



## Whistleblower Policy

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### Rationale

Santa Sabina College (the College), is committed to a working environment and culture that reflects the College's values to act with truth by allowing staff to raise concerns about unlawful, unethical or improper conduct occurring in the workplace.

The policy outlines the reporting and investigatory processes that the College will adopt, and the protections provided, where disclosures relate to possible illegal, unethical or otherwise improper conduct.

### 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 College's Grievances and Disputes Procedures for Staff and Grievances and Disputes Guidelines for Students and Parents/Carers.
- Disclosures about reportable conduct will be addressed in accordance with the College's 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's Grievances and Disputes Procedures for Staff.
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the College's Prevention of Discrimination, Bullying and Harassment Guidelines.

### Qualifying Disclosure

A qualifying disclosure is when an eligible whistleblower makes a disclosure to an eligible recipient and the eligible whistleblower has a reasonable grounds to suspect that the information concerns a disclosable matter.

### Who Can Make A Qualifying Disclosure?

#### Eligible Whistleblowers

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

- a Board member
- a staff member
- 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 (as defined in the Corporations Act)
- a relative or dependent (or dependents of a spouse or partner) of an individual described above.

#### 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.

### Excluded Matters

#### 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 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 financial system; or

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

- an interpersonal conflict between the discloser and another staff member
- 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 Grievances and Disputes Procedures for Staff.

### Disclosure Matters that Qualify for Protection

#### Disclosure 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 staff) – 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 staff) 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
- 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.

#### 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.

A discloser 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.

### 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 College or a related company:

- a Board or Executive member
- an auditor or member of an audit team of the College or a related company.

### 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 writing to the College Principal via email at [principal@ssc.nsw.edu.au](mailto:principal@ssc.nsw.edu.au)

If it is not appropriate for the disclosure to be made to the College Principal, the eligible whistleblower is encouraged to make the decision, in writing, to the Chair of the Board via email at [board@ssc.nsw.edu.au](mailto:board@ssc.nsw.edu.au)

Where a disclosure is made to an eligible recipient who is not the College Principal, then subject to the confidentiality set out in 'Confidentiality and Records' below, it will generally be passed onto the College Principal and dealt with in accordance with 'Investigating a Qualifying Disclosure' below.

### External Disclosure

Disclosers 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 only

- if the information has been previously disclosed to ACNC, 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 disclosure 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 ACNC, 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.

### Investigating A Qualifying Disclosure

#### Receiving a Disclosure

Upon receiving a disclosure, the recipient (generally the College Principal or their delegate or Chair of the Board or their 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 Related Policies above).

#### Investigating a Qualifying Disclosure

How the College 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 College reports the allegations within the disclosure to a third party, such as NSW 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 College is the primary investigator of the disclosure.

Staff 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 College.

### 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 ACNC, 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 is 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 handing and storing records.

### 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 Confidentiality and Records 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 may be enforced or exercised against the person on the basis of 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 make, may have made, proposes to make or could make a qualifying disclosure.

Threads of detriment are also unlawful.

Detriment has a very broad meaning and includes dismissal of a staff member, injuring a staff member in their employment, alteration of a staff member's position or duties to their disadvantage; discrimination between a staff member and other staff; 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.

The College 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 College Principal, via email [principal@ssc.nsw.edu.au](mailto:principal@ssc.nsw.edu.au)

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

#### **Additional Support for Eligible Whistleblowers and Other Staff Members**

The College's Employee Assistance Program (EAP) services will be available to all eligible whistleblowers and other staff members affected by the disclosure, should they require support. If you have any queries after this policy, you should contact the College Principal for advice.

#### **Review of Policy**

These guidelines will be reviewed at the discretion of the College Principal

Last review date: November 2019

Next review date: As determined by the College Principal when required (2024)

Authorised delegate(s): College Principal

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