

## WILLIAM CLARKE COLLEGE MANAGEMENT POLICY WHISTLEBLOWER

<b>POLICY</b>	<b>William Clarke College will properly investigate and manage any qualifying disclosure made by an eligible whistleblower.</b>
<b>PURPOSE</b>	This policy applies to William Clarke College to ensure individuals ( <b>eligible whistleblowers</b> ) who disclose wrongdoing in relation to the College can do so safely, securely and with confidence that they will be protected and supported.
<b>RELEVANT COMPLIANCE LEGISLATION OR REFERENCE DOCUMENT</b>	<p><b>Relevant Legislation</b> Corporations Act</p> <p><b>Reference documentation</b> Independent Schools NSW Whistleblower Overview Independent Schools NSW Sample Whistleblower Policy</p>
<b>SCOPE</b>	<p>This policy responds to <b>disclosable matters</b> (see definitions) that qualify for protection.</p> <p>Whilst it is preferable to investigate a matter knowing the identity of the whistleblower (for example, to request follow up information), this policy allows for the whistleblower to remain anonymous.</p> <p>All whistleblowers are to be afforded the protections that are available within this policy and the Corporations Act.</p> <p>Where a complaint does not meet the requirements of a disclosable matter, William Clarke College will manage the complaint under the appropriate policy:</p> <ul style="list-style-type: none"> <li>• Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with the <b><i>Complaints Handling Policy (Staff)</i></b>.</li> <li>• Disclosures about reportable conduct will be addressed in accordance with the <b><i>Child Protection Policy</i></b>.</li> <li>• 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, to be addressed to the Director of People &amp; Culture</li> <li>• Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the <b><i>Discrimination, Harassment and Bullying Policy (Staff)</i></b>.</li> </ul>

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<b>DEFINITIONS</b>	<p>A <b>qualifying disclosure</b> is when an <b>eligible whistleblower</b> makes a disclosure to an <b>eligible recipient</b>, and the eligible whistleblower has <b>reasonable grounds to suspect</b> that the information concerns a <b>disclosable matter</b>.</p> <p><b>Eligible whistleblowers:</b> An eligible whistleblower is an individual who is or has been any of the following, in relation to the College:</p> <ul style="list-style-type: none"> <li>• a Council Member;</li> <li>• an employee of the College;</li> <li>• a person who supplies goods or services (paid or unpaid);</li> <li>• an employee of a person who supplies goods or services (paid or unpaid);</li> <li>• a relative or dependent (or dependents of a spouse) of any individual described above.</li> </ul> <p>The eligible whistleblower is also addressed as a “Discloser” within this policy.</p> <p><b>Eligible recipient</b> An eligible recipient is an individual who occupies any of the following roles, in relation to the College:</p> <ul style="list-style-type: none"> <li>• a Council Member or a member of the College Executive;</li> <li>• an auditor, or member of an audit team of the College;</li> <li>• a person authorised by the school to receive disclosures that may qualify for protection</li> </ul> <p><b>Note:</b> Eligible recipient may delegate components of the investigations to appropriate members of College staff. The member of staff must be made aware of confidentiality requirements. The College has nominated 2 eligible recipients – Head of College and Chair of Council.</p> <p><b>Disclosable matter</b> A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the College concerns:</p> <ul style="list-style-type: none"> <li>• misconduct;</li> <li>• an improper state of affairs or circumstances;</li> <li>• illegal activity (including conduct of officers and employees) – meaning activity in breach of the Corporations Act, or an offence against any law of the Commonwealth punishable by imprisonment of 12 months or more; or</li> <li>• conduct (including conduct of officers and employees) that represents a danger to the public or financial system.</li> </ul> <p><b>Reasonable grounds to suspect</b> Reasonable grounds to suspect is where the discloser has the suspicion that could reasonably be formed based on the facts and information available to them.</p>
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<b>PROCEDURES</b>	<p><b>1. Who can make a qualifying disclosure?</b></p> <ul style="list-style-type: none"> <li>• A qualifying disclosure can be made by an Eligible whistleblower (as outlined in definition).</li> <li>• The eligible whistleblower must hold or have previously held one of the eligible roles to access whistleblower protections, you are not required to identify yourself or disclose your role and can raise your concerns anonymously. There are whistleblower protections and support that eligible whistleblower is covered by (refer to Appendix 1).</li> <li>• Grievances made by other organisations or schools against are not covered by whistleblowing legislation.</li> </ul> <p><b>Anonymous disclosures</b></p> <p>A disclosure can be made anonymously and still be protected under the <i>Corporations Act</i>. A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised.</p> <p>However, anonymous reporting may limit the Eligible recipient’s ability to fully assess or investigate a matter, as it prevents from seeking clarification, requesting additional evidence, or verifying details directly with the discloser. For this reason, the College encourages individuals to provide their names when making a disclosure. Where a discloser chooses to identify themselves, the Eligible recipient will protect the discloser’s identity in accordance with legislative requirements.</p> <p>If a discloser wishes to disclose anonymously,</p> <ul style="list-style-type: none"> <li>• the discloser should provide sufficient information to allow the matter to be properly investigated. The following information is recommended to be provided to aid investigation: <ul style="list-style-type: none"> <li>• names of the individuals involved,</li> <li>• dates, times and locations of the incident/s,</li> <li>• clear description of the misconduct, including specific actions, decisions, or communications,</li> <li>• the actual or potential impact of the misconduct on the organization or individuals involved</li> <li>• any steps taken to address or raise the issue prior to reporting</li> </ul> </li> <li>• The College encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided. It will also allow the College to report the progress of the investigation to the discloser, as appropriate.</li> </ul> <p>If an anonymous disclosure contains insufficient information, an investigation may not be possible. This will be determined by the eligible recipient. This determination will be made based on the nature and quality of the information provided and the feasibility of undertaking enquiries without further input from the discloser.</p> <p><b>2. Disclosable matters that qualify for protection</b></p> <p><b>2.1 Disclosable matters</b></p> <p>An eligible whistleblower may make a disclosure under this policy if they have reasonable grounds to suspect the information concerns:</p>
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- a misconduct or
- an improper state of affairs or circumstances; in relation to the school
- illegal activity (including conduct of officers and employees) – meaning activity in breach of the Corporations Act, 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 College that involves:

- fraudulent activity;
- negligence;
- unlawful or corrupt use of College funds;
- breach of duty;
- improper accounting or financial reporting practices;
- systemic practices that pose a serious risk to the health and safety of any person on College premises or during College activities.

### 2.2 Non- disclosable matters & Personal work-related grievance

Reports concerning issues that are **not disclosable** matters do **not** attract whistleblower protections under the Corporations Act.

Generally, disclosures that relate solely to personal work-related grievances do not qualify as disclosable matters under whistleblowing legislation unless they indicate a broader systemic issue.

A disclosure will be considered personal work-related grievance of the discloser if the information:

- concerns a grievance arising from the discloser’s current or former employment and has implications for the discloser personally; and
- does not have significant implications for the College beyond the discloser’s circumstances; and
- does not relate to conduct involving:
  - an alleged contravention of the Corporations Act or specified financial services laws;
  - an offence under Commonwealth law punishable by imprisonment for 12 months or more; or
  - a danger to the public or the financial system

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 College’s other policies as outlined in the Scope.

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A personal work-related grievance may still qualify for protection if:

- it includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (mixed report);
- the entity has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances;
- the discloser suffers from or is threatened with detriment for making a disclosure; or
- the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act

### 2.3 Reasonable grounds to suspect

Whether a discloser would have 'reasonable grounds to suspect' is based on the reasonableness for the discloser's suspicion, having regard to all the circumstances when considered objectively.

If a disclosure is made without 'reasonable grounds to suspect', 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. Any deliberate false reporting will be regarded very seriously.

**A discloser can still qualify for protection even if their disclosure turns out to be incorrect.**

### 3. Who can receive a qualifying disclosure?

A disclosable matter should be reported to an Eligible recipient.

- The **eligible recipient** of the College has been determined to be the Head of College via [whistleblower@wcc.nsw.edu.au](mailto:whistleblower@wcc.nsw.edu.au) or the links in the College Website or College Portal (Connect).
- Should the complaint be about the Head of College, the **eligible recipient** shall be the Chair of Council, via [chair@wcc.nsw.edu.au](mailto:chair@wcc.nsw.edu.au).
- Where a disclosure is made to an eligible recipient who is not the Head of College, then subject to the confidentiality protections set out at Section 5 below, it will generally be passed onto the Head of College and dealt with in accordance with Section 4 below.
- Disclosures may also be made to external bodies such as ASIC , APRA or a prescribed Commonwealth authority.

**Note:** If an eligible whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making their disclosure, they can contact the **Business Manager** or an **independent legal advisor**.

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## 3.1 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.
- Information regarding how to make whistleblower disclosures to these entities can be found on their relevant websites (e.g. ASIC: <https://www.asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/> )

**Note:** Although the College is registered with the Australian Charities and Not-for-profits Commission (ACNC), the ACNC is **not an eligible recipient** for the purpose of making a protected disclosure. Whistleblowers may report a concern to both an eligible recipient of the College and the ACNC; however, only disclosures made to an eligible recipient will attract the statutory protections.

Where a disclosure about a charity is made to the Australian Securities and Investments Commission (ASIC), ASIC may encourage the whistleblower to also notify the ACNC. ASIC may share relevant information with the ACNC and will typically seek the whistleblower's consent before doing so. The ACNC's investigative powers are limited to certain types of conduct, and further detail on what it can and cannot investigate is available on the [ACNC website](#).

## 3.2 Public interest disclosures

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

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:

- at least 90 days has passed since the eligible whistleblower made the first disclosure to ASIC, APRA or a prescribed Commonwealth authority; 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
- before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that they intend to make a public interest disclosure; and
- the extent of information disclosed is no greater than necessary to inform the recipient of the disclosable matter.

An eligible whistleblower may wish to consider obtaining independent legal advice before making a public interest disclosure.

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## 3.3 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
- before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that 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.

An eligible whistleblower may wish to consider obtaining independent legal advice before making an emergency disclosure.

## 4. Investigating a qualifying disclosure

### 4.1 Receiving a disclosure

Upon receiving a disclosure, the recipient (Head of College/Chair) will assess:

- whether it qualifies for protection under the *Corporations Act*;
- whether it should be managed under this policy or another College policy (refer to the Scope in this policy)

### 4.2 Investigating a qualifying disclosure

Eligible recipient will acknowledge receipt of a disclosure within a reasonable period, assuming the 'eligible whistleblower' can be contacted (including through anonymous channels). The Eligible recipient will assess disclosures to determine whether:

- they fall within the Whistleblower Protection Scheme; and
- an investigation is required – and if so, how that investigation should be carried out.

Generally, if an investigation is required, the Eligible recipient will determine:

- the nature and scope of the investigation;
- who should lead the investigation – including whether an external investigation is appropriate;
- the nature of any technical, financial or legal advice that may be required to support the investigation; and
- the anticipated timeframe for the investigation. Each investigation will be different which will impact the applicable timeframe. However, the College's intent is to complete an investigation as soon as practicable.

Where practicable, the Eligible recipient will keep the eligible whistleblower informed of the steps taken or to be taken (or if no action is to be taken, the reason for this), and provide appropriate updates, while the investigation is in progress and after the investigation has been finalised. The frequency and timeframe of any updates may vary depending on the nature of the disclosure.

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However, the extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors the College considers relevant in the particular situation.

The College may not be able to undertake an investigation, or provide information about the process etc, if it is not able to contact the eligible whistleblower, for example, if a disclosure is made anonymously and has not provided a means of contact.

The Eligible recipient to maintain the below confidentiality requirements during the investigation:

- 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.
- If a disclosure involves an issue which the College is required to report, the College may not be able to maintain the confidentiality of the identity of the disclosure. This disclosure could include NSW Police, the NSW Office of the Children's Guardian, 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 to be observed in relation to handling and storing records.

### **4.3 Fair treatment of employees mentioned in disclosures**

The Eligible recipient will take steps to ensure the fair treatment of employees who are mentioned in a disclosure that qualifies for protection:

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- when an investigation needs to be undertaken, the process will be objective and fair;
- employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

The College's employee assistance program (EAP) services will be available to employees affected by the disclosure, should they require that support.

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The Eligible recipient will document the steps of the investigation and the findings from the investigation and report those findings to those responsible in the College. The method for documenting and reporting the findings will depend on the nature of the disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

### 5. Safeguards for protection against detriment for eligible whistleblower

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 Head of College, via email at [Head@wcc.nsw.edu.au](mailto:Head@wcc.nsw.edu.au)

If it is not appropriate for the report to be made to the Head of College, the eligible whistleblower should report the matter, in writing, to the Chair of Council, via email at [chair@wcc.nsw.edu.au](mailto:chair@wcc.nsw.edu.au).

The Eligible recipient may also consider a range of other matters to protect an eligible whistleblower from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure. Steps taken to help achieve this may include:

- assessing whether anyone may have a motive to cause detriment—information could be gathered from an eligible whistleblower about:
  - the risk of their identity becoming known;
  - who they fear might cause detriment to them;
  - whether there are any existing conflicts or problems in the workplace; and
  - whether there have already been threats to cause detriment.
- analysing and evaluating the likelihood of each risk and evaluating the severity of the consequences;
- developing and implementing strategies to prevent or contain the risks—for anonymous disclosures, and assessing whether the discloser's identity can be readily identified or may become apparent during an investigation;
- monitoring and reassessing the risk of detriment where required — the risk of detriment may increase or change as an investigation progresses, and even after an investigation is finalised;
- taking steps to ensure that:
  - disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
  - each disclosure will be assessed and may be the subject of an investigation;
  - the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed.

### Employee Assistance Program

The College's employee assistance program (EAP) services will be available to eligible whistleblowers who are employees, should they require that support. If a whistleblower who is not an employee wishes to obtain support, such as counselling or other professional support, they should contact the Director of People and Culture.

Remedies available to an eligible whistleblower for being subjected to detriment could include:

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

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	<p>Schools and individuals may face significant civil and criminal penalties for failing to comply with confidentiality and detrimental conduct provisions.</p> <p><b>6. Accessibility of this policy</b></p> <p>William Clarke College is committed to ethical and honest conduct. Individuals who become aware of potential wrongdoing are encouraged to report their concerns through the appropriate channels. In support of this commitment, this policy will be published on the College website and made available to council members and employees, via Connect.</p> <p>If you have any queries about this policy, you should contact the Business Manager for advice.</p> <p><b>7. Ongoing Staff Education</b></p> <p>In addition to the standard communication protocols for policies, the Head of College will use existing staff communication forums (e.g., Connect posts and staff meetings) to promote understanding of the Whistleblowing Policy and to reinforce William Clarke College's commitment to a culture of openness, integrity, and accountability.</p> <p><b>8. Record Management</b></p> <p>The following records will be stored in line with our legal obligations:</p> <ul style="list-style-type: none"> <li>• Whistleblower report</li> <li>• Whistleblower Investigation records (including updates to relevant stakeholders)</li> </ul>	
<b>DELEGATION &amp; RESPONSIBILITIES</b>	Period of Delegation	Indefinite
	Accountability	As per this policy

### Document status

Document Approver	Executive
Document Author	Business Manager
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### Previous version history

Version 1	1 July 2019
Version 2	9 June 2021 (no changes)
Version 3	24 October 23

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## Appendix 1

### Whistleblower protections and support

#### Confidentiality

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 4.2 of the Whistleblower policy.

The Eligible recipient will adopt measures to protect an eligible whistleblower's identity by:

- appropriately redacting documents
- referring to the whistleblower in gender-neutral terms.
- Handling and investigating disclosures only by Eligible recipient/s
- secure all documents and communicate them in a way that will maintain confidentiality e.g. access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure; only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;

#### Immunity

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 College) 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.

#### Detriment

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.

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