

1.09

MERCY EDUCATION POLICY 1.09 WHISTLEBLOWER POLICY

Introduction

The Corporations Act 2001 (the Act) imposes obligations on certain types of organisations to protect whistleblowers. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth) amended the Act and new protections came into operation on 1 July 2019. The new legislation allows employees and contractors and their relatives and dependants, to make protected disclosures of information to 'senior managers'. In Mercy schools, this would include the employer (Mercy Education Ltd), the principal and deputy principal(s) and employees who have authority over the direction or management of the school.

Disclosures may be made where a whistleblower has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the school or to Mercy Education Ltd (Mercy Education). Enhanced protections for whistleblowers allow for anonymous disclosures and expand the prohibition against victimisation. A court may make orders including orders for compensation where a whistleblower is subjected to detriment for making a protected disclosure.

Purpose

This Whistleblower Policy (**Policy**) is underpinned by a strong commitment to building a culture in Mercy Education and its schools that reflects sound governance and ethical behaviour. In accordance with that commitment, the Policy provides a foundation for investigation and response where there are reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances, in relation to Mercy Education and/or its schools.

The Policy provides protection to whistleblowers by establishing a mechanism for concerns to be raised on a confidential basis without fear of reprisal.

Policy Coverage

The Policy applies in respect of relevant disclosures made under the Policy by individuals who are, or have been, officers, associates, employees or contractors performing work for Mercy Education and/or its schools (including individuals, whether paid or unpaid, who supply goods or services to Mercy Education and/or its schools and their employees), and their relatives and dependants.

It is recognised that there are forms of alleged employee conduct committed against, with or in the presence of a child, such as relevant sexual offences, sexual misconduct, physical violence, behaviour that causes significant emotional or psychological harm and significant neglect that constitute 'reportable allegations'. The required management of these forms of conduct is dealt with under the Reportable Conduct Scheme. Other obligations may also be relevant, such as reporting of alleged criminal behaviour to police and mandatory reporting to DHHS.

Definitions

Detriment:

- dismissal of an employee
- injury of an employee in his or her employment
- alteration of an employee's position or duties to his or her disadvantage
- discrimination between an employee and other employees of the same employer
- harassment or intimidation of a person
- harm or injury to a person, including psychological harm
- any other damage to a person

Disclosure: information provided by a whistleblower who has reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances, in relation to Mercy Education and/or its schools not including disclosures about a personal work-related grievance.

Personal work-related grievance: a grievance about any matter in relation to a person's employment, or former employment, having personal implications, and the information does not have significant implications, beyond the personal implications, for Mercy Education and/or its schools.

Misconduct: conduct by a person or persons connected with Mercy Education and/or its schools which the whistleblower has reasonable grounds to suspect, is (among other things):

- dishonest;
- fraudulent;
- corrupt;
- negligent;
- illegal (including theft, drug sale/use, criminal damage etc);
- in breach of Commonwealth or state legislation or local authority by-laws;
- unethical (representing a breach of the Mercy Education Code of Conduct or generally);
- other serious improper conduct;
- an unsafe work practice;
- representative of gross mismanagement, serious and substantial waste and/or a repeated breach of administrative procedures; and
- other conduct which may cause financial or non-financial loss to Mercy Education and/or its schools or be otherwise detrimental to the interests of Mercy Education and/or its schools.

Reasonable grounds to suspect: more than mere conjecture and would usually require some factual basis.

Senior Management: the employer, the principal and deputy principal and employees of Mercy Education and/or its schools who have authority over the direction or management of Mercy Education and/or its schools.

Whistleblower: an officer, employee or a contractor performing work or providing goods for Mercy Education and/or its schools, or an associate, relative or dependant of such an officer, employee or contractor, who makes a disclosure.

Whistleblower Investigations Officer : the person who may be appointed, either internally or externally, by the Whistleblower Protection Officer to conduct an investigation into disclosures.

Whistleblower Protection Officer: the member of senior management appointed at Mercy Education and/or its schools to receive disclosures and protect the interests of Whistleblowers in accordance with this Policy.

Policy Statement

01 Protections and support

Mercy Education encourages all persons covered by this Policy to report misconduct or an improper state of affairs or circumstances, in relation to Mercy Education and/or its schools and is committed to protecting and supporting those persons who do so.

The protections provided to a whistleblower under this Policy apply to the disclosure of information where the whistleblower has reasonable grounds to suspect misconduct or an improper state of affairs or circumstances in relation to Mercy Education and/or its schools and do not apply in circumstances where a person discloses information that they know to be untrue. Information that is disclosed regarding matters that do not relate to misconduct or an improper state of affairs or circumstances in relation to Mercy Education and/or its schools do not qualify for protection under legislation.

A whistleblower under this Policy will not be subjected to any detriment or threat of detriment for making a disclosure and will be covered by all of the protections provided under Commonwealth legislation providing for whistleblower protections. Any alleged detriment should be reported to the Whistleblower Protection Officer, and may be dealt with under the Mercy Education disciplinary procedures. A court may make orders including orders for compensation where a whistleblower is subjected to detriment for making a disclosure.

Mercy Education will maintain the confidentiality of a whistleblower and any information that would be likely to lead to the identification of the whistleblower, subject to law and any authorisation by the whistleblower allowing for identification in the context of an investigation of a disclosure.

A person who is considering making a disclosure may contact the Whistleblower Protection Officer to obtain additional information before making a disclosure.

(Note: There are also specific protections provided in the tax whistleblower regime under the Taxation Administration Act.)

02 How disclosures may be made

Disclosures may be made, either verbally or in writing, to any member of senior management or the Whistleblower Protection Officer if preferred. Disclosures may be made anonymously and still be protected.

A whistleblower will also qualify for protection in relation to disclosures made to:

- ASIC, APRA or another prescribed Commonwealth body
- A legal practitioner for the purpose of obtaining legal advice or legal representation about the provisions of the Whistleblower legislation
- A member of Federal or State Parliaments
- A journalist

03 How investigations are to be conducted

Investigation

All disclosures that qualify for protection will be subject to thorough investigation.

The Whistleblower Protection Officer will investigate the disclosure, or may elect to appoint a Whistleblower Investigations Officer to investigate. This will be a decision of the Whistleblower Protection Officer and will depend on the nature and extent of the allegation(s) contained in the disclosure.

The whistleblower will be kept informed of the progress and outcome of the investigation by the Whistleblower Protection Officer, subject to privacy considerations of individuals involved in the investigation.

All reports and investigation procedures will be dealt with promptly.

Investigation report

The person conducting the investigation, whether that be the Whistleblower Protection Officer or a Whistleblower Investigations Officer, will prepare an investigation report. The investigation report will provide a summary of the facts of the disclosure and of the investigation. It will also provide recommendations as to findings of whether any allegation is substantiated or unsubstantiated and may also provide recommendations on actions, if any, that may be taken accordingly.

Decision-making

The investigation report will be provided by the Whistleblower Protection Officer to the relevant decision-maker at Mercy Education who will make a final decision in relation to the recommended findings and actions to be taken, if any. In circumstances where the investigation is conducted by a Whistleblower Investigations Officer, the investigation report will also be provided to the Whistleblower Protection Officer.

The Whistleblower Protection Officer will inform the whistleblower of the outcome of any investigation and retain a co-ordinating role in monitoring the implementation of any decided actions.

04 Ensuring fair treatment for employees mentioned in disclosures

Procedural fairness

The principles of procedural fairness will apply to the conduct of investigations regarding disclosures. The person against whom any relevant allegations are made will be informed accordingly and will be provided an opportunity to respond. Any decision regarding outcomes of an investigation will be made by an unbiased decision-maker.

Whistleblowers can rely on the protection afforded by this Policy and the relevant legislation, providing that the person making any disclosure has reasonable grounds to suspect misconduct. If a whistleblower has any concerns regarding any detriment as a result of a report made under this Policy, they should immediately contact the Whistleblower Protection Officer.

05 How the policy is to be made available to employees

This Policy is to be made available to all officers, employees and contractors at Mercy Education and/or its schools by way of the Mercy Education website. The Policy will be the subject of induction and subsequent in-service refresher training.

06 Examples of Disclosures

Inappropriate Electronic Material

An employee brings to work a personal DVD containing image files of adults that are sexually explicit. They download the images to their work computer and then decide to circulate some of the images to colleagues. A colleague who receives the images uses the provisions of the Whistleblower

Protection Policy to report the matter confidentially, as the actions are in breach of acceptable ICT Usage policies.

Suspicious Behaviour involving School Funds

An employee is relieving a colleague who is on annual leave and is asked by a parent why they have not received a receipt for the last cash payment they made to the school. The replacement employee advises that they will follow up the parent's inquiry. The replacement employee is suspicious that fraudulent misconduct may be occurring. They decide to report the matter confidentially and in line with the Whistleblower Protection Policy.

07 Who to Contact

Whistleblower Protection Officer contact details at Mercy Education:

Mr Christopher Houlihan Chief Executive Officer Mercy Education 720 Heidelberg Road ALPHINGTON VIC	Ms Sylvia Williams RSM Board Chair Mercy Education 720 Heidelberg Road ALPHINGTON VIC
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If the matter of disclosure concerns the conduct of a Director of the Board of Mercy Education, then contact should be made to the Institute of Sisters of Mercy of Australia and Papua New Guinea (ISMAPNG) through its Professional Standards office, through Ms Nicki Patten, Director, Standards & Legal, 720 Heidelberg Road (PO Box 5067), ALPHINGTON VIC 3078 on P: (03) 9490 6600
M: 0409 798 541

Associated Policies

- 1.06A Complaints Management
- 1.07A Mercy Education Privacy Policy

Related Documents

Whistleblower Policy Catholic Education Commission of Victoria Ltd
Corporations Act 2001
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)
Corporations Amendments (Proprietary Company Thresholds) Regulations 2019

Review History:

Version	Date Released	Next Review	Author	Approved
1.0	December 2019	December 2022	MEL Board	MEL Board