

JESUIT EDUCATION AUSTRALASIA WHISTLEBLOWER POLICY

In support of the Province Wide Whistleblower Principles and Template Policy adopted by the JEA Board on 4 December, with an implementation date of 1 January 2021.

1. PURPOSE

- The purpose of this Policy is to help deter wrongdoing, in line with the Jesuit Code of Conduct, Jesuit Education Australasia's risk management and governance framework and to ensure that any individuals of Jesuit Education Australasia ("JEA") who disclose wrongdoing in relation to JEA can do so safely, securely and with confidence that they will be protected and supported.
- The aim of this Policy is to help individuals feel confident about raising concerns internally, by offering a reporting and investigative mechanism that is objective, confidential, independent and protects individuals from reprisal or disadvantage.
- Under this Policy:
 - individuals are encouraged to report concerns, whether openly or, if preferred, anonymously;
 - if an individual reports concerns, he or she will be afforded confidentiality unless indicated (or the law requires) otherwise;
 - concerns will be properly investigated with a view to establishing the truth and correcting any wrongdoing where possible;
 - individuals will be advised of the outcome of the investigation and any action taken as much as practicable; and
 - individuals will not be victimised or adversely affected because of the action in reporting concerns provided of course, that there is a basis for the concerns, and that the individual has acted in good faith and without malicious intent.
- This Policy will be published on the JEA website and made available to Board members and employees. Training will be provided to JEA's employees.
- The JEA Executive Director has been appointed as a contact point where Jesuits and employees can seek accurate and confidential advice or information about the following, without making a disclosure:
 - How this whistleblower policy works;
 - What this whistleblower policy covers; and
 - How a disclosure might be handled.

2. RELATED POLICIES

Complaints of unauthorised data disclosures may be addressed in accordance with JEA's Privacy Policy.

3. KEY REQUIREMENTS – DISCLOSABLE MATTERS

- All Jesuits and Partners in Mission involved in JEA have a responsibility to help detect, prevent and report instances of suspicious activity or wrongdoing, referred to as a Disclosable Matter.

- Under the *Corporations Act 2001 (Cth)* (**Corporations Act**) to be eligible for whistleblower protection, the individual must be an ‘eligible whistleblower’, the report must be made to an eligible recipient or to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Policy and the information reported must be a disclosable matter.
- It is expected that Jesuits and Partners in Mission involved in JEA who become aware of actual or suspect on reasonable grounds, a potential disclosable matter, will make a report under this Policy or under other applicable policies.

Who is an eligible whistleblower?

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

- 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 JEA (as defined in the Corporations Act); and
- a relative or dependent (or dependents of a spouse) of any individual described above.

What is a qualifying disclosable matter?

An eligible whistleblower may make a report under this Policy if they have reasonable grounds to suspect that a director, officer, employee, contractor, supplier, tenderer or other person who has business dealings with JEA has engaged in conduct which is “improper”, including:

- is dishonest, fraudulent or corrupt, including bribery;
- is illegal activity (such as theft, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law);
- is unethical or in breach of Province or JEA policies (such as dishonestly altering records or data, adopting questionable accounting practices or wilfully breaching the Province Code of Conduct or other policies or procedures and significant regulatory and legal obligations);
- is potentially damaging to JEA, an employee or a third party, such as unsafe work practices, environmental damage, health risks or abuse of property or resources;
- amounts to an abuse of authority;
- may cause financial loss to JEA or damage its reputation or be otherwise detrimental to its interests;
- involves harassment, discrimination, victimisation or bullying, other than personal work-related grievances as defined in the Corporations Act.

Personal worked related grievances do not usually qualify for protection. A personal work-related grievance is normally dealt with using the JEA Staff Grievance Policy. Examples of personal work-related grievances that do not qualify for protection (unless the next paragraph applies) 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.

Personal work-related grievances may still qualify for protection if:

- it includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (mixed report);
- the entity has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances;
- the discloser suffers from or is threatened with detriment for making a disclosure; or
- the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act.

Reasonable Grounds to Suspect

Whether a discloser would have 'reasonable grounds to suspect' is based on the reasonableness of the discloser's suspicion, having regard to all the circumstances when considered objectively.

If a disclosure is made without 'reasonable grounds to suspect', 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. Any deliberate false reporting will be regarded very seriously.

A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

4. WHO CAN I MAKE A REPORT TO?

- To be eligible for whistleblower protection, the report must be made to an Eligible Recipient as defined in this Policy.
- The Province through its entity, The Society of Jesus in Australia (**SOJA**), provides a number of services to JEA to assist in our governance, including an "arms length" Disclosures Panel for the purpose of investigating any Disclosable Matter. Consequently, JEA has several channels for making a report if an eligible whistleblower becomes aware of any issue or behaviour which they consider to be a Disclosable Matter:
 - JEA encourages disclosure to an Eligible Recipient in writing, preferably to the Executive Director of JEA, via email at jesuiteducationaustralasia@sjasl.org.au.
 - If it is not appropriate for the disclosure to be made to the Executive Director of JEA, the eligible whistleblower is encouraged to make the disclosure, in writing, to the Chair of JEA, via email at JEChair@sjasl.org.au.
 - At any time, the eligible whistleblower can make a report directly to the Province through the Protected Disclosure Officers who, with the Provincial, form the Protected Disclosures Panel.

Where a disclosure is made to an Eligible Recipient locally, such as the Executive Director of JEA or the Chair of JEA, then subject to the confidentiality protections set out at Section 6 below, it will be notified to the Province's Disclosure Panel and dealt with in accordance with Section 5 below.

Protected Disclosure Officers

Contact details

- Province Director of Professional Standards

Phone: 03 9810 7300

Email: professionalstandards@sjasl.org.au

- Province Socius

Phone: 03 9810 7300

Email: socius@sjasl.org.au

- Province Manager of Human Resources

Phone: 03 9810 7300

Email: humanresources@sjasl.org.au

- If the disclosure concerns conduct of the Provincial, the Superior General of the Society of Jesus [Reports to be posted to Borgo S. Spirito 4, 00193, Roma Italy, in two envelopes, the interior one being marked "SOLI", if sent by a Jesuit] shall be an "eligible recipient".
- Reports may also be posted to 130 Power Street, Hawthorn, Vic, 3122 (marked to the attention of one of the Protected Disclosure Officers).

Anonymous Disclosures

- A disclosure can be made anonymously and still be protected under the Corporations Act. A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised.

However, this may make it difficult to investigate the reported matter. JEA therefore 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. JEA encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided. It will also allow JEA to report the progress of the investigation to the discloser, as appropriate.

External/Public Interest and Emergency 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.
- Eligible whistleblowers who make a 'public interest disclosure' or an 'emergency disclosure' also qualify for protection.

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:

- at least 90 days has passed since the eligible whistleblower made the first disclosure to ASIC, APRA or a prescribed Commonwealth authority; 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

- before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that 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 Disclosure

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
- before making the disclosure, the eligible whistleblower gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that 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.
- An eligible whistleblower may wish to consider obtaining independent legal advice before making a public interest or emergency disclosure.

5. INVESTIGATION OF A DISCLOSABLE MATTER

- For all matters reported an investigation will be undertaken as soon as practicable by either the Executive Director of JEA or the JEA Chair and/or the Province Disclosures Panel. Whoever undertakes the investigation may with the whistleblower's consent, appoint a person or persons to assist in the investigation of the report. Where appropriate, the Executive Director of JEA or the JEA Chair or the Province Disclosures Panel will provide feedback to the whistleblower regarding the investigation's progress and/or outcome (subject to considerations of the privacy of those against whom allegations are made).
- On receipt of each disclosure, the Executive Director of JEA or the JEA Chair and/or the Province Disclosures Panel will determine whether the disclosure is eligible for protection and a formal, in-depth investigation is required.
- The investigation will be conducted in an objective and fair manner, and otherwise as is reasonable and appropriate having regard to the rights of both the discloser and the person against whom the allegations are made and the nature of the disclosable matter and the circumstances.
- While the investigation process and enquiries adopted will be determined by the nature and substance of the report, in general, as soon as practicable upon receipt of the report, if the report is not anonymous, the Executive Director of JEA or the JEA Chair or one of the Province's Protected Disclosure Officers will contact the whistleblower to discuss the investigation process including who may be contacted and such other matters as are relevant to the investigation.
- Depending on the nature of the disclosable matter reported directly to JEA, the Province may undertake the investigation on behalf of JEA. However, the confidentiality of the discloser will be protected in accordance with section 6 of this policy.
- At the conclusion of an investigation, a report will be prepared and submitted to the JEA Board. Where appropriate, the discloser will be provided with a final update that sets out the findings and outcomes arising from the investigation.

Fair treatment of employees mentioned in disclosures

JEA, or the Province Disclosure Panel will take steps to ensure the fair treatment of employees who are mentioned in a disclosure that qualifies for protection:

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
 - when an investigation needs to be undertaken, the process will be objective and fair;
 - employees about whom disclosures are made will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.
- JEA, employee assistance program (EAP) services will be available to employees affected by the disclosure, should they require that support.
 - JEA or the Province Disclosure Panel will document the steps of the investigation and the findings from the investigation and report those findings to those responsible in the Province including JEA. The method for documenting and reporting the findings will depend on the nature of the disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

6. CONFIDENTIALITY

- Under the Corporations Act, the identity of the discloser of a qualifying disclosure (assuming the disclosure qualifies for protection – e.g. the discloser has reasonable grounds to suspect it is true and it is not solely a personal work related grievance) 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.
- If a disclosure involves an issue which JEA is required to report, JEA may not be able to maintain the confidentiality of the identity of the disclosure. This disclosure could include State Police, the State Office of the Children’s Guardian (or equivalent), State Education Standards Authority or the State 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. If you are subjected to a breach of confidentiality relating to a report made under this Policy, you should inform an Eligible Recipient, including an officer or senior manager within JEA immediately. You may also lodge a complaint with a regulator, such as ASIC, APRA or the ATO.
- Confidentiality will be observed in relation to handling and storing records.

7. PROTECTIONS AVAILABLE

- JEA and the Province are committed to ensuring confidentiality in respect of all matters raised under this Policy, and that those who make a report are treated fairly and do not suffer detriment.

Protection against detrimental conduct

- Detrimental treatment includes dismissal, demotion, harassment, discrimination, disciplinary action, bias, threats or other unfavourable treatment connected with making a report; and
- If you are subjected to detrimental treatment because of making a report under this Policy, you should inform an Eligible Recipient, including an officer or senior manager within JEA immediately.
- Remedies for being subjected to detriment could include:
 - Compensation;
 - injunctions and apologies;
 - reinstatement of a person whose employment is terminated; and/or
 - exemplary damages.

Protection from Civil, Criminal or Administrative Liability

- 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 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.

Protection of your identity and confidentiality

- Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, must be kept confidential, subject to relevant exceptions as set out in section 6 above.
- JEA and the Province will protect an eligible whistleblower's identity by appropriately redacting documents and referring to the whistleblower in gender-neutral terms. It will also secure all documents and communicate them in a way that will maintain confidentiality.

Protection of files and records

- All files and records created from an investigation will be retained securely.
- Unauthorised release of information to someone not involved in the investigation without your consent as the person making a disclosure will be a breach of this Policy.
- Those making a disclosure are assured that a release of information in breach of this Policy will be regarded as a serious matter and will be dealt with under disciplinary procedures.
- JEA and the Province seeks to provide appropriate protections to disclosers, noting the following national legislative protections:
 - The *Taxation Administration Act 1953 (Cth)* (**Taxation Administration Act**) also gives special protection to disclosures about breaches of any Australian tax law, provided certain conditions are met – refer to Attachment A for details.

8. DEFINITIONS

Name	Description
Code of Conduct	The Province-approved document which sets out what personal and professional standards mean for the Province, the Province's primary obligations and the associated behaviour that are expected of all Jesuits, Partners in Mission and Contractors, and how to report inappropriate behaviour. See: https://jesuit.org.au/wp-content/uploads/Code-of-Conduct.pdf
Contractor	Means a person who is not an employee but is engaged under an independent service contract to complete a specific job or project within a specified time frame for an agreed price. The Code of Conduct applies to Contractors who are permitted to be unsupervised while on ministry grounds e.g. engaged using a tender process and formal induction.
Disclosure	Notification of an allegation of wrongdoing e.g. breach of the Code of Conduct, corrupt conduct, fraud, maladministration or serious and substantial waste.
Eligible recipient	Means the following: (a) an officer or senior manager of JEA or a related body corporate; (b) an auditor, or a member of an audit team conducting an audit, of JEA or a related body corporate; (c) an actuary of JEA or a related body corporate; (d) a person authorised by JEA to receive disclosures that may qualify for protection under Part 9.4AAA of the <i>Corporations Act 2001(Cth)</i> or Part IVD of the <i>Income Tax Assessment Act 1953 (Cth)</i> , including a member of the Province Protected Disclosures Panel and any person named in clause 4 of these Procedures.
Jesuit	Means any Priest or Brother member of the Society of Jesus or someone in formation for those roles (e.g. a novice or a scholastic).
Partners in Mission	Means a lay person involved in JEA.
Provincial	The member of the Society of Jesus from time to time holding the office of Major Superior of the Province or, in the case of absence or

	indisposition, the acting Provincial or, in the event of the office of the Provincial being vacant at any time, the member of the Society of Jesus for the time being performing the duties of Provincial.
Volunteer	Means a person who is involved with JEA, generally without payment or financial reward. The Code of Conduct applies equally to volunteers as it does to Jesuits and Partners in Mission.

9. POLICY REVIEW

- This Policy will be monitored for compliance and effectiveness by the Executive Director of JEA, in consultation with the Province’s Director of Professional Standards. This Policy will be reviewed after 12 months from approval and at least every two years thereafter.

VERSION CONTROL AND CHANGE HISTORY

Version	Approved Date	Approved By	Short Description for Development or Review	Review Completed by	Consultation Process
New document	4 December 2020	Board of Jesuit Education Australasia	New document – adapted from the Province Wide Whistleblower Principles and Template Policy	N/A	JEA Chair and JEA EO collaborated in the adaptation

ATTACHMENT A - SPECIAL PROTECTIONS UNDER THE TAXATION ADMINISTRATION ACT

The Taxation Administration Act gives special protection to disclosures about a breach of any Australian tax law by JEA, or misconduct in relation to the tax affairs of JEA if the following conditions are satisfied:

- 1) the discloser is or has been:
 - a) an officer or employee of JEA;
 - b) an individual who supplies goods or services to JEA (whether paid or unpaid) or an employee of a person who supplies goods or services (whether paid or unpaid) to JEA, including employees of the Society of Jesus in Australia;
 - c) an individual who is an associate of JEA;
 - d) a spouse, child, dependent or dependent of the spouse of any individual referred to at (a) to (c) above;
- 2) the report is made to:
 - a) a Protected Disclosure Officer;
 - b) a director, secretary or senior manager of JEA or a related body corporate;
 - c) any external auditors (or a member of that audit team) engaged by JEA;
 - d) a registered tax agent or BAS agent who provides tax or BAS services to JEA;
 - e) any other employee or officer of JEA who has functions or duties relating to tax affairs of (e.g. an internal accountant);
 - f) the Commissioner of Taxation; or
 - g) a lawyer for the purpose of obtaining legal advice or representation in relation to a report; and
- 3) if the report is made to an Eligible recipient, the discloser:
 - a) has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of JEA or an associate of; and
 - b) considers that the information may assist the Eligible recipient to perform functions or duties in relation to the tax affairs of JEA or an associate of; and
- 4) if the report is made to the Commissioner of Taxation, the discloser considers that the information may assist the Eligible recipient to perform functions or duties in relation to the tax affairs of JEA or an associate of.

The protections given by the Taxation Administration Act when these conditions are met are:

- 1) the discloser is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
- 2) no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the discloser for making the report;
- 3) where the disclosure was made to the Commissioner of Taxation, the reported information is not admissible against the discloser in criminal proceedings or in proceedings for the imposition of a penalty, except where the proceedings are concerned with whether the information is false;
- 4) unless the discloser has acted unreasonably, a discloser cannot be ordered to pay costs in any legal proceedings in relation to a report;
- 5) anyone who causes or threatens to cause detriment to a discloser or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and liable to pay damages;
- 6) a discloser's identity cannot be disclosed to a Court or tribunal except where considered necessary;
- 7) the person receiving the report commits an offence if they disclose the substance of the report or the discloser's identity, without the discloser's consent, to anyone except the Commissioner of Taxation,

the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

CONFIDENTIALITY

If a report is made, the identity of the discloser will be kept confidential unless one of the following exceptions applies:

- 1) the discloser consents to the disclosure of their identity;
- 2) disclosure of details that might reveal their identity is reasonably necessary for the effective investigation of the allegations;
- 3) the concern is reported to the Commissioner of Taxation or the AFP; or
- 4) the concern is raised with a lawyer for the purpose obtaining legal advice or representation.