

# 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 legislation allows current and former employees, directors and contractors, and their relatives, and dependants, to make protected disclosures of information to 'senior managers'. In Mercy Education schools, this would include the employer (Mercy Education Ltd), the principal, 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, an improper situation or circumstance, in relation to the school or to Mercy Education Ltd (Mercy Education). Enhanced protections for whistleblowers provide for anonymous disclosures and expand the prohibition against victimisation. A court may make orders including compensation where a whistleblower is subject 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 this commitment, the Policy fosters a safe speak up culture and provides a safe and secure means for disclosing misconduct. This Policy explains how concerns can be reported, the protections that will apply to whistleblowers, how concerns will be investigated, what a whistleblower can expect, and other sources of information that may be helpful to whistleblowers in reporting concerns, in relation to Mercy Education and/or its schools.

The policy complies with the Australian Securities and Investment Commission (ASIC) Corporations (Whistleblower Policies) Instrument 2019/1146, and rigorous governance requirements as detailed by the Australian Charities and Not-for-profits Commission (ACNC) and the Corporations Act 2001 (Cth) (Corporations Act).

## **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 various forms of alleged employee conduct committed against, with or in the presence of a child or young person, such as relevant sexual offences, sexual misconduct, physical violence, behaviour that causes significant emotional or psychological harm and significant neglect constitute 'reportable allegations'. The required management of these forms of conduct is dealt with under the Reportable Conduct Scheme in Victoria and Western Australia. Other statutory obligations may also apply, such as reporting alleged criminal behaviour to police and mandatory reporting to the Department of Fairness, Families and Housing (DFFH - Victoria), Department of Human Services (South Australia) and the Department of Communities (Western Australia).

## **Definitions**

ACNC: The Australian Charities and Not-for-Profits Commission

ASIC: The Australian Securities and Investment Commission

Board: The Directors of Mercy Education Limited

Detriment includes:

- dismissal of an employee
- injury of an employee in their employment
- alteration of an employee's position or duties to their disadvantage
- discrimination between an employee and other employees of the same employer
- harassment, threats or intimidation of a person
- harm or injury to a person, including psychological harm
- damage or threats to the property, business, financial position or reputation of a person
- threatening to carry out any of the above actions.

Disclosure/Disclosable matters:

Refers to information provided by a whistleblower who has reasonable grounds to suspect misconduct, an improper situation or circumstances, or breach of the law. It can include conduct that contravenes the Corporations Act, the Australian Securities, and Investments Commission Act 2001 (Cth), constitutes an offence against another Commonwealth law that is punishable by imprisonment for 12 months or more, represents a danger to the public or the financial system, or is prescribed by the Corporations Regulations 2001 (Cth).

To qualify for protection, the whistleblower must have reasonable grounds to suspect that the information they will disclose indicates misconduct. It does not include personal work-related grievances (as defined in this policy).

Eligible recipient: Refers to the person an eligible whistleblower must make their qualifying disclosure to, to qualify for protection. These include the Mercy Education Whistleblower Protection Officer, specific directors, the Company Secretary, the college auditor or a member of the audit team of Mercy Education, ASIC, the Australian Prudential Regulatory Authority (APRA), a Commonwealth body nominated for this purpose in the Regulations (not including the ACNC) or a legal practitioner if someone is seeking legal advice about whether the protections will apply to them.

Eligible whistleblower or whistleblower: A person eligible to make a qualifying disclosure to an eligible recipient, including an officer, employee, volunteer, or an employee of a person who supplies goods or services to Mercy Education, Mercy Education schools, or an associate or dependant of such an officer, employee, or supplier.

Misconduct: Conduct by a person or persons connected with Mercy Education, including schools governed by Mercy Education, where the whistleblower has reasonable grounds to suspect a matter:

- is a systemic, wilful, or serious breach of the law applicable to Mercy Education, or its internal policies
- poses a significant or serious threat to the health and safety of workers
- involves a serious mismanagement of Mercy Education resources
- involves victimisation of an individual or individuals for reporting a disclosable matter
- involves an instruction to conceal or attempt to conceal a serious wrongdoing
- interferes with a pending internal or external audit process
- is unethical and a breach of the Mercy Education Code of Conduct or a serious risk to the reputation or financial sustainability of Mercy Education
- is dishonest, fraudulent, corrupt, negligent, or illegal (including theft, drug sale/use, criminal damage etc.)
- is in breach of Commonwealth or State legislation, or local authority by-laws
- is conduct that may cause a loss (financial or non-financial) to a Mercy Education workplace or is otherwise detrimental to the interests of Mercy Education

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

Reasonable grounds: More than suspicion and usually accompanied by facts indicating misconduct.

School staff and employees refers to an individual working at Mercy Education or in a Mercy Education school who is:

- directly engaged or employed by Mercy Education
- a volunteer or a contracted service provider (whether a body corporate or any other person as an intermediary)

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 is appointed, either internally or externally, by the Whistleblower Protection Officer to investigate disclosures made by whistleblowers.

Whistleblower Protection Officer (WPO): a member of senior management appointed by Mercy Education and/or its schools to receive disclosures, protect the interests of Whistleblowers and determine whether a report falls within the scope of this Policy.

Whistleblower protections: the protections provided to whistleblowers to enable reporting of misconduct without fear of retribution or personal detriment

## Principles

Mercy Education is committed to ensuring there is a culture of disclosure where reasonable grounds exist of misconduct or the suspicion of misconduct. This policy enables individuals connected with Mercy Education and its schools to identify instances of wrongdoing and provides guidance on the process of raising a concern about suspected or actual misconduct in Mercy Education and/or its schools. Raising a concern can be difficult and individuals must feel supported to communicate any instance of suspected wrongdoing and be confident that Mercy Education has arrangements in place for handling disclosures with confidentiality. This includes having confidence that people authorised by Mercy Education to receive disclosures understand their obligations and will ensure they are handled appropriately.

## Policy Statement

### 01 Protections and support

Mercy Education encourages all persons covered by this Policy and who come forward in good faith to report a suspected improper situation based on a reasonable belief in relation to Mercy Education and/or its schools and is committed to protecting and supporting those persons who do so.

Mercy Education will maintain confidentiality by determining an appropriate time and place for the disclosure to be made and by treating sensitively any information that would likely to lead to the identification of the whistleblower

In addition, Mercy Education will protect and support any individual who makes a disclosure in good faith from any form of detrimental act or omission because of a disclosure. Mercy Education will also ensure that there are consequences for anyone who subjects a whistleblower to detriment in accordance with relevant policies or codes of conduct.

Any alleged detriment should be reported to the Whistleblower Protection Officer and may be dealt with under the relevant Mercy Education policy. A person who is considering making a disclosure may contact the Whistleblower Protection Officer to obtain additional information before making a disclosure.

### 02 Types of misconduct that may be a qualifying disclosure

The following types of misconduct may be a qualifying disclosure:

- breaches of Mercy Education's Code of Conduct
- issues of honesty or integrity, including internal fraud, theft, bribery and corruption;
- suspicious behaviour involving payroll or supplier payments
- conflicts of interest, including those relating to outside business interests, relationships, improper payments and donations;
- work practices that are unsafe
- breaches of privacy or confidentiality;
- breaches of modern slavery legislation and/or human rights standards
- a practice or behaviour of concern that relates to current or past employment of Mercy Education that has significant implications for Mercy Education or is otherwise a breach of law
- deliberate, inaccurate reporting of student enrolment numbers in a government census
- inappropriate electronic material or use of computers to circulate inappropriate material
- suspicious behaviour involving Mercy Education or school funds.

#### Inappropriate electronic material

An employee brings to work a personal DVD containing images 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 (Information Communication Technology) usage policies.

#### Suspicious behaviour involving Mercy Education or 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/service. 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.

### 03 Types of conduct that may not be a qualifying disclosure

While everyone is encouraged to speak up and report any concerns to Mercy Education, not everyone nor all types of concerns are intended to be covered by this Policy. Examples of matters that are generally not intended to be covered by this Policy are:

- a personal work-related grievance that affects only the whistleblower. Examples may include:
  - an interpersonal conflict with another employee
  - a decision about employment, transfer, or promotion
  - a decision about the terms and conditions of employment
  - a decision to suspend or terminate employment or otherwise discipline the employee based on conduct, behaviour or performance.

These matters are excluded from the Policy as they are not matters that the whistleblower laws are intended to protect, unless they have broader implications for Mercy Education or they relate to detrimental conduct (as defined above).

### 04 How disclosures may be made

Disclosures may be made, either verbally or in writing, noting that disclosures can be made confidentially, securely, and outside business hours. They may be made anonymously and still be protected under the Corporations Act to any member of senior management or the Whistleblower Protection Officer if preferred.

### 05 To whom disclosures may be made

Disclosures of misconduct must only be made to a person authorised by Mercy Education to receive whistleblower information. This is to ensure that any disclosure is handled in accordance with the requirements and protections outlined in this policy. Ultimately all reports received by Eligible Recipients will be referred to the WPO unless there are exceptional circumstances.

At Mercy Education, the role of Whistleblower Protection Officer is held by the Chief Executive.

In addition, a whistleblower will 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 Parliament
- A journalist

The ACNC is not an eligible recipient of disclosures.

#### 06 Legal Protections

To qualify for whistleblower protection, the person making a disclosure must have reasonable grounds to suspect that the information disclosed indicates misconduct. Disclosures not involving 'disclosable matters' do not qualify for protection under the Corporations Act.

##### Support and practical protection

Whistleblowers can rely on the protection of this policy for disclosures of misconduct that meet the definition provided in this policy. Any concerns about unfavourable treatment because of making such a disclosure should immediately be made to the Whistleblower Protection Officer or to the Board Chair if the matter relates to the Whistleblower Protection Officer.

No action will be taken against a whistleblower who makes a report in good faith that is not substantiated in a following investigation. However, it is important to have reasonable grounds to suspect that the information disclosed about Mercy Education or its schools' concerns misconduct or an improper situation which will usually include some information. A court may make orders, including orders for compensation, where a whistleblower is subjected to detriment for making a disclosure.

Mercy Education and its schools 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. It is illegal to identify a whistleblower without consent outside these reasons. A person who is considering making a disclosure may contact the Whistleblower Protection Officer to obtain additional information before making a disclosure.

It should be noted that the Taxation Administration Act 1953 (Cth) also contains protections for whistleblowers reporting misconduct related specifically to tax; however, as a registered charity, Mercy Education and its schools receive selected tax concessions.

#### 07 How investigations are to be conducted

All investigations will be conducted in a timely manner, in accordance with the principles of fairness and natural justice and appropriately documented. Where appropriate, Mercy Education will update the Whistleblower on the status and outcome of their report. After receiving a report, the WPO will:

- Assess the report to determine if it will be managed under this Policy;
- Determine whether and how to investigate; and
- Consider any conflicts of interest prior to investigating.

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.

#### 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.

### 08 Ensuring fair treatment for employees mentioned in disclosures

#### Procedural fairness

Any person named in a disclosure that qualifies for protection will be treated with procedural fairness, including those who are the subject of a disclosure.

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 before any adverse findings of fact in any investigation are made. 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 because of a report made under this Policy, they should immediately contact the Whistleblower Protection Officer, who will ensure they are investigated.

### 09 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 Portal and school websites. The Policy will be the subject of induction and subsequent in-service refresher training.

## 10 Who to Contact

Whistleblower Protection Officer contact details at Mercy Education:

Chief Executive Mercy Education 720 Heidelberg Road ALPHINGTON VIC <a href="mailto:chiefexecutive@mercy.edu.au">chiefexecutive@mercy.edu.au</a>	Board Chair Mercy Education 720 Heidelberg Road ALPHINGTON VIC <a href="mailto:contact@mercy.edu.au">contact@mercy.edu.au</a>
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- 11 If the matter of disclosure concerns the conduct of a Director of the Board of Mercy Education, the WPO shall ensure the matter is reported to Mercy Ministry Companions Ltd (MMCL) through its Chair, 1 Dawson Street BRUNSWICK VIC 3056 on P: (03) 9448 1880

## **Breach of this Policy**

- 12 A breach of this Policy must be immediately escalated to the Policy Owner. A breach of this Policy is considered a breach of the Mercy Education Code of Conduct and may have serious consequences including termination of employment, engagement, or services, where appropriate.

## **Related Documents**

Catholic Education Commission of Victoria Ltd (CECV)

- *Whistleblower Policy*

## Legislation

- *Corporations Act 2001* <https://www.legislation.gov.au/Details/C2019C00216>
- *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)* <https://www.legislation.gov.au/Details/C2019A00010>
- *Corporations Amendments (Proprietary Company Thresholds) Regulations 2019*
- *Reportable Conduct Scheme*
  - *Victoria:* <https://ccyp.vic.gov.au/reportable-conduct-scheme/> *Western Australia:* <https://www.wa.gov.au/government/announcements/reportable-conduct-scheme>
- *Mandatory Reporting*
  - *South Australia:* <https://www.childprotection.sa.gov.au/reporting-child-abuse/mandated-notifiers-and-their-role>
  - *Department of Human Services* <https://dhs.sa.gov.au/>
  - *Victoria: Department of Fairness, Families and Housing (DFFH) Vic* <https://www.dffh.vic.gov.au/>
  - *Western Australia: Department of Communities* <https://www.wa.gov.au/organisation/department-of-communities>

Mercy Education Limited (MEL)

- *1.06 Policy: Complaints Management*
- *1.07 Policy: Privacy*

## **Review History:**

Version	Date Released	Next Review	Author	Approved
1.0	January 2020	December 2022	CECV	MEL Board
2.0	September 2023	September 2025	Head of People & Culture	MEL Board