to a detriment or a threat of detriment, this should immediately be reported in writing to the Principal, via email

If it is not appropriate for the report to be made to the principal, the eligible whistleblower should report the matter, in writing, to the Chair of the Board, via email at admin@smmc.nsw.edu.au.

9. Additional support for eligible whistleblowers and other employees

The school's employee assistance program (EAP) services will be available to all eligible whistleblowers and other employees affected by the disclosure, should they require that support.

10. Contact

If you have any queries about this policy, you should contact office@smmc.nsw.edu.au for advice.

Complaints Procedure

1. Introduction

1.1 Purpose and scope

This procedure applies to Saint Mary macKillop College Albury in handling complaints made in respect of services provided by the school or against staff members, which includes employees, contractors and volunteers.

This procedure does not extend to personal grievances between parents, guardians or other members of the school community.

1.2 Whistleblowing complaints

This procedure does not extend to complaints which are whistleblowing disclosures. The procedure for processing whistleblowing complaints are dealt with in the school's whistleblowing policy.

In summary a whistleblowing disclosure is a disclosure which:

- is made by a board member, staff member, a person who supplies goods or services to the school, including a volunteer, an employer of a supplier or a relative of any of these people;
- involves alleged misconduct, an improper state of affairs or circumstances, or illegal activity, and
- is made to a senior staff member, or officer of the school, the school's auditor or a person who the school has authorised to collect such disclosures.

1.3 Related policies

Complaints about reportable conduct will be addressed in accordance with the school's Child Protection Policy.

Complaints regarding a grievance between staff members about work matters, including work relationships and decision made by other staff members which impact on their work, are addressed in accordance with the school's Staff Grievance Policy.

Complaints regarding unlawful discrimination, harassment or bullying between staff are generally addressed in accordance with the school's Discrimination, Harassment and Bullying Statement.

1.4 Confidentiality

All parties involved in complaints handling are required to maintain appropriate confidentiality, including in relation to handling and storing records.

2. Complaints

A complaint or grievance is an expression of dissatisfaction made to the school about an educational and/or operational matter relating to services provided by the school or the behaviour or decisions of a staff member, contractor or volunteer, including misconduct.

If a parent/carer or student has a concern about the conduct of a staff member, they should raise their concern with the school in accordance with section 3. If a complaint that concerns the behaviour of a staff member may constitute reportable conduct, the matter will be addressed in accordance with the school's Child Protection Policy in accordance with section 1.2. Please refer to the school's Child Protection Policy for information about reportable conduct. Complainants are not required to assess whether their concern meets the threshold of reportable conduct before making a complaint. Any concern about a child's wellbeing may be reported under this policy.

Complaints may be made by a student or parent/carer.

The school will seek to resolve complaints informally where possible but acknowledges that in some cases a person may wish to make a formal complaint.

3. Raising a complaint

3.1 The complainant

Informal complaints may be raised by a complainant directly with the person involved. However, if the complainant does not feel comfortable doing so or the matter is one where it may not be appropriate to do so a complaint can be made to the Principal or High School Co-ordinator. Any complaint about the conduct of a staff member should be raised directly with the Principal in the first instance.

Should the matter not be resolved through informal processes, the complainant may raise the matter formally with the school. A formal complaint can be made in writing to the Principal, via email: principal@smmc.nsw.edu.au.

Where a person wishes to make a formal complaint concerning the Principal the complaint should be made in writing to the Chair of the Board, via email admin@smmc.nsw.edu.au In this situation, the references in this policy relating to the role of the Principal should be read as references to the Chair of the Board..

3.2 The school

The Principal will generally acknowledge receipt of a formal complaint in writing as soon as practicable.

4. Handling complaints

4.1 Assessing a complaint

The Principal generally will assess the complaint and determine:

- whether the complaint is one to be addressed under this policy or is a staff grievance or reportable conduct matter which are dealt with by the relevant policies, see section 1.2; and
- the priority of the complaint in accordance with the urgency and/or seriousness of the matter raised; and
- whether the school may be required to report the matter to the Ombudsman, Police, Family and Community Services or other relevant authorities should the complaint relate to possible unlawful conduct or other reportable matters.

4.2 Managing a formal complaint

The Principal generally will manage a formal complaint by:

- a) advising the complainant of the likely steps that will be undertaken by the School in relation to the complaint;
- b) if appropriate, advising the relevant parties of the complaint at the relevant time and providing them with an opportunity to respond;
- c) collecting any additional information the School considers necessary to assess the complaint;
- d) making a decision about how the complaint will be resolved (“resolution decision”); and
- e) advising the complainant in writing, and any other relevant parties as appropriate, of the resolution decision of the Principal and if appropriate, any proposed action to be taken.

There may be circumstances where some of the steps outlined above are not appropriate and the school will determine, on a case by case basis the most appropriate method of handling the complaint.

A complainant and the relevant parties that the complaint is about may choose to have an appropriate support person present at any meeting with representatives of the School about the complaint. However, the School maintains the right to determine whether the person’s preferred support person is appropriate and may not approve the attendance of a support person where they are determined by the School to be inappropriate.

5. Contact

If you have any queries about this procedure, you should contact the school office: office@smmc.nsw.edu.au for advice.