

Policy and Procedure Manual

Whistleblower

1. Rationale

St Leonard's College is committed to ensuring a robust culture of openness and feedback in which concerns, and complaints are addressed appropriately and are handled respectfully and fairly, and in a timely manner.

This policy falls within the College's governance policy framework and forms part of the College's risk management system. The College is committed to implementing procedures that comply with the school's legal obligations in relation to the protection of eligible whistleblowers and to the management of any eligible disclosure they make.

The purpose of this policy is to set out the principles, guidelines and procedures governing the College's approach to the protection of whistleblowers and the management of relevant disclosures.

2. Aims

The aims of this policy are to:

- 2.1. comply with the requirements of the Treasury Laws Amendment (Enhancing Whistleblowers Protections) Act 2019 (Cth) (the Act), the Corporations Act 2001 (Cth) and other relevant legislation
- 2.2. ensure eligible whistleblowers are protected as set out in the legislation
- 2.3. ensure eligible disclosures are managed appropriately and in compliance with legislation.

3. Scope

3.1. This policy applies to:

- any person wishing to make a disclosure; and
- any person authorised to receive a disclosure.

3.2. This policy does not apply to:

- complaints or allegations of staff misconduct;
- complaints or allegations made by students or parents;
- personal or professional work-related grievances by staff;
- disclosures about reportable conduct; and
- unlawful discrimination, harassment or bullying.

The correct mechanism for complaints or concerns outlined in clause 3.2 above may include the Grievance Policy, Equal Employment Opportunity and Anti-discrimination Policy, and Privacy Policy.

St Leonard's College is committed to child safety and has a zero tolerance of child abuse. In the context of this policy, concerns that arise in relation to Child Safe Standards should be raised under the terms of the Child Safe Policy in the first instance.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 1 of 17
----------------------------	------------	------------------	-------------------	--------------

Policy and Procedure Manual

Whistleblower

4. Principles

- 4.1. St Leonard's College believes that complaints are an important way in which the College community can provide the College with feedback and so form the basis for future improvements. The College will undertake to respond to both the specific and (where applicable) the systemic issues raised by the complaint.
- 4.2. Where possible the College encourages concerns and complaints to be identified and resolved speedily and informally.
- 4.3. The person raising the concern or complaint may not be satisfied that the issue has been addressed or resolved. In this case, whether or not the issue has been the subject of the College's complaint mechanisms (for example, the Grievance Policy), the person may decide to make a disclosure. Such action will be dealt with under the terms of the College's Whistleblower Policy.

5. Key Definitions

5.1. Legal Status of St Leonard's College

The legal status of St Leonard's College is as a company limited by guarantee, regulated by the *Corporations Act 2001* (Cth)].

5.2. Whistleblowing

Whistleblowing is the disclosure of information by an individual (the 'discloser') to an 'eligible recipient' when the discloser has 'reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances in relation to the regulated entity'¹. The disclosure may not involve unlawful conduct but may indicate a 'systemic issue that the relevant regulator should know about.'²

5.3. Whistleblower

A whistleblower is defined as anyone who discloses wrongdoing.

5.4. Eligible Whistleblower

The conditions under which a whistleblower becomes eligible for protection are set out in the Act. An eligible whistleblower includes someone who is or has been³:

- a current or former officer of the College as the regulated entity. This will include Council members as directors of the College and the secretary, even if the secretary is not a Council member
- a current or former employee of the College
- an individual who currently supplies or has previously supplied services or goods to the College (whether paid or unpaid). This includes contractors, suppliers and volunteers and any employees of those who supply services or goods
- a relative or dependent of any of the above.

¹ The *Whistleblower Act*, Section 1317AA (4).

² Whistleblower Policy: Draft regulatory guidance <https://download.asic.gov.au/media/5226945/attachment-to-cp321-published-7-august-2019.pdf>.

³ The *Whistleblower Act*, Section 1317AAA.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 2 of 17
----------------------------	------------	------------------	-------------------	--------------

5.5. Ineligible whistleblower

The definition of an eligible whistleblower does not extend to a consumer or customer of the company. That is, for the purpose of this policy, the whistleblowing protections cannot be guaranteed to extend to parents or students in relation to concerns and allegations of misconduct or improper behaviour raised by parents or students. These concerns and allegations should be dealt with using the College's Grievance Policy and procedures. The eligible recipient will inform the whistleblower as to their eligibility status/protection under the terms of the Whistleblower Policy and/or will direct the whistleblower to the correct complaints and grievance mechanism, as appropriate.

5.6. Making a disclosure

A whistleblower can make a disclosure anonymously and/or outside business hours.

5.7. Eligible disclosure

Eligible (or protected) disclosures qualify for protection under the Act. Disclosures can qualify for protection even if the disclosure turns out to be incorrect.

When the eligible recipient receives the whistleblower's disclosure, the first thing the recipient will do is to decide or seek advice as to whether the disclosure qualifies as a protected disclosure and so is to be managed under the terms of the Whistleblower Policy. The eligible recipient will inform the whistleblower of this decision.

5.8. Protected disclosure

The following three conditions must be met for a disclosure to qualify as a protected disclosure:

- 5.8.1. the whistleblower must have 'reasonable grounds to suspect misconduct or an improper state of affairs'⁴ relating to the College:
- the whistleblower will have reasonable grounds if their suspicion is founded on facts and information available to the whistleblower and is a suspicion that other people in a similar position might reasonably draw. The whistleblower does not need to prove their suspicions.

A disclosure will not qualify as a protected disclosure if the whistleblower's disclosure is not based on reasonable grounds, the disclosure is unfounded (e.g. could be conjecture, malicious, frivolous or vexatious) or does otherwise not qualify for protection under the legislation.

- 5.8.2. the subject of a protected disclosure must concern the College and its operation and could include (but not limited) to:
- misconduct
 - dishonest activity
 - illegal activity
 - behaviour that is a danger to the public or the natural environment
 - behaviour that is contrary to Child Safe Standards

⁴ The Whistleblower Act, Section 1317AA (4).

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 3 of 17
----------------------------	------------	------------------	-------------------	--------------

Policy and Procedure Manual

Whistleblower

- behaviour that is a danger to the financial system, such as corruption, bribery, fraud or money laundering
- improper accounting or financial reporting practices
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or who is planning to make a disclosure.

5.8.3. the disclosure must be made to an eligible recipient.

5.9. Eligible recipient

In order to qualify for protection, the disclosure (including an anonymous disclosure) must be made to an 'eligible recipient'. St Leonard's College makes provision for the reporting of a whistleblowing allegation (disclosure) to the following eligible recipients:

- 5.9.1. The Principal: ConfidentialDisclosures@stleonards.vic.edu.au
- 5.9.2. The Chair, College Council: collegechair@stleonards.vic.edu.au or
- 5.9.3. The Deputy Chair, College Council: DeputyChairCouncil@stleonards.vic.edu.au
- 5.9.4. For matters associated with alleged financial misconduct, disclosure may also be made to the College auditors, Deloitte Australia, 550 Bourke Street, Melbourne, Victoria, 3000.

5.10. Support for potential whistleblowers

The College will provide support for potential whistleblowers in the following ways:

- 5.10.1. via the Principal, the Chair College Council, the Deputy Chair College Council
- 5.10.2. if the whistleblower is a member of staff, they may wish to seek support from the College's employee assistance program (EAP)
- 5.10.3. the College recognises that in some situations, the effect of an eligible disclosure may impact on employees other than the whistleblower. The support provided by the College to the whistleblower extends to them as well.

5.11. External Disclosures

A disclosure may qualify for protection if:

- 5.11.1. it is made to ASIC⁵
- 5.11.2. an eligible whistleblower seeks legal advice about the issue in which case the legal practitioner could become the eligible recipient.

5.12. Public Interest Disclosures

A whistleblower may make a public interest disclosure to a journalist or a member of parliament under conditions prescribed in the Act. These conditions⁶ include:

- 5.12.1. the disclosure concerns information that the whistleblower has reasonable grounds to believe is in the public interest and

⁵ This is true whether the school is a company under the terms of the *Corporations Act 2001* (Cth) or a trading incorporated association under the *Associations Incorporation Reform Act 2012* (Vic)

⁶ The *Whistleblower Act*, Section 1317AAD (1). This section sets out the conditions in more detail.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 4 of 17
----------------------------	------------	------------------	-------------------	--------------

Policy and Procedure Manual

Whistleblower

- 5.12.2. the discloser has already made a protected disclosure to ASIC or APRA or other relevant Commonwealth regulator at least 90 days prior and the discloser has reasonable grounds to believe no action has been or is being taken, and
- 5.12.3. the discloser has given the regulator written notice of their intention to make a public interest disclosure. Please refer to **Appendix B** for further details on making a public interest disclosure.

5.13. Emergency Disclosures

A whistleblower may make an emergency disclosure to a journalist or a member of parliament under conditions prescribed in the Act. These conditions⁷ include:

- 5.13.1. the disclosure concerns information that the whistleblower has 'reasonable grounds to believe concerns' a matter of 'substantial and imminent danger to the health' and safety of a person (or persons including, in the context of a school, children) or to the environment⁸ and
- 5.13.2. the discloser has already made a disclosure to ASIC or APRA or other relevant Commonwealth regulator and
- 5.13.3. the discloser has given the regulator written notice of his or her intention to make an emergency disclosure. Please refer to **Appendix C** for further details on making an emergency disclosure.

5.14. Whistleblower Legal Protections

A whistleblower making an eligible disclosure is protected under the terms of the legislation.

The key whistleblower protections are:

- 5.14.1. the identity of the whistleblower (and information that could identify the whistleblower) will remain confidential unless the whistleblower consents to their identity being disclosed
- 5.14.2. the whistleblower is protected from criminal, civil and administrative liability in relation to their disclosure
- 5.14.3. the whistleblower will not be subject to disciplinary action (for example, an official warning, termination of contract, change of contract to the detriment of the whistleblower) in response to a whistleblowing action
- 5.14.4. the whistleblower will be protected from retaliation, harassment, victimisation or the threat of such behaviour (for example, discrimination in how the whistleblower is treated by the College, reputational damage)
- 5.14.5. the protections offered to the whistleblower extend to the threat of the above detriments
- 5.14.6. the whistleblower will be provided with support.

⁷ The *Whistleblower Act*, Section 1317AAD (2). This section sets out the conditions in more detail.

⁸ The *Whistleblower Act*, Section 1317AAD (2)(b).

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 5 of 17
----------------------------	------------	------------------	-------------------	--------------

6. Roles and Responsibilities

6.1. College Council

The College Council, as the governing board, is responsible for:

- 6.1.1. determining this policy and reviewing it according to the policy review cycle
- 6.1.2. responding to an eligible disclosure when called upon to do so
- 6.1.3. monitoring the number, nature and outcome of whistleblowing events, bearing in mind the need for strict confidentiality.

6.2. The Principal

The Principal is responsible for:

- 6.2.1. overseeing a College culture in which concerns, and complaints are addressed appropriately and are handled respectfully and fairly
- 6.2.2. determining the whistleblowing procedures and ensuring they are up-to-date
- 6.2.3. ensuring that eligible recipients are aware of their roles and responsibilities
- 6.2.4. ensuring the Whistleblower Policy is appropriately communicated to staff, contractors and the wider college community
- 6.2.5. setting up an appropriate process to manage and investigate a disclosure brought under this policy
- 6.2.6. retaining a confidential register of protected disclosures (listing the date, subject and resolution) for reporting to the governing board on an annual basis and to be available to the authorities if required
- 6.2.7. providing training for eligible recipients; retaining a record of the training.

6.3. Eligible Recipients

Eligible recipients are responsible for:

- 6.3.1. understanding their role as an eligible recipient
- 6.3.2. participating in relevant training
- 6.3.3. knowing and understanding the College's whistleblower policies and procedures
- 6.3.4. being ready to receive and respond to a disclosure when that happens.

6.4. Staff

Staff are responsible for knowing and understanding the College's Whistleblower Policy and procedures.

7. Related Policies

Child Safe Policy

Grievance Policy

Equal Employment Opportunities and Anti-discrimination Policy

Privacy Policy

8. Communication of this Policy

College Council

The Whistleblower policy is available to College Council members in their induction information and online via their STL Link Council files.

Staff

The Whistleblower Policy is available to staff via their initial employment and induction information, and online via the STL Link intranet - Policies and Incident Reporting.

Contractors and the College community

The location of policies is communicated annually to the community via the St Leonard's College Newsletter.

The Whistleblower policy is available via the College's public website.

The Whistleblower policy is available to our contractors via the SAM4Schools platform.

9. Procedural Documents

The Appendices provide the following procedural documentation to support the implementation of this policy-

Appendix A - Making a protected (or anonymous) disclosure

Appendix B - Making a public interest disclosure

Appendix C - Making an emergency disclosure

Appendix D - Receiving a disclosure

Appendix E - Investigating a disclosure

Appendix F - Support for whistleblowers

Appendix G - How to handle victimisation or the threat of victimisation

<i>Document ID: Whistleblower</i>	<i>Issue #: 3</i>	<i>Issue Date: 2021</i>	<i>Review Year: 2024</i>	<i>Page 7 of 17</i>
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Policy and Procedure Manual

Whistleblower

10. Reviewed by

Principal, College Council

11. Approved by

Chair of College Council



Signature

28 October 2021

Date

12. Reason for Revision

Scheduled review of policy

All policies at St Leonard's College are subject to a three (3) year review cycle (unless otherwise stated) irrespective of any amendments made during this period.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 8 of 17
----------------------------	------------	------------------	-------------------	--------------

Policy and Procedure Manual

Whistleblower

1. Making a protected (or an anonymous) disclosure

- 1.1. If possible, and as a first step, the whistleblower should seek to raise their concern informally or through the Grievance Policy with the Principal, the Chair of College Council or the Deputy Chair of Council. This could be done verbally or in writing.
- 1.2. If the whistleblower does not feel this is possible or if the whistleblower is concerned about how the issue will be handled, the whistleblower may find it helpful to seek advice from someone they trust. The whistleblower could, for example, speak to the Principal, the Chair of College Council or the Deputy Chair of College Council within the College or seek legal advice from a legal practitioner external to the College.

Note: If the whistleblower is making an anonymous protected disclosure:

If the whistleblower feels they may decide to make an anonymous disclosure, the whistleblower may still find it helpful to seek advice from someone they trust. It could be that the person will be outside the College, for example, a legal practitioner external to the College. If the whistleblower is a member of staff, they may wish to seek support from the College's employee assistance program (EAP).

If the whistleblower makes a disclosure using an email address from which their identity cannot be determined, the disclosure will be treated as anonymous.

- 1.3. Once the whistleblower has decided that they wish to make a protected disclosure under the terms of the Whistleblower Policy, they are able to do so to any eligible recipient as listed in clause 5.9.
- 1.4. If the whistleblower sought advice from a legal practitioner, they could make the disclosure to that person.
- 1.5. To help the recipient decide whether the disclosure is eligible for protection under the terms of this policy, the whistleblower should set out their concern(s) in writing stating the date, information and facts on which they have based their concern.
- 1.6. The whistleblower should only disclose the names and contact details of other people connected to the disclosure to the extent that it is necessary for the recipient to understand the concern the whistleblower is raising.
- 1.7. When the eligible recipient receives the whistleblower's disclosure, the first thing the recipient will do is to decide or seek advice as to whether the disclosure qualifies as a protected disclosure and so is to be managed under the terms of the Whistleblower Policy.
- 1.8. The eligible recipient will let the whistleblower know the outcome of this decision. If the whistleblower has lodged the disclosure using the designated confidential email address set out in clause 5.9 of this policy, the eligible recipient will be able to reply to the whistleblower even if they have made an anonymous disclosure.

The advantage of using the designated confidential email address is that the recipient will be able to continue to communicate with the whistleblower in this way even if the whistleblower has made an anonymous disclosure.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 9 of 17
----------------------------	------------	------------------	-------------------	--------------

Policy and Procedure Manual

Whistleblower

- 1.9. By law, the College is required to keep the whistleblower's name and details, and the details of any other person who may be connected to the disclosure confidential unless they give permission for their confidentiality to be waived.
- 1.10. If the whistleblower is not satisfied with the way the College has handled the disclosure process, the whistleblower could lodge a complaint with ASIC.

2. Resources to assist you

- 2.1. ASIC has an information sheet for whistleblowers (INFO 238) <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-rights-and-protections/> (accessed 17 July 2019)

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 10 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. Making a protected public interest disclosure

- 1.1. In order to make a protected public interest disclosure, the whistleblower must first decide that it is reasonable to consider that making a further disclosure of this information is in the public interest.
- 1.2. Secondly and in addition, the whistleblower is only able to make a protected public interest disclosure if the whistleblower has already made a disclosure to ASIC or APRA or other relevant Commonwealth regulator at least 90 days before and the whistleblower has reasonable grounds to believe no action has been taken or is being taken.
- 1.3. Thirdly and in addition, following the conclusion of the 90 days, the whistleblower must give the regulator written notice, including enough information to enable the regulator to identify the previous disclosure, that the whistleblower intends to make a public interest disclosure.
- 1.4. If all these conditions have been met, the whistleblower may make a disclosure to a journalist or to a Commonwealth or State member of parliament.
- 1.5. The information the whistleblower discloses to the journalist or member of parliament must only be enough to inform them of the misconduct or improper state of affairs.
- 1.6. If the whistleblower discloses their concerns to a journalist or member of parliament or in public in another way (e.g. using social media) and the above conditions do not apply, the protections provided by the Whistleblower Policy may not apply.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 11 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. Making a protected emergency disclosure

- 1.1. In order to make a protected emergency disclosure, the whistleblower must first have 'reasonable grounds to believe' the disclosure concerns a matter of 'substantial and imminent danger to the health and safety of a person (or persons including, in the context of a school, children) or to the environment'.
- 1.2. Secondly and in addition, the whistleblower is only able to make a protected emergency disclosure if the whistleblower has already made a disclosure to ASIC or APRA or other relevant Commonwealth regulator and the whistleblower has reasonable grounds to believe no action has been taken or is being taken.
- 1.3. Thirdly and in addition, the whistleblower must give the regulator written notice, including sufficient information to enable the regulator to identify the previous disclosure, that the whistleblower intends to make an emergency disclosure.
- 1.4. If all these conditions have been met, the whistleblower may make a disclosure to a journalist or to a Commonwealth or state member of parliament.
- 1.5. The information the whistleblower discloses to the journalist or member of parliament must only be enough to inform them of the misconduct or improper state of affairs.
- 1.6. If the whistleblower discloses their concerns to a journalist or member of parliament or in public in another way (e.g. using social media) and the above conditions do not apply, the protections provided by the Whistleblower Policy may not apply.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 12 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. Receiving a disclosure

- 1.1. The recipient will be listed as an eligible recipient (of a disclosure by the whistleblower) in section 5.9 of this Whistleblower policy and will have participated in training in relation to this function.
- 1.2. When the eligible recipient receives the disclosure, the first thing they must do is to form an opinion or take advice as to whether the disclosure qualifies as a protected disclosure and so is to be managed under the terms of this Whistleblower Policy.

The eligible recipient should stay neutral. They do not need to take a position as to whether the suspicion or allegation is true or not; all they need to make a judgment on is, as to whether or not they have 'reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances in relation to the regulated entity'.

This may well be a complex decision and could well be made more complicated by the need for strict confidentiality. It is, therefore, wise for the recipient to seek legal advice. To this end, it is recommended that the College provides all eligible recipients, and specifically the person(s) whom the College has designated to receive disclosures, with an avenue for direct contact with the College's appropriate legal advisers or an equivalent. Eligible recipients should contact the Finance Manager to obtain the current list of the College legal representative(s).

- 1.3. The eligible recipient will wish to let the whistleblower know the outcome of this decision. If the whistleblower has lodged the disclosure using the designated confidential email address (see section 5.9 of this policy), the recipient will be able to reply to the whistleblower even if the whistleblower has made an anonymous disclosure.

The use of the designated confidential email address will enable the recipient to continue to communicate with the whistleblower in this way even if the whistleblower has made an anonymous disclosure.

- 1.4. By law, the recipient is required to keep the whistleblower's details and the details of any other person who may be connected to the whistleblower confidential unless those concerned give permission for their confidentiality to be waived.
- 1.5. Having established whether or not the disclosure is a protected disclosure under the terms of this policy, the recipient will then, with the whistleblower's permission, take steps to refer the matter to someone who is in a position to investigate or to oversee an investigation into the information. That may involve the recipient taking the following steps:
 - a) the recipient seeking further legal advice.
 - b) the recipient communicating with the whistleblower in order to gather further information about the allegation.

In seeking additional information, the recipient should make it clear to the whistleblower that information the whistleblower provides:

- should continue to protect the discloser's identity and that of anyone else potentially implicated in the matter

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 13 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

- should only be as much information as is necessary to guide the setting up of an investigation.

If the disclosure has been made anonymously, this communication will only be possible if the whistleblower has been made using the designated confidential email address.

- c) the recipient referring the matter to the Principal, the Chair of College Council, the Deputy Chair of College Council or another appropriate person for investigation, taking care to protect confidentiality and to ensure the referral is to someone who isn't directly or indirectly involved in the allegation of misconduct or improper activity.
- 1.6. Once the matter has been referred to an appropriate person, the recipient would normally not take any further part in the matter.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 14 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. Investigating a disclosure

- 1.1. The College will investigate all eligible disclosures as soon as is practicable.
- 1.2. The nature and timing of the investigation will depend on the concern or allegation that has been made.
- 1.3. The College will appoint an independent investigator or an investigation team, which may be internal or external to the College depending on the nature of the allegation.
- 1.4. The investigator will undertake some or all of the following tasks:
 - a) seek further information and evidence from the whistleblower either in writing or in person
 - b) seek information and evidence from other sources as appropriate, e.g. interviews, reviewing documentation, etc.
 - c) seek advice from external professionals
 - d) refer the matter to regulators or other authorities if necessary
 - e) draft a report to summarise their findings
 - f) make recommendations for action.
- 1.5. The investigation report and recommendations will be tabled for the Principal and College Council unless these parties are the subject of the allegations.
- 1.6. The investigator will make recommendations to College Council as to whether and how the findings should be communicated back to the whistleblower, to the College community, and/or to the authorities.
- 1.7. The investigator will also make recommendations to College Council as to the archiving of the report, bearing in mind the need for strict confidentiality.
- 1.8. If the disclosure is made to regulators or other authorities, their investigation process will normally take precedence over that of the College.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 15 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. Support for Whistleblowers and others involved in the process
 - 1.1. Staff may seek support from the College's employee assistance program (EAP)
 - 1.2. The College has appointed the Principal, the Chair of College Council and the Deputy Chair of College Council as points of contact for a potential whistleblower to approach in order to seek advice.
 - 1.3. The whistleblower may choose to have an appropriate support person (or persons) present in any meetings with the investigator or other authorities. For example, this may include (but not be limited to) a legal representative, a translator and/or other support person, as appropriate.
 - 1.4. The College recognises that in some situations, the effect of an eligible disclosure may impact on employees other than the whistleblower. The above support provided by the College extends to them as well.
 - 1.5. The effect of an eligible disclosure may also impact on some against whom allegations have been made. They are also entitled to support from the College and will be given an opportunity to respond.

Document ID: Whistleblower	Issue #: 3	Issue Date: 2021	Review Year: 2024	Page 16 of 17
----------------------------	------------	------------------	-------------------	---------------

Policy and Procedure Manual

Whistleblower

1. What to do if the whistleblower believes they are or have been victimised or threatened with some form of retaliation
 - 1.1. Clause 5.14 of this policy sets out the legal protections that apply to an eligible disclosure under this policy.
 - 1.2. If the whistleblower believes they have suffered a detriment or a threat of detriment as a result of the disclosure, the whistleblower is advised to report that to the Principal, the Chair of College Council or Deputy Chair of College Council immediately.
 - 1.3. If the whistleblower believes it is not appropriate to report the detriment or threat of detriment to the Principal, the Chair of College Council or the Deputy Chair of College Council, the whistleblower is advised to report the matter to an eligible recipient (see clause 5.9) or to a legal practitioner immediately.
 - 1.4. If the whistleblower believes they have suffered a detriment or a threat of detriment as a result of the disclosure, they may be able to seek compensation or other remedy through the courts.

<i>Document ID: Whistleblower</i>	<i>Issue #: 3</i>	<i>Issue Date: 2021</i>	<i>Review Year: 2024</i>	<i>Page 17 of 17</i>
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