

Whistleblower Policy

1. Purpose

This policy applies to the Inner Sydney Montessori School in protecting eligible whistleblowers and managing qualifying disclosures made regarding misconduct in relation to the School.

2. Who is Affected by these Policies?

- Inner Sydney Montessori School/Association
- Council Directors
- Nominated Supervisor (Principal)
- Staff (including casuals)
- Parents/carers
- Visitors
- A person who supplies goods or services (paid or unpaid) to the School or an employee of a person who provides goods or services to the School
- An individual who is an associate of the School (as defined in the Corporations Act)
- A relative or dependent (or dependents of a spouse) of any individual described above

3. What does this Policy mean?

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.

Who can make a Qualifying Disclosure?

A. 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.

B. 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 remain anonymous, 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. Disclosable Matters that Qualify for Protection

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; e.g. not conforming with accepted standards of behaviour;
- 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.

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.

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 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 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 School's Complaints Policy and Procedures and other relevant policies and laws.

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.

B. Who can receive a Qualifying Disclosure?

Eligible recipients

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

- Council Director, Principal, Deputy Principal of Academics, Deputy Principal of Operations, Business Manager or Registrar;
- An auditor, or member of an audit team of the School or a related company; and
- An actuary of the School or a related company.

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 to principal@isms.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 Council President, via email to president@isms.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 F below, it will generally be passed onto the Principal and dealt with in accordance with Section E below.

External disclosures

Disclosures may also qualify for protection if they are made to Australian Securities and Investments Commission (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.

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
- The 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, if made in good faith.

C. Investigating a Qualifying Disclosure

Receiving a disclosure

Upon receiving a disclosure, the recipient, generally the Principal or Council President, 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 4. Related Policies and Procedures). The Association of Independent Schools NSW (AISNSW) may be contacted for advice in order for the School to follow their recommended procedures.

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 enquiries 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 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. 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.

D. 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 will be maintained at all times.

E. 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 F 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, 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
- 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 to principal@isms.nsw.edu.au.

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 Council President via email to president@isms.nsw.edu.au.

F. 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.

G. Contact

If any queries arise about this policy, please contact the Principal for advice.

4. Related Policies and Procedures

Policy to be read in conjunction with:

- 3.6.1 Child Protection Policy and Procedures
- 3.6.2.3 Unlawful Discrimination, Harassment & Bullying
- 3.6.11 Complaints Policy and Procedures

5. Access to and Communication of Policy

Families have access to an electronic version of this policy through the ISMS Intranet. Staff have access to an electronic version through the ISMS Staff Intranet page. Hard copies are available at all campuses.

Families:

- If there are changes to the policy, the Deputy Principal and ICT Manager are responsible for ensuring parents are notified via the School Newsletter or email and the policy is updated on the ISMS Intranet.

Staff:

- If there are changes to the policy, the Deputy Principal and ICT Manager are responsible for ensuring staff are notified via email and the policy is updated on the Staff Intranet page. Additionally, significant changes are discussed and communicated verbally at Whole Staff Meetings.

The Deputy Principal is responsible for the upkeep of policies and procedures through Intranet sites and hard copies in central locations. This includes initiating the review process for all policies.

6. Review Process

Person Responsible for Initiating Review: Deputy Principal

External Consultation: ACECQA, CELA, AISNSW, NSWDET

Approver: School Council

7. Legislative Requirements

Relevant legislation and standard include but are not limited to:

[ACECQA](#)

Education and Care Services National Law Act 2010

Education and Care Services National Regulations 2011 (ACECQA) [Link to National Quality Standard, Quality Area 2: Children's Health and Safety](#)

[Link to National Quality Standard, Quality Area 5: Relationships with Children](#)

[NSW Education Standards Authority \(NESA\)](#)

Registered and Accredited Individual Non-government Schools (NSW) Manual

- Section B8 – Safe and Supportive Environment

“The School’s policies which are made from time to time are made pursuant to the requirements set out in section 47 of the Education Act, the NSW Education Standards (NESA) for registration of the School and the Australian Children’s Education and Care Quality Authority (ACECQA).”