

Whistleblower

Policy

Dunlea Centre is committed to the protection of individuals who disclose information about illegal or improper conduct occurring within Dunlea Centre. This policy has been adopted to provide a safe and confidential environment where such concerns can be raised by whistleblowers without fear of reprisal or detrimental treatment.

Purpose and Scope

This policy sets out:

- Who is entitled to protection as a whistleblower under this policy and the Corporations Act
- The protections whistleblowers are entitled to under this policy and the Corporations Act
- How disclosures made by whistleblowers in accordance with this policy and under the Corporations Act will be handled by Dunlea Centre

This policy is available to all employees, volunteers, contractors and Board members of Dunlea Centre, who must comply with its contents. It is published on Dunlea Centre's website in the Policies and Procedures section at www.dunleacentre.org.au and on Dunlea Centre's CompliSpace site.

Related Policies:

- Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with Dunlea Centre's **Complaints Handling Policy**
- Disclosures about reportable conduct will be addressed in accordance with Dunlea Centre's **Child Safeguarding Policy**
- 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 Dunlea Centre's **Grievance Resolution Policy**
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with Dunlea Centre's **Discrimination, Harassment and Bullying Policy**



Definitions

ASIC means the Australian Investment and Securities Commission

APRA means the Australian Prudential Regulation Authority

Associate means any individual within the meaning of the Corporations Act

Corporations Act means the Corporations Act 2001 (Cth)

Personal Work-Related Grievance is as defined in section 1317AADA of the Corporations Act and may include the following grievances:

- 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 to discipline the discloser

Relative has the same meaning as in the Corporations Act

Spouse has the same meaning as in the Corporations Act

Qualifying Disclosures

A qualifying disclosure occurs when an eligible whistleblower:

- Discloses information regarding the type of matters listed in **Disclosable Matters** and
- Discloses that information to one of the people or bodies listed in **Eligible Recipients**

The eligible recipient and the eligible whistleblower must have reasonable grounds to suspect that the information concerns a disclosable matter.

Eligible Whistleblowers

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

- A Board member
- An employee
- A person who supplies goods or services (paid or unpaid)
- An employee of a person who supplies goods or services (paid or unpaid)
- An individual who is an associate of Dunlea Centre (as defined in the Corporations Act)
- A relative, spouse, dependent or dependent of a spouse; of any individual described above



Anonymous Disclosures

A disclosure can be made anonymously. However, this may make it difficult to investigate the reported matter. Dunlea Centre 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 agency encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

Disclosable Matters

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to Dunlea Centre 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 Dunlea Centre that involves:

- Fraudulent activity
- Unlawful or corrupt use of Dunlea Centre funds
- Improper accounting or financial reporting practices
- Systemic practices that pose a serious risk to the health and safety of any person on Dunlea Centre premises or during agency activities

Disclosures which are **solely** about a Personal Work-Related Grievance, as defined, will not be protected under this policy. Such matters may be appropriately dealt with in accordance with Dunlea Centre's ***Grievance Resolution policy***.

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.



Personal Work-Related Grievances

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

All matters listed previously in the definition of Personal Work-Related Grievance will be addressed in accordance with Dunlea Centre's **Grievance Resolution Policy**.

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.

Eligible Recipients

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

- The Executive Director
- A Protected Disclosure Officer
- A member of the Leadership Team (who will pass the information on to the Executive Director or Chair of the Board or Chaplain)
- The Chair of the Board
- A Board member
- An auditor, or member of an audit team of Dunlea Centre or a related company
- The Chaplain of Dunlea Centre

If the circumstances described in section 1317AAD of the Corporations Act exist, then a whistleblower may make an external disclosure i.e. a public interest disclosure or an emergency disclosure; to the persons listed in the relevant sections below.

Making a Qualifying Disclosure

An eligible whistleblower can make a disclosure to any eligible recipient in person, by telephone or in writing. Dunlea Centre encourages any eligible whistleblower to make a disclosure in writing to one of the Protected Disclosure Officers:

- Executive Director, via email at director@boystown.net.au or;
- Business Manager at busmgr@boystown.net.au or;



- by mail addressed to: Attention: Protected Disclosure Officer, Confidential for Addressee only, Dunlea Centre (Australia's Original Boys' Town) PO Box 99, Engadine NSW 2233.

If it is not appropriate for the disclosure to be made to the Executive Director or Business Manager, the eligible whistleblower is encouraged to make the disclosure, in writing, to the Chair of the Board via email at director@boystown.net.au or Dunlea Centre Chaplain, Father Peter Hoang SDB at phoang@salesian.org.au or the company auditor, at kevin@kevinjones.com.au .

Where a disclosure is made to an eligible recipient who is not the Executive Director, then subject to the confidentiality protections set out in the section on **Confidentiality and Records** below, it will generally be passed onto the Executive Director and dealt with in accordance with the section on **Investigating a Qualifying Disclosure** below.

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. Such external persons and bodies may have other means by which a disclosure may be made.

Public Interest Disclosures

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 90 days has passed since the time of the first disclosure 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
- 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

Emergency Disclosures

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
- The eligible whistleblower informs the original recipient 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

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

Receiving a Disclosure

Procedure

The person who receives the disclosure will promptly forward it, usually to the Executive Director or Business Manager, who will assess the disclosure to determine whether it qualifies for protection under the Corporations Act and requires formal investigation. This will also determine if the matter is to be managed in accordance with this policy (i.e. it is a qualifying disclosure) or if the disclosure concerns matters that should be managed in accordance with related policies, as listed previously.

If it is not appropriate for the Executive Director or Business Manager to receive or investigate a disclosure, it is to be forwarded instead to the Chair of the Board, the Chaplain or the company auditor of Dunlea Centre, who will follow the ensuing guidelines and steps in the process, taking the place of the Executive Director. At all times, complete discretion will apply regarding the number of individuals involved in reviewing the disclosure.

Investigating a Qualifying Disclosure

Procedure

How the agency investigates a qualifying disclosure will depend on the nature of the disclosure. An investigation will generally involve the making of inquiries or collection of evidence for the purpose of assessing the disclosure made by the whistleblower.

Any formal investigation of a disclosure will be undertaken by an impartial senior person. External professionals may be engaged to assist or conduct the investigation process.

Dunlea Centre will ensure that the investigation:

- Is conducted promptly
- Is sufficiently resourced
- Is conducted in a fair and objective manner
- Is conducted in strict confidence
- Protects the identity of the person who made the disclosure
- Gives any person who is adversely mentioned in the disclosure an opportunity to respond prior to any findings being made

At the conclusion of the investigation, the investigator(s) will provide the Executive Director with a report that will summarise how the investigation was conducted, the evidence collected and contain findings in relation to the allegations in the disclosure and recommend any action required.



Following receipt of the investigation report, the Executive Director will take appropriate action, which may include:

- Implementing the recommendations of the investigator(s)
- Requesting further investigation
- Recommending disciplinary action
- Notifying regulatory and/or law enforcement bodies

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 investigator(s) and/or representatives of the agency.

The whistleblower will be informed of the results of the investigation following the Executive Director taking the above steps. However, some circumstances may limit the information provided to the person, such as confidentiality or other legal constraints.

In instances where the agency reports the allegations within the disclosure to a third party, such as NSW Police, Australian Federal Police or 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 agency is the primary investigator of the disclosure.

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. Dunlea Centre will take all reasonable steps to avoid the identification of a whistleblower.

Exceptions to this are disclosures to ASIC, APRA, the Australian Federal Police, or a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or legal representation; or made with the consent of the discloser.

The discloser's identity and information which is likely to lead to the identification of the discloser can also be provided to:

- A Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties
- A Court or Tribunal, where it is considered necessary in the interests of justice
- NSW Police
- The NSW Ombudsman
- NSW Education Standards Authority
- NSW Department of Education

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 must be observed in relation to handling and storing records. All documentation relating to an eligible disclosure will be stored in a confidential file held by the Executive Director, as outlined in Dunlea Centre's Other Records policy.

Whistleblower Protections

There are two types of protections for whistleblowers: confidentiality and protection from detriment. Dunlea Centre will not seek to cause any detriment to a whistleblower because of a disclosure.

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 **Confidentiality and Records** 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 agency) 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 i.e. suffering any detriment by reason of the qualifying disclosure. Anyone who causes or threatens to cause detriment to a whistleblower or another person in the belief or suspicion that a qualifying disclosure or report has been made, may have been made, proposes to, or could be made; may be guilty of an offence under the Corporations Act and may be liable for damages.

Threats of detriment are also unlawful.

Detriment can include the 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

Organisations 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 Executive Director, via email.

If it is not appropriate for the report to be made to the Executive Director, the eligible whistleblower should report the matter, in writing, to the Chair of the Board, via email at director@boystown.net.au.

Additional Support for Eligible Whistleblowers and Other Employees

Dunlea Centre's Employee Assistance Program (EAP) services will be available to all eligible whistleblowers and other employees affected by the disclosure, should they require that support. This service can be utilised as outlined in the Dunlea Centre Employee Assistance Program policy.

Monitoring and Training

Dunlea Centre will monitor and review this policy regularly to assess its effectiveness in encouraging the reporting of qualifying disclosures, protection of those making reports and the proper investigation of reports. Dunlea Centre is committed to ensuring that Protected Disclosure Officers are appropriately qualified for the role and readily accessible.

Education and training relating to the procedures involved in this policy will be provided to those involved in managing and investigating disclosures. Dunlea Centre staff will also be kept informed of whistleblower protections, including an overview of this policy and procedures at full agency meetings.

Contact

Any queries about this policy should be directed to the Compliance Manager, Kate McLaren for advice.

