



Whistleblower Policy

1 Rationale

- 1.1 Pymble Ladies' College (College) recognises it is required to observe the provisions of the *Corporations Act 2001* and have a *Whistleblower Policy*.
- 1.2 The College has developed this *Whistleblower Policy* to encourage the reporting of concerns to promote transparency, improve systems and protect to the best of its ability, those who have the courage to disclose.
- 1.3 This policy applies to ensure, as is reasonably practicable, individuals who disclose wrongdoing in relation to the College can do so safely, securely and with confidence that they will be protected and supported.
- 1.4 This policy has been developed to align with the 2019 *Australian Securities and Investments Commissions (ASIC) Regulatory Guide 270* and advice provided by the Association of Independent Schools NSW (AISNSW).

2 Scope

- 2.1 This policy applies to all College employees and Board Members in protecting eligible whistleblowers and managing qualifying disclosures made regarding misconduct in relation to the College.
- 2.2 This policy applies to all College employees and Board Members who disclose within the criteria of the *Whistleblower Policy*.
- 2.3 Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with the College *Complaints Policy and Procedure*.
- 2.4 Disclosures about reportable conduct will be addressed in accordance with the College *Child Protection Policy*.
- 2.5 Disclosures regarding a grievance between staff members about work matters, including work relationships and decisions made by other staff members which impact their work, may be addressed in accordance with the College *Grievance and Dispute Resolution Policy and Procedure*.
- 2.6 Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the College *Discrimination, Harassment and Workplace Bullying Policy*.

3 Definitions

In the context of this document:

3.1 **Eligible whistleblower** is an individual who is or has been any of the following, in relation to the College:

- Board Member;
- employee;
- person who supplies goods or services (paid or unpaid);
- employee of a person who supplies goods or services (paid or unpaid);
- individual who is an associate of the College (as defined in the *Corporations Act*) and
- relative or dependant (or dependants of a spouse) of any individual described above.

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

- Board Member, officer or senior managers*;
- Auditor or member of an audit team of the College or a related company;
- Actuary of the College or a related company
- Chief People and Culture Officer.

* Senior manager is a member of the Senior Executive team who makes or participates in making decisions that affect the whole or a substantial part of the business of the entity or has the capacity to significantly affect the entity's financial standing.

3.3 **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;
- improper state of affairs or circumstances;
- illegal activity (including conduct of Board members, officers, the Principal, executives 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 Board members, 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;
- negligence;
- 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 College activities.

- 3.4 **Reasonable grounds to suspect** is based on the reasonableness of the reasons for the discloser's suspicion, having regard to all the circumstances when considered objectively.
- 3.5 **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**.

4 Policy

Making a disclosure

- 4.1 An eligible whistleblower can make a qualifying disclosure to an eligible recipient if the whistleblower has reasonable grounds to suspect that the information concerns a disclosable matter.
- 4.2 A disclosure will not qualify for whistleblower protection under the *Corporations Act* if it is:
- not about a disclosable matter
 - made without reasonable grounds to suspect.
- 4.3 While an eligible whistleblower can make a disclosure directly to any eligible recipient, the College encourages them to make a disclosure in writing to the Principal via email at principal@pymblelc.nsw.edu.au
- 4.4 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 Chair of the Board by addressing an email to Board@pymblelc.nsw.edu.au
- 4.5 Where a disclosure is made to an eligible recipient who is not the Principal, then subject to confidentiality protections (see **Whistleblower protection and support** *below*) it will be generally passed onto the Principal to be managed.
- 4.6 If an eligible whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making their disclosure, they can contact the Company Secretary via secretary@pymblelc.nsw.edu.au or an independent legal advisor.
- 4.7 A disclosure can be made anonymously and still be protected under the *Corporations Act*. A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. 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. This will also allow the College to report the progress of the investigation to the discloser, as appropriate.
- 4.8 Generally, disclosures that concern personal work-related grievances do not qualify for protection.

- 4.9 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 College *Grievance and Dispute Resolution Policy and Procedure*.

- 4.10 A personal work-related grievance may still qualify for protection if:
- it includes information about misconduct, or information about misconduct if it includes or is accompanied by a personal work-related grievance (mixed report);
 - the entity has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that presents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstance
 - 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*.

External disclosures

- 4.11 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.
- 4.12 Eligible whistleblowers who make a public interest disclosure or an emergency disclosure also qualify for protection.
- 4.13 Eligible whistleblowers may wish to consider obtaining independent legal advice before making a public interest or emergency disclosure.

Public interest disclosures

- 4.14 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:
- at least 90 days has passed since the eligible whistleblower made the first disclosure to ASIC, APRA or a prescribed Commonwealth authority; 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
 - before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that 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

- 4.15 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
 - before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that 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.

Receiving a disclosure

- 4.16 Upon receiving a disclosure, the recipient (generally the Principal or the 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 other related policies.

Investigating a qualifying disclosure

- 4.17 The College will acknowledge receipt of a disclosure within a reasonable period, assuming the 'eligible whistleblower' can be contacted (including through anonymous channels). The School 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.

- 4.18 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 College intent is to complete an investigation as soon as practicable.
- 4.19 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. 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.
- 4.20 The College 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).
- 4.21 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.

Fair treatment of employees mentioned in disclosures

- 4.22 The College will take steps to ensure as far as is reasonably practicable, the fair treatment of employees mentioned in a disclosure that qualifies for protection:
- disclosures will be managed confidentially, when it is practical and appropriate in the circumstances;
 - when an investigation needs to be undertaken, the process will be objective and fair;
 - employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.
- 4.23 The College employee assistance program (EAP) services will be available to employees affected by the disclosure, should they require that support.
- 4.24 The College will document the steps of the investigation, 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.

Confidentiality and records

- 4.25 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.
- 4.26 Exceptions to this are disclosures to ASIC, the Australian Federal Police, or a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or made with the consent of the discloser.
- 4.27 If a disclosure involves an issue which the College is required to report, the College may not be able to maintain the confidentiality of the identity of the discloser. This disclosure could include NSW Police, the NSW Office of Children's Guardian, NSW Education Standards Authority or the NSW Department of Education.
- 4.28 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.
- 4.29 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.
- 4.30 Confidentiality will be observed in relation to handling, managing and storing records.

Whistleblower protection and support

Confidentiality

- 4.31 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 to relevant exceptions, see Confidentiality and records, particularly, points 4.25 to 4.28 above*).
- 4.32 The College will protect an eligible whistleblower's identity by appropriately redacting documents and referring to the whistleblower in gender-neutral terms. It will also secure all documents and communicate them in a way that will maintain confidentiality.

Immunity

- 4.33 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.
- 4.34 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.

- 4.35 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.

Detriment

- 4.36 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.
- 4.37 Threats of detriment are also unlawful.
- 4.38 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.
- 4.39 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@pymblelc.nsw.edu.au
- 4.40 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 Chair of the Board via email at Board@pymblelc.nsw.edu.au
- 4.41 The College may also consider a range of other matters to protect an eligible whistleblower from the risk of suffering detriment and to ensure, so far as is reasonably practicable, fair treatment of individuals mentioned in a disclosure. Steps it may take include:
- Assessing whether anyone may have a motive to cause detriment. Information could be gathered from an eligible whistleblower about:
 - the risk of their identity becoming known;
 - who they fear might cause detriment to them;
 - whether there are any existing conflicts or problems in the workplace; and
 - whether there have already been threats to cause detriment.
 - Analysing and evaluating the likelihood of each risk and evaluating the severity of the consequences;
 - 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;
 - Monitoring and reassessing the risk of detriment where required. The risk of detriment may increase or change as an investigation progresses, and even after an investigation is finalised;

- Taking steps to ensure that:
 - disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
 - each disclosure will be assessed and may be the subject of an investigation;
 - the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed.

4.42 Remedies available to an eligible whistleblower for being subjected to detriment could include:

- Compensation;
- Injunctions and apologies;
- Reinstatement of a person whose employment is terminated;
- Exemplary damages.

4.43 Whilst the College employee assistance program (EAP) services will be available to eligible whistleblowers who are employees, if a whistleblower is not an employee and wishes to obtain support, such as counselling or other professional support, they should contact the Principal.

Contact

4.44 If you have any queries about this policy, you should contact either the Principal via email to principal@pymblelc.nsw.edu.au or the Company Secretary via email to secretary@pymblelc.nsw.edu.au.

4.45 This Policy is available on the College portals, to Board members and employees.

4.46 This policy is not intended to extend responsibilities of the College beyond the law or to impose any contractual obligations on the College.

4.47 The College reserves the right to change or modify this policy at any time by notice on the College portal.

5 Guidelines

5.1 Nil

6 Responsibilities

6.1 Principal

6.2 Chair of the Board

7 Related Documents

7.1 Child Protection Policy

- 7.2 Complaints Policy
- 7.3 Discrimination, Harassment and Workplace Bullying Policy
- 7.4 Grievance and Dispute Resolution Policy
- 7.5 Gifts and Services Policy
- 7.6 Staff Code of Behaviour

8 Authorisation

- 8.1 Principal
Dr Kate Hadwen
- 8.2 Chair of the Board
James Hunter

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