



# Whistleblower Policy

Efficacy Date: December 2022

Craig Sandwell, Deputy Headmaster – Policy and Strategy

## 1 Purpose

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.

This policy applies to all persons who interact with the School (including its Staff and their delegates, Students, Parents, eligible Whistleblowers, and any other Members of the School community involved in School activities), who disclose wrongdoing in relation to the School, to ensure such persons can do so safely, securely and with confidence that they will be protected and supported.

## 2 Definitions (for the purpose of this policy)

**Corporations Act** means the Corporations Act 2001

An eligible **Recipient** means an individual, in relation to the School or a related company, who occupies the role of Headmaster or his delegate; Chairman of the School Council; an auditor, or member of an audit team; or an actuary.

An eligible **Whistleblower** means an individual who, in relation to the School, is or has been a Council member, Staff, person (including Staff of a person) who supplies goods or services (paid or unpaid), 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.

**Reasonable Grounds to Suspect** means the reasonableness of the reasons for the eligible Whistleblower's suspicion, having regard to all the circumstances when considered objectively.

**Disclosable matter** means 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, or conduct (including conduct of officers and Staff) that represents a danger to the public or financial system.

**Illegal activity** (including conduct of officers and Staff) means 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.

**Victimisation** means to cause the suffering of detriment by reason of a qualifying disclosure.

**Detriment** means (broadly) dismissal of any Staff, injury of Staff, alteration of a Staff member's position or duties to their disadvantage; discrimination between Staff; victimisation of a dependent of the eligible Whistleblower, 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.

## 3 Related policies

**This policy should not be used to:**

- ▲ replace the grievance procedure that should be used to raise personal issues relating to employment, the work environment, work relationships and decisions made by other Staff members which impact on a person's work which is covered by the School's Grievance Policy and Procedure documentation;
- ▲ replace the process that should be used to raise allegations of Staff misconduct that does not meet the criteria of a whistleblowing disclosure which is covered by the School's Staff Code of Conduct and Complaint Investigation
- ▲ Process documentation;
- ▲ replace the mandatory reporting of reportable conduct in relation to Child Protection which is covered by the School's Child Protection Policy and Procedure documentation;
- ▲ question financial or business decisions taken by the School;
- ▲ reconsider any matters which have previously been addressed under unlawful discrimination, harassment, grievance, disciplinary or bullying complaints in accordance with other relevant School policies and procedures.

## 4 Disclosure

### 4.1 Qualifying disclosure

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.

If a disclosure is made without 'reasonable grounds to suspect', the disclosure will not be a qualifying disclosure and the eligible Whistleblower will not have the protections provided for under this Policy and the Corporations Act.

### 4.2 Anonymous disclosure

A Disclosure can be made anonymously and still be protected under the Corporations Act.

However, this may make it difficult to effectively and accurately investigate the disclosure. The School encourages eligible Whistleblowers to provide their identity as it is important that disclosable matters are dealt with quickly and sensitively.

If an eligible Whistleblower wishes to disclose anonymously, they should provide sufficient information to allow the matter to be properly investigated. The School encourages the eligible Whistleblower to provide an anonymous email address through which additional questions can be asked and information provided. It will also allow the School to report the progress of the investigation, as appropriate.

## 5 Protection

### 5.1 Disclosable matters that qualify for protection

If a disclosure is not about a disclosable matter, it will not qualify for protection under the Corporations Act.

However, if the eligible Whistleblower reasonably believes that they are, in good faith, disclosing a disclosable matter, the School will take this into consideration when in normal circumstances action by the School may be warranted. The School does not undertake or warrant that it or any external agency will not take action against a person who knowingly discloses information in contradiction to the obligations of this Policy.



Any person making a disclosure in good faith is assured that in making the disclosure, they will not be personally disadvantaged by dismissal, demotion, any form of harassment, discrimination or adverse action on any current or future basis.

## 5.2 Making a qualifying disclosure

While an eligible Whistleblower can make a disclosure directly to any eligible Recipient, the School encourages them to make a disclosure in writing to the Headmaster, Trinity Grammar School, PO Box 174, Summer Hill NSW 2130 or by email [headmaster@trinity.nsw.edu.au](mailto:headmaster@trinity.nsw.edu.au).

If it is not appropriate for the disclosure to be made to the Headmaster, the eligible Whistleblower is encouraged to make the disclosure, in writing, to the Chairman of the School Council, Trinity Grammar School, PO Box 174, Summer Hill NSW 2130 [marked **CONFIDENTIAL**].

Where a disclosure is made to an eligible Recipient who is not the Headmaster, then subject to the confidentiality protections as set out in Clause 7, the disclosure will generally be passed onto the Headmaster and dealt with in accordance with Clause 6.

If an eligible Whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making a disclosure, they should contact the Deputy Headmaster – Policy & Strategy or an independent legal advisor.

## 5.3 Liability

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 eligible Whistleblower on the basis of the disclosure.

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

## 5.4 Detriment

It is unlawful for a person to engage in conduct against another person that causes, or will cause detriment. Threats of detriment are also unlawful.

Eligible Whistleblowers are protected from detriment.

If an eligible Whistleblower believes they are being subjected to detriment or a threat of detriment, this should immediately be reported in writing to the Headmaster, Trinity Grammar School, PO Box 174, Summer Hill NSW 2130 or by email [headmaster@trinity.nsw.edu.au](mailto:headmaster@trinity.nsw.edu.au).

If it is not appropriate for the report to be made to the Headmaster, the eligible whistleblower should report the matter, in writing, to the Chairman of the School Council, Trinity Grammar School, PO Box 174, Summer Hill NSW 2130 [marked **CONFIDENTIAL**].

The School may also consider a range of other matters (but not necessarily in the order shown) to protect an eligible Whistleblower from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure, such as:

1. assessing whether anyone may have a motive to cause detriment;
2. analysing and evaluating the likelihood of each risk and evaluating the severity of the consequences;
3. 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;
4. monitoring and reassessing the risk of detriment where required which may increase or change as an investigation progresses, or after an investigation is finalised;



5. taking steps to ensure that disclosures will be handled confidentially, when it is practical and appropriate in the circumstances, and that the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed.

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

## 6 Investigation

### 6.1 Investigating a qualifying disclosure

In the first instance, the eligible Recipient will assess the disclosure. If it is determined as qualifying for protection under the *Corporations Act* the disclosure is to be managed in accordance with this Policy.

Any disclosure that does not qualify for protection should be managed in accordance with relevant related policies, as set out (without limitation) in Clause 3.

The School will acknowledge receipt of a disclosure within a reasonable period. All disclosures will be subject to thorough investigation by the School. The investigator will be fair and independent of the eligible Whistleblower who made the report (if known) and the person who is the subject of the disclosure.

Generally, if an investigation is required, the School will (but not necessarily in the order shown) identify:

- ▲ 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 School's intent is to complete an investigation as soon as practicable.

Where practicable, the School 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, including the frequency and timeframes of investigation steps. The frequency and timeframe of any updates may vary depending on the nature of the disclosure. 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 School considers relevant in the particular situation.

The School may not be able to undertake an investigation, or provide information about the process, 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.

### 6.2 External disclosure

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.

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

### 6.3 Public Interest and Emergency Disclosures

An eligible Whistleblower may disclose to a member of Parliament or a journalist, subject to their previous disclosure to ASIC, APRA or a prescribed Commonwealth Authority, meeting the eligibility criteria of the respective public interest or emergency disclosure.

An eligible Whistleblower making a disclosure under this clause may wish to consider obtaining independent legal advice prior to making a disclosure.



## 6.4 Fair treatment of Staff mentioned in disclosures

Should a Staff member be mentioned in a qualifying disclosure, the School will (but not necessarily in the order shown) ensure:

- ▲ disclosures are handled confidentially, when it is practical and appropriate in the circumstances;
- ▲ when an investigation needs to be undertaken, that the process will be objective and fair;
- ▲ Staff about whom disclosures are made be given an opportunity to respond to the relevant allegations made in the qualifying disclosure;
- ▲ its Employee Assistance Program (EAP) services are available to Staff affected by the disclosure, should support be required

The school will document the steps of the investigation and the findings from the investigation and report those findings to those responsible in the School. 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.

## 7 Confidentiality and records

### 7.1 Identity

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

The School will protect an eligible Whistleblower's identity by appropriately redacting documents and referring to the eligible Whistleblower in gender-neutral terms. It will also secure all documents and communicate them in a way that will maintain confidentiality.

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 School is required to report, the School may not be able to maintain the confidentiality of the identity of the eligible Whistleblower. 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 eligible Whistleblower 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 eligible Whistleblower's identity and information likely to lead to the identification of the eligible Whistleblower is a criminal offence and may be the subject of criminal, civil and disciplinary proceedings.

### 7.2 Records

Confidentiality will be observed in relation to the handling and storing of records.

Records will be retained and destroyed in accordance with applicable Privacy legislation.

This policy will be published on the School's website and made available to all Staff and Council members.

The School reserves the right to review and amend this Policy without notice.



## 8 Enquiries

If you have any queries about this policy, you should contact Mr Craig Sandwell, Deputy Headmaster – Policy & Strategy [[csandwell@trinity.nsw.edu.au](mailto:csandwell@trinity.nsw.edu.au)] for advice.

