



# Whistleblower Policy

## VERSION CONTROL:

Frequency of review: 12 months

<b>Version</b>	<b>Date</b>	<b>Description</b>
1.0	November 2019	Policy Adopted by Executive
1.1	March 2020	Policy approved by Board



## LOURDES HILL COLLEGE WHISTLEBLOWER POLICY

### Introduction

This policy outlines the manner in which whistleblower disclosures will be managed by Lourdes Hill College in accordance with the requirements of the *Corporations Act 2001*.

### 1. PURPOSE

1.1 The purpose of this policy is to:

- a) ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported
- b) ensure disclosures are dealt with appropriately and in a timely basis
- c) provide transparency around Lourdes Hill College's framework for receiving, handling and investigating disclosures
- d) encourage more disclosures of wrongdoing
- e) help deter wrongdoing.

1.2 The rationale for the policy:

- a) to support Lourdes Hill College's values and code of conduct policy
- b) to support Lourdes Hill College's long-term sustainability and reputation
- c) to meet Lourdes Hill College's legal and regulatory obligations
- d) to align with best practice governance principles and standards.

### 2. ELIGIBLE WHISTLEBLOWERS

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

- a) an officer or employee
- b) a supplier of services or goods to the entity (whether paid or unpaid), including their employees
- c) an associate of the entity
- d) a relative, dependant or spouse of any of the above.

2.2 A discloser qualifies for protection as a whistleblower under the *Corporations Act 2001* if they are an 'eligible whistleblower' in relation to Lourdes Hill College and:

- a) they have made a disclosure of information relating to a 'disclosable matter' directly to an 'eligible recipient' or to the Australian Securities and Investment Commission (ASIC), the Australian Prudential Regulation Authority (APRA) or another Commonwealth body prescribed by regulation
- b) they have made a disclosure to a legal practitioner for the purposes of obtaining legal



advice or legal representation about the operation of the whistleblower provisions in the *Corporations Act 2001*

- c) they have made an 'emergency disclosure' or 'public interest disclosure'.

### 3. MATTERS COVERED BY THE POLICY

3.1 Disclosable matters involve information that the discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances<sup>1</sup>, in relation to:

- a) Lourdes Hill College
- b) a related body corporate of Lourdes Hill College.

3.2 Disclosable matters also involve information about Lourdes Hill College or related body corporate, if the discloser has reasonable grounds to suspect that the information indicates these entities (including their employees or officers) have engaged in conduct that:

- a) constitutes an offence against, or a contravention of, a provision of any of the following:
  - i. The *Corporations Act 201*
  - ii. the Australian Securities and Investments Commission Act 2001
  - iii. the *Banking Act 1959*
  - iv. the *Financial Sector (Collection of Data) Act 2001*
  - v. the *Insurance Act 1973*
  - vi. the *Life Insurance Act 1995*
  - vii. the *National Consumer Credit Protection Act 2009*
  - viii. the *Superannuation Industry (Supervision) Act 1993*
  - ix. an instrument made under any of the above Acts.
- b) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more
- c) represents a danger to the public or the financial system
- d) is prescribed by regulation.

3.3 Examples of disclosable matters include:

- a) illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property
- b) fraud, money laundering or misappropriation of funds
- c) offering or accepting a bribe
- d) financial irregularities
- e) failure to comply with, or breach of, legal or regulatory requirements
- f) engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made or be planning to make a disclosure.

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<sup>1</sup> The term 'misconduct' is defined in section 9 of the *Corporations Act 2001* to include 'fraud, negligence, default, breach of trust and breach of duty'. The phrase 'improper state of affairs or circumstances' is not defined and is intentionally broad.



Disclosures that relate solely to personal work-related grievances, and that do not relate to detriment or threat of detriment to the discloser, do not qualify for protection under the *Corporations Act 2001*.

- 3.4 Personal work-related grievances are those that relate to the discloser's current or former employment and have, or tend to have, implications for the discloser personally, but do not:
- a) have any other significant implications for the entity (or another entity)
  - b) relate to any conduct, or alleged conduct, about a disclosable matter as set out above.
- 3.5 Examples of grievances that may be personal work-related grievances include:
- a) an interpersonal conflict between the discloser and another employee
  - b) decisions that do not involve a breach of workplace laws:
    - i. about the engagement, transfer or promotion of the discloser
    - ii. about the terms and conditions of engagement of the discloser
    - iii. to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

## **4. PROVIDING ADVICE ON OR RECEIVING A DISCLOSURE**

- 4.1 Eligible recipients for a disclosure include:
- a) an officer or senior manager of Lourdes Hill College or related body corporate;
  - b) an internal or external auditor (including a member of an audit team conducting an audit) or actuary of Lourdes Hill College or related body corporate
  - c) a person authorised by Lourdes Hill College to receive disclosures that may qualify for protection.
- 4.2 Generally, an 'officer' includes a director or company secretary of an entity.
- 4.3 A 'senior manager' is generally a senior executive within an entity, other than a director or company secretary, who:
- a) makes or participates in making decisions that affect the whole, or a substantial part, of the business of the entity
  - b) has the capacity to significantly affect the entity's financial standing.
- 4.4 Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the *Corporations Act 2001* are protected (even in the event the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').
- 4.5 Disclosures of information relating to disclosable matters can be made to ASIC, APRA or another Commonwealth body prescribed by regulation and qualify for protection under the *Corporations Act 2001*. For example, see ASIC [Information Sheet 239 How ASIC handles whistleblower reports](#).

## **5. PUBLIC INTEREST DISCLOSURES AND EMERGENCY DISCLOSURES**

- 5.1 A 'public interest disclosure' is the disclosure of information to a journalist or a parliamentarian, where:



- a) at least 90 days have passed since the discloser made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation
- b) the discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure
- c) the discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest
- d) before making the public interest disclosure, the discloser has given written notice to the body to which the previous disclosure was made that:
  - i. includes sufficient information to identify the previous disclosure
  - ii. states that the discloser intends to make a public interest disclosure.

5.2 An 'emergency disclosure' is the disclosure of information to a journalist or parliamentarian, where:

- a) the discloser has previously made a disclosure of the information to ASIC, APRA or another Commonwealth body prescribed by regulation
- b) the discloser 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
- c) before making the emergency disclosure, the discloser has given written notice to the body in RG 000.70(a) (i.e. the body to which the previous disclosure was made) that:
  - i. includes sufficient information to identify the previous disclosure
  - ii. states that the discloser intends to make an emergency disclosure
- d) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

## 6. ROLES AND RESPONSIBILITIES

6.1 The following staff members are responsible for:

- a) acting as a contact point where employees can seek accurate and confidential advice or information about the operation of this policy
- b) receiving disclosures from disclosers
- c) protecting or safeguarding disclosers and ensuring the integrity of the reporting mechanism
- d) investigating disclosures

Robyn Anderson	Principal	3399 8888	<a href="mailto:ran@lhc.qld.edu.au">ran@lhc.qld.edu.au</a>
Terry Niebling	Senior Deputy Principal – Head of School	3399 8888	<a href="mailto:tni@lhc.qld.edu.au">tni@lhc.qld.edu.au</a>
Andrew Hines	Business Manager	3399 8888	<a href="mailto:ahi@lhc.qld.edu.au">ahi@lhc.qld.edu.au</a>



Roger Lazzaretti	Board Chair		<a href="mailto:boardchair@lhc.qld.edu.au">boardchair@lhc.qld.edu.au</a>
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- 6.2 Alternatively, a disclosure can be made to the independent whistleblowing service provider, Stopleveline, which will receive and manage disclosures. Ph 1300 304 550 or email [lhc@stopleveline.com.au](mailto:lhc@stopleveline.com.au).

A disclosure can also be made to Australian Securities and Investment Commission (ASIC) on 1300 300 630 or Australian Prudential Regulation Authority (APRA) on 1300 558 849.

## 7. HOW TO MAKE A DISCLOSURE

- 7.1 A disclosure may be made anonymously and/or confidentially, securely and outside of business hours.
- 7.2 The contact details for staff members responsible for receiving disclosures are listed in 6.1 d).  
A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. A discloser can refuse to answer questions that they feel could reveal their identity during follow-up conversations.
- 7.3 A discloser may choose to adopt a pseudonym for the purposes of their disclosure, and not use their true name. This may be appropriate in circumstances where the discloser's identity is known to their supervisor, and staff member receiving the disclosure, but the discloser prefers not to disclose their identity to others.
- 7.4 If a disclosure comes from an email address from which the person's identity cannot be determined, and the discloser does not identify themselves in the email, it will be treated as an anonymous disclosure.
- 7.5 If the discloser has any concerns about making a disclosure to the LHC staff or Board Chair listed in 6.1 d), a disclosure should be made to the independent whistleblower service provider, Stopleveline, ASIC or APRA. See 6.2 for contact details.

## 8. LEGAL PROTECTIONS FOR DISCLOSURES

- 8.1 A person cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser (which they have obtained directly or indirectly because the discloser made a disclosure that qualifies for protection).
- 8.2 The exception to this is if a person discloses the identity of the discloser:
- a) to ASIC, APRA, or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*)
  - b) to a legal practitioner (for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the *Corporations Act 2001*)
  - c) to a person or body prescribed by regulations
  - d) with the consent of the discloser.
- 8.3 A person can disclose the information contained in a disclosure without the discloser's consent if:



- a) the information does not include the discloser's identity
  - b) the entity has taken all reasonable steps to reduce the risk that the discloser will be identified from the information
  - c) it is reasonably necessary for investigating the issues raised in the disclosure.
- 8.4 It is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser, outside the exceptions listed above. A discloser may lodge a complaint about a breach of confidentiality, including to ASIC and APRA.
- 8.5 To ensure confidentiality:
- a) all paper and electronic documents and other materials relating to disclosures are stored securely
  - b) all information relating to a disclosure can only be accessed by those directly involved in managing and investigating the disclosure
  - c) only a restricted number of people who are directly involved in handling and investigating a disclosure are made aware of a discloser's identity or information that is likely to lead to the identification of the discloser
  - d) communications and documents relating to the investigation of a disclosure are not sent to an email address or to a printer that can be accessed by other staff
  - e) each person who is involved in handling and investigating a disclosure is reminded that they should keep the identity of the discloser and the disclosure confidential and that an unauthorised disclosure of a discloser's identity may be a criminal offence.
- 8.6 A person cannot engage in conduct that causes detriment to a discloser (or another person), in relation to a disclosure, if:
- a) the person believes or suspects that the discloser (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection
  - b) the belief or suspicion is the reason, or part of the reason, for the conduct.
- 8.7 In addition, a person cannot make a threat to cause detriment to a discloser (or another person) in relation to a disclosure. A threat may be express or implied, or conditional or unconditional. A discloser (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.
- 8.8 Examples of detrimental conduct include:
- a) dismissal of an employee;
  - b) injury of an employee in his or her employment;
  - c) alteration of an employee's position or duties to his or her disadvantage;
  - d) discrimination between an employee and other employees of the same employer;
  - e) harassment or intimidation of a person;
  - f) harm or injury to a person, including psychological harm;
  - g) damage to a person's property;
  - h) damage to a person's reputation;



- i) damage to a person's business or financial position;
- j) any other damage to a person.

8.9 A discloser (or any other employee or person) can seek compensation and other remedies through the courts if:

- a) they suffer loss, damage or injury because of a disclosure
- b) the entity failed to prevent a person from causing the detriment.

8.10 A discloser is protected from any of the following in relation to their disclosure:

- a) civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- b) criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)
- c) administrative liability (e.g. disciplinary action for making the disclosure).

8.11 The protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

## **9. SUPPORT AND PRACTICAL PROTECTION FOR DISCLOSURES**

9.1 Lourdes Hill College will support disclosers and protect disclosers from detriment implementing:

- a) processes for assessing the risk of detriment against a discloser and other persons (e.g. other staff who might be suspected to have made a disclosure) as soon as possible after receiving a disclosure
- b) support services (including counselling or other professional or legal services)
- c) strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation.

## **10. HANDLING AND INVESTIGATING A DISCLOSURE**

10.1 Each disclosure will need to be assessed to determine whether:

- a) it falls within the entity's policy
- b) an investigation is required.

10.2 Determination will need to be made as to:

- a) the nature and scope of the investigation;
- b) the person(s) within and/or outside the entity that should lead the investigation;
- c) the nature of any technical, financial or legal advice that may be required to support the investigation;
- d) the timeframe for the investigation.

10.3 It is acknowledged that an investigation may not be able to be undertaken if the discloser is





not able to be contacted (e.g. if a disclosure is made anonymously and the discloser has refused or omitted to provide a means of contacting them).

10.4 Without the discloser's consent, information that is contained in a disclosure cannot disclose as part of its investigation process—unless:

- a) the information does not include the discloser's identity;
- b) the entity removes information relating to the discloser's identity or other information that is likely to lead to the identification of the discloser (e.g. the discloser's name, position title and other identifying details);
- c) it is reasonably necessary for investigating the issues raised in the disclosure.

10.5 Each disclosure will be acknowledged within a reasonable period after the disclosure is received, if the discloser can be contacted (including through anonymous channels).

10.6 Disclosers will be provided with updates at various stages of the investigation.

10.7 The findings from an investigation will be documented and communicated to those responsible for oversight of the policy and the discloser.

## **11. ENSURING FAIR TREATMENT OF INDIVIDUALS MENTIONED IN A DISCLOSURE**

11.1 Employees who are mentioned in a disclosure that qualifies for protection, including those who are the subject of a disclosure, will receive fair treatment by the entity ensuring that:

- a) disclosures are handled confidentially, when it is practical and appropriate in the circumstances
- b) each disclosure is assessed and may be the subject of an investigation
- c) the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported
- d) an employee who is the subject of a disclosure will be advised about:
  - I. the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness, and prior to any actions being taken—for example, if the disclosure is to be the subject of an investigation or if the disclosure is serious and needs to be referred to ASIC, APRA or the Federal Police
  - II. the outcome of the investigation (but they will not be provided with a copy of the investigation report).

## **12. ENSURING THE POLICY IS EASILY ACCESSIBLE**

12.1 The whistleblower policy will be disseminated to and easily accessible by officers and employees of Lourdes Hill College.

## **13. MONITORING AND REVIEW OF THE POLICY**

13.1 The effectiveness of this policy will be monitored and the policy reviewed on a periodic basis.