

**INABURRA** FAITH  
KNOWLEDGE  
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# INABURRA SCHOOL POLICY DOCUMENT

## WHISTLEBLOWER POLICY



**INABURRA SCHOOL**  
A Project of Menai Baptists

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## 1. DESCRIPTION

### 1.1 Purpose and scope

This policy applies to Inaburra School in protecting eligible whistleblowers and managing qualifying disclosures made regarding misconduct in relation to the school.

This policy will be published on the Inaburra website and Sentral and made available to Board members and employees.

### 1.2 Related policies

- Disclosures about reportable conduct will be addressed in accordance with the school's Child Protection Policy.
- Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with the school's *Grievance Policy - Staff*.
- Disclosures regarding a grievance between staff members about work matters, including work relationships and decisions made by other staff members which impact on their work, may be addressed in accordance with the school's *Grievance Policy - Staff*.
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the school's *Discrimination, Harassment and Bullying Policy, Gender Equity Policy and Grievance Policy – Staff*.

## 2. DEFINITION

### 2.1 Whistleblower

ASIC defines a whistleblower as an insider within an organisation who reports misconduct or dishonest or illegal activity that has occurred within that same organisation.

### 2.2 Qualifying disclosure

A qualifying disclosure is a disclosure made by an eligible whistleblower to an eligible recipient, and the eligible whistleblower has reasonable grounds to suspect that the information concerns a disclosable matter.

### 2.3 Eligible whistleblower

An eligible whistleblower is an individual who is or has been any of the following, in relation to the school:

- a Board member;
- an employee;
- a person who supplies goods or services (paid or unpaid). This extension includes parents who volunteer for activities such as excursions, canteen duty and reading groups.
- an employee of a person who supplies goods or services (paid or unpaid);
- an individual who is an associate of the School (as defined in the Corporations Act); and

- a relative or dependent (or dependents of a spouse) of any individual described above.

### 2.4 Eligible recipients

An eligible recipient is an individual who occupies any of the following roles, in relation to the school or a related company:

- a Board member or the Principal. Contact details for a member of the Board can be accessed through the Personal Assistant to the Principal.
- an auditor, or member of an audit team of the school or a related company;
- an actuary of the school or a related company.

## 3. WHO CAN MAKE A QUALIFYING DISCLOSURE?

### 3.1 An eligible whistleblower

### 3.2 Anonymous disclosures

A disclosure can be made anonymously.

However, this may make it difficult to investigate the reported matter. The school encourages disclosers to provide their name. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated and the school encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

## 4. DISCLOSABLE MATTERS THAT QUALIFY FOR PROTECTION

### 4.1 Disclosable matters

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the School or a related company concerns:

- misconduct;
- an improper state of affairs or circumstances;
- illegal activity (including conduct of officers 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 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 school that involves:

- fraudulent activity;
- unlawful or corrupt use of school funds;
- improper accounting or financial reporting practices;
- systemic practices that pose a serious risk to the health and safety of any person on school premises or during school activities.

## 4.2 Reasonable grounds to suspect

A discloser would have 'reasonable grounds to suspect' if the discloser has a suspicion that could reasonably be formed based on the facts and information available to them.

If a disclosure is made without 'reasonable grounds to suspect' (e.g. where the disclosure is unfounded), the disclosure will not be a qualifying disclosure and the discloser will not have the protections provided for under this policy and the Corporations Act.

## 4.3 Personal work-related grievances

Generally, disclosures that concern personal work-related grievances do not qualify for protection under this policy.

A personal work-related grievance:

- 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; 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 school's *Grievance Policy - Staff*.

A disclosure could qualify for protection if it concerns a personal work-related grievance and also concerns alleged detriment (or a threat of detriment) to the discloser.

## 5. HOW TO MAKE A QUALIFYING DISCLOSURE

### 5.1 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the School encourages them to make a disclosure in writing to the Principal or via email at [pietschj@inaburra.nsw.edu.au](mailto:pietschj@inaburra.nsw.edu.au)

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 Chairman of the Board. Contact details for the Chairman of the Board can be accessed through the Personal Assistant to the Principal.

Where a disclosure is made to an eligible recipient who is not the Principal, then subject to the confidentiality protections set out at Section 7 below, it will generally be passed onto the Principal and dealt with in accordance with Section 6 below.

### 5.2 External disclosures

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.

### 5.3 Public interest disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if all three of the following criteria are met.

1. The information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:
2. **90 days has passed since the time of the first disclosure; and**
3. **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
  - the eligible whistleblower informs the original recipient 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.

### 5.4 Emergency disclosures

An eligible whistleblower can disclose to a member of Parliament or a journalist only if.

1. the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:
2. 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**
3. the eligible whistleblower informs the original recipient they intend to make an emergency disclosure; and
4. the disclosure of information is no greater than necessary to inform the recipient of the substantial and imminent danger.

Eligible whistleblowers who make a 'public interest disclosure' or an 'emergency disclosure' also qualify for protection.

## 6. INVESTIGATING A QUALIFYING DISCLOSURE

### 6.1 Receiving a disclosure

Upon receiving a disclosure, the recipient, the Principal or Chairman 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 related policies (see section 1.2).

## 6.2 Investigating a qualifying disclosure

How the school investigates a qualifying disclosure will depend on the nature of the disclosure.

An investigation will generally involve the making of inquiries and collection of evidence for the purpose of assessing the disclosure made by the whistleblower.

External professionals may be engaged to assist or conduct the investigation process.

In instances where the school reports the allegations within the disclosure to a third party, such as NSW Police, Australian Federal Police or Australian Securities and Investments Commission (ASIC), the investigation procedures of the relevant third party will generally take precedence.

The timing of an investigation will depend on the circumstances of the matter and whether the school is the primary investigator of the disclosure.

Employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

An eligible whistleblower and the relevant parties that the disclosure is about may choose to have an appropriate support person present at any meeting with representatives of the school.

## 7. CONFIDENTIALITY AND RECORDS

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.

Exceptions to this are disclosures to

- ASIC,
- The Australian Federal Police,
- A legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or made with the consent of the discloser.
- To any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties. This could include NSW Police, the NSW Ombudsman, NSW Education Standards Authority or the NSW Department of Education.
- Made with the consent of the eligible whistleblower.

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.

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.

Confidentiality will be observed in relation to the handling and storing of records.

## 8. WHISTLEBLOWER PROTECTIONS

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 set out in section 7 above.

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.

Whistleblowers who make some types of qualifying disclosures (generally external to the school) 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.

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.

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.

### 8.1 Protection from Detriment

Eligible whistleblowers are also protected from suffering from any detriment, or threats of detriment, by reason of the disclosure.

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.

Remedies for being subjected to detriment could include:

- compensation
- injunctions and apologies
- reinstatement of a person whose employment is terminated
- exemplary damages

The School and individuals may face significant civil and criminal penalties for failing to comply with confidentiality and detrimental conduct provisions.

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.

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 Chairman of the Board.



## 9. ADDITIONAL SUPPORT FOR ELIGIBLE WHISTLEBLOWERS AND OTHER EMPLOYEES

The school's counselors and/or employee assistance program (EAP) services will be available to all eligible whistleblowers and other employees affected by the disclosure, should they require that support.

Further advice: AIS NSW Legal Counsel (02) 9299 2845

If you have any queries about this policy, you should contact The Director of Compliance or the Principal for advice.

## 10. DOCUMENT CONTROL

### DOCUMENT INFORMATION

*Prepared By* Gillian Powell – Adapted from AIS Policy

*Document Owner* James Pietsch

*Policy last reviewed*

*Policy approved by*

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### CHANGE HISTORY

| <i>Date</i> | <i>Change Number</i> | <i>Details and reason for the change</i> |
|-------------|----------------------|--|
| 18/10/2019  | 1                    | Adapted from AIS Policy by G. Powell     |

## APPENDIX: IS THE DISCLOSURE COVERED BY THE WHISTLEBLOWER POLICY?

All four requirements below must be met for a disclosure to be considered under the Inaburra School Whistleblower Policy.

If all four requirements are not met, the disclosure does not qualify for protection under the Inaburra School Whistleblower Policy. Inaburra School will manage the complaint under the appropriate policy, including the *Staff Grievance Policy*, *Child Protection Policy* and *Discrimination, Harassment and Bullying Statement*.

However, disclosures may qualify for protection if they are a 'public interest disclosure' and 'emergency disclosure' or if they are made to ASIC, APRA or a prescribed Commonwealth authority.

| QUESTION  | REQUIREMENT  | SPECIFICALLY  |
|---|--|---|
| 1. <i>Who the disclosure is made by</i>                               | The disclosure must be made by an eligible whistleblower     | <p>An eligible whistleblower is an individual who is <u>or has been</u> any of the following, in relation to the school:</p> <ul style="list-style-type: none"> <li>• a member of the governing body of the school;</li> <li>• an employee;</li> <li>• a person who supplies goods or services (paid or unpaid);</li> <li>• an employee of a person who supplies goods or services (paid or unpaid); and</li> <li>• a relative or dependent (or dependents of a spouse) of any individual described above.</li> </ul> <p>Anonymous complaints, where the discloser's name is not known, can also meet the 'eligible whistleblower' requirement.</p> |
| 2. <i>Who the disclosure is made to</i>                               | The disclosure must be made to an eligible recipient         | <p>An eligible recipient is an individual who occupies any of the following roles, in relation to the school:</p> <ul style="list-style-type: none"> <li>• an officer (such as a member of the governing body of the school) or senior manager of the school or a related company;</li> <li>• an auditor, or member of an audit team, of the school or a related company;</li> <li>• an actuary of the school or a related company; and</li> <li>• a person authorised by the school to receive disclosures that may qualify for protection.</li> </ul> <p>Eligible recipients also include ASIC, APRA or a prescribed Commonwealth authority.</p>  |
| 3. <i>The nature of the disclosure</i>                                | The disclosure must be about a disclosable matter            | <p>Information that concerns:</p> <ul style="list-style-type: none"> <li>• misconduct or an improper state of affairs or circumstances in relation to the school or a related company;</li> <li>• illegal activity of the school or a related company (or its or their officers and employees) – meaning activity in breach of the Corporations Act or specified legislation or an offence against any law of the Commonwealth punishable by imprisonment of 12 months or more; or</li> </ul> <p>a danger to the public or financial system.</p>  |
| 4. <i>Is there reasonable suspicion by the eligible whistleblower</i> | The eligible whistleblower has reasonable grounds to suspect | <p>Reasonable grounds to suspect is where the discloser has the suspicion that could reasonably be formed based on the facts and information available to them.</p> <p>It is not required that the recipient believe the suspicion, merely that the suspicion held by the discloser is reasonable.</p>  |