



ST STANISLAUS' COLLEGE

BATHURST

Whistleblower Policy and Procedures

Intended Audience: College Employees, Board of Directors

Distribution: College Policies and Procedures Manual, College Website

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POLICY STATEMENT

1. Introduction

1.1 Scope

This policy applies to St Stanislaus' College managing qualifying disclosures made regarding misconduct in relation to the College and in protecting eligible whistleblowers.

This policy will be published on the College website and made available to Board Directors and employees and contractors as relevant. In addition, information sessions will be provided as relevant to employees.

1.2 Policy Principles

This Policy has been developed as a result of amendments to the *Corporations Act 2001* (Part 9.4 as amended in the *Treasury Laws Amendment (Enhancing Whistleblower Protections Act) 2019*) which requires all schools that are companies limited by guarantee to have in place a Whistleblower Policy.

Under the new provisions in the Corporations Act a person who is an "eligible whistleblower" who makes a "qualifying disclosure" to an "eligible recipient" about a "disclosable matter" is entitled to certain protections, including a right to have their identity kept confidential and protection from detriment.

1.3 Policy Purpose

St Stanislaus' College is committed to the protection of individuals who disclose information about illegal or improper conduct occurring within the College. This policy has been adopted to provide a safe and confidential environment where such concerns can be raised by whistleblowers without fear of reprisal or detrimental treatment.

This policy sets out:

- who is entitled to protection as a whistleblower under this policy and the Corporations Act;
- the protections whistleblowers are entitled to under this policy and under the Corporations Act; and
- how disclosures made by whistleblowers in accordance with this policy and under the Corporations Act will be handled by the College.

All officers, employees and contractors of the College must comply with this policy.

1.4 Related Policies

- Complaints or allegations of staff misconduct that do not meet the criteria of a qualifying disclosure will be addressed in accordance with the *College Complaints and Grievances Policy and Procedures*.
- Disclosures about child protection matters will be addressed in accordance with the *College 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 *College Staff Grievance Policy*.
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the *College Discrimination, Harassment and Bullying Statement*.

POLICY PROCEDURES

1. 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**.

2. Who can make a qualifying disclosure?

2.1 Eligible Whistleblowers

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

- a Board Director;
- a Company Secretary;
- 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 College; and
- a relative or dependent (or dependents of a spouse) of any individual described above.

2.2 Anonymous Disclosures

A disclosure can be made anonymously.

However, this may make it difficult to investigate the reported matter. The College 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 College encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

3. Disclosable matters that qualify for protection

3.1 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 College 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, Australian Charities and Not for Profit Commission (ACNC) 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 College that involves:

- fraudulent activity;
- 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 school activities.

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

3.2 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. Any deliberate false reporting will be regarded very seriously and may result in appropriate action being taken against the person who wilfully made the disclosure to cause mischief or harm.

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

3.3 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 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 College that do not relate to 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 to the accounting and financial reporting processes and procedures.

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 that does not involve a breach of workplace laws;
- 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 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. This may include:

- information about misconduct or is accompanied by a personal work-related grievance (mixed report);
- the College 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.

4. Who can receive a qualifying disclosure

4.1 Eligible recipients

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

- a Board Director or Head of College;
- an auditor, or member of an audit team of the College or a related company;
- an actuary of the College or a related company.

4.2 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the College encourages them to make a disclosure in the first instance in writing to the Head of College, via email at head@stannies.com.

If it is not appropriate for the disclosure to be made to the Head of College, the eligible whistleblower is encouraged to make the disclosure, in writing marked 'confidential', to the Chair of the Board, via board@stannies.com

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 7 below, it will generally be passed onto the Head of College and dealt with in accordance with Section 6 below.

If an eligible whistleblower feels that they cannot make a disclosure to either the Chair of the Board or Head of College, they should make the disclosure to an external party (eg: Australian Securities Investment Commission (ASIC) or their solicitor).

4.3 External disclosures

Disclosures may also qualify for protection if they are made to ASIC, Australian Prudential Regulation Authority (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.

4.4 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, in writing, the original recipient 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.

4.5 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, in writing, 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.

5. Investigating a qualifying disclosure

5.1 Receiving a disclosure

Upon receiving a disclosure, the recipient (generally the Head of College or Chair of the 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).

5.2 Investigating a qualifying disclosure

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

The College will acknowledge receipt of a disclosure within a reasonable period (usually within seven days), assuming the 'eligible whistleblower' can be contacted (including through anonymous channels). The Head of College in consultation with the Board Chair 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 College 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 intent of the College is to complete an investigation as soon as practicable.

Where practicable, the College 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

about the completion of any investigation. 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.

Where practicable, whistleblowers will receive updates about when the investigation has begun, 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. The College will also have regard to confidentiality considerations when providing updates.

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 College. A support person may provide personal support to the parties but may not answer questions on their behalf or interrupt the meeting.

5.3 Fair treatment of employees mentioned in disclosures

The College 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 follow due process;
- 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 provided Employee Assistance Program (EAP) will be available to employees affected by the disclosure, should they require that support.

The College 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.

6. 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.

7. Whistleblower protections

Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, must be kept confidential, subject to relevant exceptions as set out in section 6 above.

To reduce the risk that a discloser may be identified from information contained in a disclosure:

- All personal information or reference to the discloser witnessing an event will be redacted;
- The discloser will be referred to in a gender-neutral context;
- Where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- Disclosures will be handled and investigated by qualified staff (generally the Board Chair or Head of College, or an external contracted professional with appropriate qualifications).

The College will ensure that:

- All paper and electronic documents and other materials relating to disclosures will be stored securely;
- 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;
- Communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other staff; and
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

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.

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
- other remedies through the courts.

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 Head of College, via email (head@stannies.com) or to ASIC as outlined earlier.

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 the Board, via email (board@stannies.com).

8. Additional support for eligible whistleblowers and other employees

The College Employee Assistance Program (EAP) services will be available to all eligible whistleblowers and other employees affected by the disclosure, should they require that support.

9. Contact

If you have any queries about this policy, you should contact the Head of College for advice, subject to the report not concerning the Head of College, otherwise queries should be directed to the College Board Chair.

10. College Response to Qualifying Disclosures

