

## Whistleblower Policy

### Policy Number: OSS030

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Version	2.0
Policy Name	Whistleblower Policy
Registered Entities	Nautilus Senior College Mid North Coast Community College Ltd
Compliance Standards	ACEQA: NESA: 3.6 Safe and Supportive Environment VET:
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Related Policies	CES005 Child Safe Environment and Protection Policy TL022 Child Protection Policy SAS014 Child Protection Framework SAS020 Complaints Management Framework Policy PP012 Workplace Bullying Policy SAS009 Student Anti Bullying Policy
Related Documents	

This Policy applies to Mid North Coast Community College (MNCCC) and its trading arms.

## 1. INTRODUCTION

### 1.1 Purpose

This policy applies to all persons engaged at Mid North Coast Community College Ltd ('**MNCCC**'). The purpose of this policy is to ensure individuals who disclose serious wrongdoing under this policy in relation to the conduct of staff and others who are engaged by MNCCC to deliver services, can do so safely and with confidence that they will be protected and supported by MNCCC.

This policy:

- Establishes a reporting system to receive reports of serious wrongdoing as defined under this Policy;
- Clarifies what amounts to serious wrongdoing such that it may be reported under this Policy;
- Sets out the protections of persons making a report under this Policy so that they may do so without fear of victimisation;
- Clarifies how this policy interacts with other MNCCC policies; and
- Establishes procedures that enable a process for an independent investigation and assessment of relevant whistleblower disclosures, and effective resolution of any issues raised.

This policy will be published on MNCCC website and made available to Board members and staff.

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**1.2 Scope**

This policy applies to ‘eligible whistleblowers’ (as defined in clause 2.1) who report an ‘eligible disclosure’ (as defined in clause 2.2) to an ‘eligible recipient’ (as defined in clause 2.3).

A whistle blower complaint may be raised against any MNCCC employee, including the CEO, senior members of staff and Board members.

**1.3 Related policies**

- a. Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with relevant policies and procedures for complaint management.
- b. Disclosures about reportable conduct will be addressed in accordance with the *Children’s Guardian Act 2019* (NSW) and relevant policies and procedures.
- c. Disclosures regarding a grievance between staff members about work matters, including work relationships and decision made by other staff members which impact on their work, may be addressed in accordance with relevant policies and procedures for complaint management.
- d. Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the *MNCCC Workplace Bullying Policy*.

**2. POLICY**

**2.1 Eligible Whistleblowers**

- a. Pursuant to the *Corporations Act 2001* (Cth) (the ‘Corporations Act’) an eligible whistleblower may be:
  - i. A current or former employee of MNCCC;
  - ii. A current or former officer of MNCCC;
  - iii. A current or former contractor, consultant or service provider who has provided goods or services to MNCCC;
  - iv. A current or former volunteer who as provided goods or services to MNCCC; or
  - v. A spouse, relative or dependant of any of the people listed above.

**2.2 Eligible Disclosure**

- a. For a disclosure to attract the protection of whistleblower laws, the eligible whistleblower must have reasonable grounds to suspect that conduct that may amount to an eligible disclosure has occurred.
- b. An eligible disclosure is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that a person acting on behalf of MNCCC has engaged in conduct represents a danger to the public or the financial system or that constitutes an offence against any provision of;
  - i. The *Corporations Act 2001* (Cth).
  - ii. The *Australian Securities and Investments Commission Act 2001* (Cth); or
  - iii. any other law of the Commonwealth of Australia which is punishable for a period of twelve (12) months or more.
- c. This may include conduct that amounts to;
  - i. Serious misconduct;
  - ii. Corrupt conduct for example fraud, dishonesty or misuse of information;
  - iii. Serious maladministration, for example unreasonable, unjust or discriminatory conduct;
  - iv. Serious and substantial waste of MNCCC money or funding;
  - v. Serious breaches of MNCCC’s Code of Conduct;

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- vi. Relevant criminal conduct, for example, theft, drug sale or use, violence, stalking, criminal damage to property, and including offences involving telecommunications and/ or abuse of children;
  - vii. Conduct that is seriously detrimental to MNCCC’s reputation;
  - viii. Improper behaviour relating to accounting, internal accounting controls or audit matters;
  - ix. Mismanagement of MNCCC’s resources;
  - x. Conduct endangering the health and safety of any person or persons;
  - xi. Coercion, harassment, or discrimination by, or affecting, any person who is a member of the MNCCC community;
  - xii. Any other kind of serious impropriety including retaliatory action against a complainant or whistleblower for having made a wrongdoing disclosure;
  - xiii. Concealment of information tending to show, or concealment of wrongdoing; and
  - xiv. Any other conduct or act that may cause significant loss to MNCCC or may otherwise be detrimental to its interests.
- d. If a disclosure is not an eligible disclosure, it will not qualify for whistleblower protection under the *Corporations Act*.

**2.3 Eligible recipients**

- a. An eligible whistleblower must disclose the information to one of the following eligible recipients:
  - i. an auditor, or member of an audit team of MNCCC or a related company;
  - ii. a director, secretary, officer or senior manager of MNCCC;
  - iii. an actuary of MNCCC or a related company;
  - iv. a person authorised by MNCCC to receive whistleblower disclosures;
  - v. the Australian Securities and Investments Commission (‘ASIC’);
  - vi. the Australian Prudential Regulation Authority (‘APRA’);
  - vii. the whistleblower’s lawyer;
  - viii. the CEO;
  - ix. the Chair of MNCCC’s Board; or
  - x. the External Whistleblower Service (‘WBS’)
- b. Eligible whistleblowers are encouraged to make disclosures to the following eligible recipients:
  - i. CEO
  - ii. Board Chair
  - iii. WBS, by phone (02) 9181 5001 (please quote MNCCC), or by emailing [mncccwhistleblower@integroe.com.au](mailto:mncccwhistleblower@integroe.com.au)
  - iv. through the MNCCC whistleblower form available on the MNCCC website and sent to one of the above eligible recipients.

**2.4 Personal work-related grievances**

- a. Generally, disclosures that concern personal work-related grievances do not qualify for protection.
- b. A disclosure will concern a personal work-related grievance of the discloser if the information:
  - i. 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
  - ii. does not have significant implications for MNCCC that are unrelated to the discloser; and
  - iii. does not concern conduct that is:
    - an alleged contravention of the *Corporations Act 2001* and specified financial services laws; or
    - an offence against another law of the Commonwealth, which is punishable

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- by imprisonment of 12 months or more; or
  - a danger to the public or financial system.
- c. Examples of disclosures regarding personal work-related grievances that may not qualify for protection include:
  - i. an interpersonal conflict between the discloser and another employee;
  - ii. a decision relating to the engagement, transfer or promotion of the discloser;
  - iii. a decision relating to the terms and conditions of engagement of the discloser;
  - iv. a decision to suspend or terminate the engagement of the discloser, or otherwise discipline the discloser.
- d. Disclosures that concern work-related grievances will be addressed in accordance with MNCCC's *Complaints Management Framework Policy and Procedure*.
- e. A personal work-related grievance may still qualify for protection if:
  - i. it includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (mixed report);
  - ii. the entity has breached employment or other laws which are 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;
  - iii. the discloser suffers from or is threatened with detriment for making a disclosure; or
  - iv. the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act.

## 2.5 Anonymous disclosures

- a. 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.
- b. An anonymous disclosure may make it difficult to investigate the reported matter. MNCCC, therefore, encourages disclosers to provide their names.
- c. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated. MNCCC encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided. It will also allow MNCCC to report the progress of the investigation to the discloser, as appropriate.

## 2.6 External Disclosures

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

## 2.7 Reasonable grounds to suspect

- a. Eligible whistleblowers must have reasonable grounds to suspect that the conduct they are disclosing qualifies for protection under the Corporations Act or this policy.
- b. Reasonable grounds means that a reasonable person in the same position as the person making the disclosure would also suspect that the information shows misconduct or a breach of the law.
- c. The requirement for reasonable grounds means that any vexatious or groundless claims are not protected by whistleblower legislation.

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

### 3. PROCEDURES

#### 3.1 Making a qualifying disclosure

- a. An eligible disclosure may be made in the first instance verbally or in writing to one of the above eligible recipients, including to the external WBS listed above by phone, email or using the MNCCC whistleblower form available on the MNCCC website.
- b. There are two pathways by which a complainant may have their disclosure managed. The complainant may choose their preferred option to lodge their initial complaint. The two options are:
  - i. One pathway is managed internally by an internal MNCCC staff member (either the CEO, or Chair).
  - ii. The other pathway is managed by an external consultancy and legal firm that has established a whistleblower service for MNCCC (that is the WBS).
- c. On receipt of a complaint under this policy, a whistleblower disclosure form is completed which documents the pathway the complainant has chosen. The eligible recipient is responsible for completing the form.
- d. If an eligible whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making their disclosure, they may contact the CEO, the Chair, the WBS, or an independent legal advisor.

#### 3.2 Receiving a disclosure

- a. Upon receiving a disclosure, the recipient 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 1.3).

#### 3.3 Investigating a qualifying disclosure

If a complaint is assessed to be an eligible disclosure then the following shall occur;

- a. The eligible recipient will notify the Chair of the Board within 48 hours (unless the matter concerns the Chair, in which case the eligible recipient will notify the CEO);
- b. A response plan is developed which includes;
  - A risk assessment;
  - Arrangements for support services as necessary;
  - Arrangement of any required protections for the whistleblower or other impacted employee if appropriate. This may include adjustments to work arrangements.
- c. Reports are made to any external authorities as required by law;
- d. An external investigator is appointed to conduct the investigation into the whistleblower complaint.
- e. The investigation will be undertaken by an external investigator which will include:
  - Making reasonable inquiries to test the veracity of the disclosure;
  - Informing the person subject of the disclosure of the allegation that has been made, and providing them with reasonable details with respect to the nature of the allegation, and allowing them an opportunity to respond;
  - Assessing all of the evidence obtained to making a finding in accordance with the civil standard of proof; and
  - Writing an investigation report with recommended findings.
- f. The Investigation Report will be provided to the CEO, if appropriate. Where complaints have been made about the CEO, it shall be provided to the Chair of the Board;

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- g. The CEO in consultation with the Chair of the Board, if appropriate, will determine a suitable outcome based on the recommended findings made in the Investigation Report. This may include;
  - Disciplinary action;
  - System review
  - Further external reporting; and
  - Ongoing support.
- h. The CEO (or their delegate) will communicate in writing any findings and outcomes of the investigation to the whistleblower and the person subject of the complaint.
- i. All documentation and records regarding the matter are to be securely and confidentially retained.

#### **4. WHISTLEBLOWER PROTECTION AND SUPPORT**

##### **4.1 Confidentiality and records**

- a. The identity of the eligible whistleblower must be kept confidential, unless consent is provided, or disclosure is required under relevant legislation.
- b. MNCCC 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 with them in a way that will maintain confidentiality.
- c. Exceptions to this may include 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.
- d. If a disclosure involves an issue which MNCCC is required to report, MNCCC may not be able to maintain the confidentiality of the identity of the disclosure. This disclosure could include NSW Police, the NSW Office of the Children’s Guardian, NSW Education Standards Authority or the NSW Department of Education.
- e. 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.
- f. 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.
- g. Confidentiality will be observed in relation to handling and storing records.

##### **4.2 Detrimental Conduct and Victimization**

- a. MNCCC has an obligation under the Corporations Act to protect whistleblowers from detrimental conduct or victimisation.
- b. Detrimental conduct means any actions or conduct that results in detriment or harm to a person or is reasonably likely to result in detriment or harm, including threats to cause detriment or harm to that person. This may include but is not limited to;
  - Dismissing the person from their employment;
  - Injuring the person in their employment
  - Altering the position or duties of the person to their disadvantage;
  - Discriminating against the whistleblower by treating them differently to other employees;
  - Harassing or intimidating the whistleblower;
  - Harming or injuring the person, including causing psychological harm;
  - Damaging the person’s property, reputation, business or financial position; or

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- Causing the person any other damage.
- c. Victimization means actually causing or threatening to cause a detriment to a person where the organisation;
  - Believes or suspects that a person has, or is planning to, or could make a whistleblower complaint and;
  - That the belief or suspicion is the reason, or part of the reason for the action that causes detriment to the person.
- d. If a whistleblower believes they are being subjected to detriment or victimisation, they should immediately report this to the CEO, if appropriate. Alternatively, this can be reported to the Chair or the WBS.
- e. Where it is reported or suspected that any person is engaging in detrimental conduct or victimisation against a whistleblower, disciplinary action may be taken up to and including the termination of employment.
- f. MNCCC’s employee assistance program (EAP) is available to all current employees, and will be offered to any eligible whistleblower who is a current employee should they wish to utilise the service.

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**5. VERSION HISTORY**

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1.0	John Beaumont, Paul Davis (Integroe)	March 2021	CEO Under delegation	26/03/2021	Creation
2.0	Integroe Partners	July 2023  Changed from NSC042 to OSS030	CEO Under delegation	27/10/2023	Amended to reflect best practice/ legislative requirements and incorporate whole of MNCCC.

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