



St Michael's
Lutheran Primary School

WHISTLEBLOWER POLICY

MAY 26, 2020

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Background

From 1 July 2019, schools which are bodies corporate (companies limited by guarantee, incorporated associations or body corporates under any law) are required to observe the provisions of the *Corporations Act* which relate to whistleblowing. For school registration, the South Australian Education Standards Board requires that schools have in place and implement, policies and procedures for managing complaints and grievances from students, parents, caregivers and the community. These requirements are set out in the *Education and Early Childhood Services (Registration and Standards) Act 2011 (SA)*.

1. Introduction

1.1 Purpose and scope

This policy applies to St Michael's Lutheran Primary School in protecting eligible whistleblowers and managing qualifying disclosures made regarding misconduct in relation to the school.

This policy can be accessed on the school website and is made available to Council 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 and Grievance Policy;
- Disclosures about reportable conduct will be addressed in accordance with the school's Child Safe Policy;
- Disclosures regarding a grievance between staff members about work matters, including work relationships and decisions made by other staff members which impact on their work, may be addressed in accordance with the school's Internal Grievance Resolution Procedure;

- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the school's Harassment Policy.

2. What is a qualifying disclosure?

A **qualifying disclosure** occurs 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 Council 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. St Michael's Lutheran Primary 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 disclosers are asked 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:

1. misconduct;
2. an improper state of affairs or circumstances;
3. 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
4. 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:

5. fraudulent activity;
6. unlawful or corrupt use of school funds;
7. improper accounting or financial reporting practices;
8. 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' (eg 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:

1. 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
2. does not have significant implications for the school that do not relate to the discloser; and
3. 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.

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

1. an interpersonal conflict between the discloser and another employee;
2. a decision relating to the engagement, transfer or promotion of the discloser;
3. a decision relating to the terms and conditions of engagement of the discloser;
4. 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 Internal Grievance Resolution Procedure.

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:

1. a Council member or the School Principal or Business manager
2. an auditor, or member of an audit team of the school or a related company;

3. 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 ttaylor@stmichaels.sa.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 Council.

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 where:

- at least 90 days has passed since the whistleblower made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
- the whistleblower does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
- the whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- before making the public interest disclosure the whistleblower has given written notice to the school that includes sufficient information to identify the previous disclosure and states that the whistleblower intends to make a public interest disclosure.

Emergency disclosures

An eligible whistleblower can disclose to a Member of Parliament or a journalist only if:

- the whistleblower has previously disclosed the information to ASIC, APRA or a prescribed Commonwealth authority, and:
- the whistleblower has reasonable grounds to believe that there is an imminent risk of serious harm or danger to public health or safety, or to the financial system, if the information is not acted on immediately; and
- a reasonable period has passed since the disclosure was made; and
- after the end of the reasonable period, the whistleblower gives the body to which the disclosure was made a written notification that includes sufficient information to identify the previous disclosure and states that he or she intends to make an emergency disclosure.

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 Council/Delegate) 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 St Michael's Lutheran Primary 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 South Australian 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.

The school may not be able to undertake an investigation if it is not able to contact the whistleblower (eg, if the disclosure is made anonymously and the whistleblower has not provided contact details).

6.3 Investigation of findings

The findings from an investigation will be documented and reported to those responsible for oversight of this Policy.

A determination will then be made as to providing those findings in written format to the whistleblower. There may however be instances where it may not be appropriate to provide details of the outcome to the whistleblower.

6.4 Review of findings

A whistleblower may lodge a complaint with a regulator, such as ASIC, APRA or the ATO, if they are not satisfied with the outcome of the school's investigation.

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 SAPOL, the SA Ombudsman, Education Standards Board or the SA Department for 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 will 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 Council, via email.

9. Additional support for eligible whistleblowers and other employees.

The school's employee assistance program (EAP) or equivalent 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 Terri Taylor, Principal for advice.