

WHISTLEBLOWER POLICY

1 INTRODUCTION

Diocese of Sale Catholic Education Limited (**DOSCEL**) is committed to promoting and supporting a culture of corporate compliance, honest and ethical behaviour, and good corporate governance. DOSCEL is committed to maintaining the highest standards of ethics, honesty, openness, fairness and accountability, and we recognise that our people have an important part to play in achieving this goal.

Officers and employees may report concerns regarding potentially unethical, unlawful or improper practices or behaviours (where there are reasonable grounds to suspect such conduct). Provided certain criteria are met, as detailed in this Policy, the individual reporting the concerns will be protected from intimidation, disadvantage or reprisal for doing so.

The relevant protections are set out in the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Tax Administration Act 1953* (Cth), as amended by the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (**Amendment Act**) (together, the **Whistleblower Protection Scheme**).

2 PURPOSE

The purpose of this Policy is to encourage disclosures of wrongdoing and to ensure that individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported according to this Policy.

This Policy sets out information about:

- (a) the disclosures that qualify for protection under the Whistleblower Protection Scheme;
- (b) the protections available to whistleblowers, including protections under the Whistleblower Protection Scheme;
- (c) the persons to whom disclosures under the Whistleblower Protection Scheme maybe made, and how;
- (d) how DOSCEL will support whistleblowers and protect them from detriment;
- (e) how DOSCEL will investigate disclosures that qualify for protection;
- (f) how DOSCEL will ensure fair treatment of DOSCEL employees who are mentioned in disclosures that qualify for protection, or to whom such disclosures relate;

- (g) how this Policy is to be made available to officers and employees of DOSCEL.

3 SCOPE OF THE WHISTLEBLOWER PROTECTION SCHEME

3.1 What kind of disclosures are protected?

A disclosure is protected under the Whistleblower Protection Scheme if:

- (a) the disclosure is made by an 'eligible whistleblower' (see section 3.2 below);
- (b) the disclosure:
 - (i) is made to:
 - A. the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Commissioner of Taxation, a prescribed Commonwealth authority under section 1317AA of the Corporations Act or a legal practitioner; or
 - B. an 'eligible recipient' within DOSCEL (see section 3.3 below); and
 - (ii) the eligible whistleblower has 'reasonable grounds' to 'suspect' that the disclosed information relates to certain categories of conduct (see section 3.4 below); or
- (c) the disclosure 'public interest disclosure' or 'emergency disclosure' (see section 3.4 below).

A disclosure which meets the criteria above, and which is therefore protected under the Whistleblower Protection Scheme, will be referred to as an '**eligible disclosure**' throughout this Policy.

In addition to being registered as a public company limited by guarantee under the Corporations Act and therefore regulated by ASIC, DOSCEL is also registered as a charity with the Australian Charities and Not-for-Profits Commission (**ACNC**). Whilst a person may wish to inform the ACNC of an issue or concern (either as well as, or instead of, ASIC), disclosures to the ACNC will not be protected under the Whistleblower Protection Scheme.

3.2 Who is an eligible whistleblower?

The following persons are capable of being 'eligible whistleblowers' for the purposes of the Whistleblower Protection Scheme:

- (a) any current or former officer of DOSCEL, which includes a director or company secretary of DOSCEL;
- (b) any current or former employee of DOSCEL (including paid interns and secondees, but not including volunteers);

- (c) any current or former supplier of goods or services to DOSCEL (whether paid or unpaid) and the supplier's employees (whether paid or unpaid);
- (d) an associate of DOSCEL, which includes:
 - (i) a director or secretary of DOSCEL, a related body corporate, or a director or secretary of a related body corporate (NB: a related body corporate has the meaning given to it in the Corporations Act 2001 and means a holding company or subsidiary of DOSCEL); and
 - (ii) a person in concert with whom DOSCEL is acting, or proposes to act, or with whom DOSCEL is, or proposes to become, associated, whether formally or informally, in any other way, which includes:
 - A. Schools' Advisory Councils/Committees
 - B. Parishes and their associates (such as Finance Council, Pastoral Council)
 - C. Catholic Education Commission Victoria Limited (**CECV**)
- (e) a relative of an individual listed in (a) to (d) above (which means their spouse, parent, child, brother or sister); and
- (f) a dependent of a person listed in (a) to (d) above or a dependent of their spouse.

Parents of students (unless they are also a relative of an individual listed in (a) to (d) above) are not eligible whistleblowers under this Policy. If you are a parent and wish to make a complaint or raise a concern, in the first instance contact should be made with the school.

When a parent is not satisfied with the manner in which their complaint has been treated by the school, or their complaint is about the principal of the school, parents should contact the Executive Manager: Industrial Relations / Human Resources, DOSCEL.

3.3 Who is an eligible recipient within DOSCEL?

Disclosures can be made to ASIC, APRA or another Commonwealth body prescribed by the Regulations and can qualify for protection under the Corporations Act. However, you are encouraged to first raise any concerns internally, before making a disclosure to any external body. This will assist DOSCEL to ensure that any wrongdoing is addressed as early as possible and will assist DOSCEL to build confidence and trust in its own policy, processes and procedures.

The following individuals are 'eligible recipients' for the purposes of the Whistleblower Protection Scheme:

- (a) any of DOSCEL's officers, which means a director or company secretary, including:
 - (i) the Chief Executive Officer;

- (ii) the Chief Financial Officer; the Chief Operations Officer; and
- (iii) the Executive Manager – Industrial Relations / Human Resources;
- (b) any of DOSCEL's senior managers, which means a person who makes, or participates in making, decisions affecting the whole, or a substantial part of, the business of DOSCEL, or who has the capacity to significantly affect DOSCEL's financial standing, which includes a School Principal; DOSCEL's auditors or actuaries; and
- (c) DOSCEL'S Whistleblower Protection Officers, who have been authorised by DOSCEL to receive eligible disclosures.

If you wish to make a disclosure under the Whistleblower Protection Scheme, you can contact any of the 'eligible recipients' listed above. However, you are encouraged to initially contact the Whistleblower Protection Officers. Their names and contact details are available [here](#).

The Whistleblower Protection Officers can also receive disclosures outside of business hours via email whistleblower@doscel.catholic.edu.au

Any eligible disclosure made to an officer or senior manager will be referred to a Whistleblower Protection Officer in order to determine whether an investigation will be conducted pursuant to clause 5.2 of this Policy.

3.4 What must a disclosure relate to in order to be protected?

A disclosure will not be protected under the Whistleblower Protection Scheme unless it is about a certain type of issue/concern which is protected by the Scheme.

Misconduct and improper state of affairs

A disclosure by an 'eligible whistleblower' to a person listed at paragraph 3.1(b)(i) above will be protected under the Whistleblower Protection Scheme if the eligible whistleblower has 'reasonable grounds' to 'suspect' that the disclosed information:

- (a) concerns misconduct in respect of DOSCEL or a related body corporate, which includes fraud, negligence, default, breach of trust and breach of duty;
- (b) concerns an improper state of affairs or circumstances in respect of DOSCEL or a related body corporate (including in relation to the tax affairs of DOSCEL or one of its directors or secretaries or related corporations);
- (c) indicates conduct by DOSCEL or one of its officers or employees:
 - (i) constituting an offence against, or contravention of, a provision of the Corporations Act or other specified financial services legislation;

- (ii) constituting an offence against any other law of the Commonwealth punishable by 12 months or more of imprisonment (i.e. indictable offences such as tax fraud, certain money laundering offences, and possession and importation of border controlled drugs);
- (iii) representing a danger to the public or the financial system;
- (iv) that is prescribed by applicable Regulations.

The conduct does not need to involve a contravention of a particular law in order to be an eligible disclosure. Examples of conduct which might be the subject of an eligible disclosure include:

- (a) illegal conduct, such as theft, dealing in or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- (b) fraud, money laundering or misappropriation of funds;
- (c) offering or accepting a bribe;
- (d) financial irregularities;
- (e) failing to comply with, or a breach of, legal or regulatory requirements;
- (f) conduct which poses a risk to the health and safety of any individual;
- (g) any deliberate covering up of information relating to the above matters.

An eligible whistleblower will still be protected under the Scheme in circumstances where they make an eligible disclosure to an eligible recipient, even if their disclosure turns out to be incorrect (provided that the eligible whistleblower reasonably believes it to be true when making the disclosure).

Exception for personal work-related grievances

Under the Whistleblower Protection Scheme, a disclosure will not be protected to the extent that the information disclosed:

- (a) concerns a 'personal work-related grievance' of the discloser (see further below); and
- (b) does not concern a contravention, or an alleged contravention, of the provisions in the Corporations Act prohibiting victimisation involving detriment caused to the discloser, or a threat made to the discloser.

For the purposes of this Policy, a disclosure is a 'personal work-related grievance' if:

- (a) the information contained in the disclosure concerns a grievance about any matter in relation to the employment or former employment of the discloser, having (or tending to have) implications for that individual personally

- (b) the information:
 - (i) does not have significant implications for DOSCEL, or another regulated entity, that do not relate to the discloser

does not concern conduct, or alleged conduct, as outlined in this Policy. Examples of personal work-related grievances, which do not qualify for protection, include:

- (a) an interpersonal conflict between the discloser and another employee;
- (b) a decision that does not involve a breach of workplace laws;
- (c) a decision about the engagement, transfer or promotion of the discloser;
- (d) a decision about the terms and conditions of engagement of the discloser; or
- (e) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

You can still make a complaint about a personal work-related grievance by discussing these with your principal or DOSCEL Manager in the first instance.

Examples of a disclosure about, or including, a personal work-related grievance that does still qualify for protection are:

- (a) where it includes information about misconduct (i.e. fraud, negligence, default, breach of trust and breach of duty);
- (b) where DOSCEL has breached employment or other Commonwealth laws punishable by imprisonment for a period of 12 months or more;
- (c) the discloser suffers from or is threatened with detriment for making a disclosure.

Public interest disclosures and emergency disclosures

There are two additional categories of eligible disclosure that may be made to journalists and members of Parliament in certain circumstances. These are known as 'public interest disclosures' and 'emergency disclosures' and are explained further below.

'Public interest disclosures' will be protected in circumstances where:

- (a) the eligible whistleblower has previously made an eligible disclosure;
- (b) at least 90 days have passed since that previous disclosure was made;
- (c) the eligible whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the disclosure related;

- (d) the eligible whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest;
- (e) at least 90 days after making the previous disclosure, the eligible whistleblower gave notice to the body to which the original disclosure was made stating their intention to make a public interest disclosure and including sufficient information to identify the original disclosure;
- (f) the extent of the information disclosed is no greater than necessary to inform the recipient of the misconduct, improper state of affairs or relevant circumstances.

'Emergency disclosures' will be protected in circumstances where:

- (a) the eligible whistleblower has previously made an eligible disclosure;
- (b) 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;
- (c) the eligible whistleblower gave notice to the body to which the original disclosure was made that stating their intention to make an emergency disclosure and including sufficient information to identify the original disclosure;
- (d) the extent of the information disclosed is no greater than is necessary to inform the recipient of the substantial and imminent danger.

4 PROTECTIONS

4.1 Confidentiality

Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the Whistleblower Protection Scheme. Contravention of these obligations is an offence and may also incur a civil penalty.

Unless the whistleblower consents, their identity or any information likely to lead to the disclosure of their identity must not be disclosed by the eligible recipient, where that confidential information was obtained directly or indirectly because of the eligible disclosure, to any other person. However, there are some exceptions to this protection, as set out below.

DOSCEL encourages whistleblowers to disclose their identity if they feel comfortable to do so. This will assist DOSCEL to efficiently and effectively assess and, where required, investigate, the subject matter of an eligible disclosure. However anonymous disclosures will still be protected.

It is also important to note that, even if a whistleblower does not consent to their identity or identifying information being disclosed to any other persons, it will still be lawful under the Whistleblower Protection Scheme:

- (a) for the eligible recipient to disclose the whistleblower's identity or identifying information to:
 - (i) ASIC, APRA, the AFP or the Commissioner of Taxation
 - (ii) a legal practitioner for the purposes of obtaining advice about the disclosure
 - (iii) a body prescribed by the Regulations
- (b) for ASIC, APRA or the AFP to disclose the whistleblower's identity or identifying information to a Commonwealth, State or Territory authority for the purpose of assisting that authority in the performance of its functions or duties;
- (c) to disclose information that is likely to lead to the disclosure of the whistleblower's identity if this is reasonably necessary for the purposes of investigating the disclosure, provided all reasonable steps have been taken to reduce the risk that the whistleblower will be identified as a result.

Confidentiality in relation to reportable allegations

If a disclosure relates to a 'reportable allegation' within the meaning of the *Child Wellbeing and Safety Act 2005 (Vic)* (**Reportable Conduct Scheme**), the matter may have to be reported to other external bodies.

A **reportable allegation** means any information that leads a person to form a reasonable belief that an employee has committed:

- (a) reportable conduct, which means:
 - (i) a sexual offence committed against, with or in the presence of, a child, whether or not a criminal proceeding in relation to the offence has been commenced or concluded;
 - (ii) sexual misconduct, committed against, with or in the presence of, a child;
 - (iii) physical violence committed against, with or in the presence of, a child;
 - (iv) any behaviour that causes significant emotional or psychological harm to a child; or
 - (v) significant neglect of a child; or
- (b) misconduct that may involve reportable conduct,

whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

DOSCEL has a statutory obligation to report any reportable allegations to the Commission for Children and Young People (**CCYP**), pursuant to the Reportable Conduct Scheme. It may also be necessary for DOSCEL to report the matter to Victoria Police and, if the allegation relates to a teacher, the Victorian Institute of Teaching. In order to comply with its statutory obligations under the Reportable Conduct Scheme, such disclosures might include the disclosure of information which could lead to the identification of the discloser.

By making a disclosure of a reportable allegation, disclosers acknowledge that, and consent to, the reportable allegation being reported to the CCYP, Victoria Police and, where necessary, the VIT, notwithstanding that it might lead to their identification. If you have any concerns about confidentiality in relation to a disclosure of a reportable allegation, you are encouraged to contact a Whistleblower Protection Officer or seek independent legal advice.

Steps DOSCEL is taking to ensure confidentiality is maintained

If, after making a disclosure, you have any concerns that these obligations of confidentiality may have been breached, you can lodge a complaint with the Chief Executive Officer of DOSCEL. You may also lodge a complaint with ASIC for investigation.

DOSCEL will take reasonably practicable steps to ensure that confidentiality is maintained. This includes, but is not limited to:

- (a) redacting personal information of the discloser;
- (b) where possible, contacting the whistleblower to obtain assistance in identifying certain aspects of their disclosure which could inadvertently identify them;
- (c) ensuring disclosures are handled and investigated by appropriately qualified staff;
- (d) ensuring records are stored securely and that access to information relating to a disclosure is limited to those directly involved in managing and investigating the disclosure.

4.2 DOSCEL cannot pursue action against the whistleblower

Under the Whistleblower Protection Scheme, DOSCEL cannot pursue any civil, criminal, administrative or contractual action, remedy or right against an eligible whistleblower in relation to the making of an eligible disclosure.

An eligible whistleblower may still be subject to civil, criminal or administrative liability for any of their own conduct which is revealed by the disclosure – the making of a disclosure does not grant the eligible whistleblower immunity with respect to their own misconduct.

However, if they made the disclosure to the Commissioner of Taxation, the information contained in the disclosure is not admissible in evidence against the whistleblower in criminal or penalty proceedings (other than proceedings in respect of the falsity of the information).

DOSCEL retains the ability to raise with a whistleblower matters that arise in the ordinary course of their employment or engagement, including separate performance or misconduct issues.

4.3 Detriments and threats of detriment prohibited

The Whistleblower Protection Scheme makes it an offence for a person to:

- (a) engage in conduct against another person that causes or will cause a 'detriment' (defined below):
 - (i) in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make an eligible disclosure
 - (ii) if the belief or suspicion held by that person is the reason or part of the reason for their conduct
- (b) threaten to cause detriment where:
 - (i) the person making the threat intended to cause, or was reckless as to causing, fear that a detriment would be carried out

the threat was made because the person threatened has made, or may make, an eligible disclosure.

The meaning of 'detriment' includes:

- (a) dismissing an employee
- (b) injuring an employee in their employment
- (c) altering an employee's position or duties to their disadvantage
- (d) discriminating between an employee and other employees
- (e) harassing or intimidating a person
- (f) harming or injuring a person, including psychologically
- (g) damaging a person's property, reputation, business or financial position
- (h) any other damage to a person.

DOSCEL will take reasonably practicable steps to ensure that disclosers are protected from detriment. This includes, but is not limited to:

- (a) communicating this Policy to all staff, to ensure that they are aware of their obligations not to take detrimental action against anyone making a disclosure;
- (b) where a disclosure is made to management, taking steps to ensure that management are aware of their responsibilities to maintain the confidentiality of the disclosure;
- (c) providing support services, such as counselling and pastoral care, to disclosers;
- (d) taking steps to address any allegation of detrimental action, which may include investigation.

If you are concerned that you might have been subject to detrimental action as a result of making a disclosure, you are encouraged to seek independent legal advice. You can also contact ASIC if you consider you have suffered detrimental action.

4.4 Consequences of causing or threatening detriment

Courts have broad powers to make orders remedying actual or threatened detrimental conduct, as well as conduct by persons who aided or abetted, induced, or were in other ways party to, that detrimental conduct.

Compensation or other remedies might be available if:

- (a) a person suffers loss, damage or injury because of the disclosure; and
- (b) DOSCEL failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Possible orders include:

- (a) an injunction
- (b) compensation for loss, damage or injury (including against individual employees and their employers)
- (c) the making of an apology
- (d) reinstatement
- (e) exemplary damages
- (f) any other order the court thinks appropriate.

You are encouraged to seek independent legal advice if you think you have been subjected to detrimental conduct.

4.5 Other protections available

If a disclosure qualifies for protection under the Whistleblower Protection Scheme, it may also amount to the exercise of a workplace right by either a DOSCEL employee or contractor. DOSCEL and its employees are prohibited under the Fair Work Act 2009 (Cth) from taking adverse action against employees or contractors because they exercised or propose to exercise any workplace rights.

5 SUPPORT, INVESTIGATIONS AND FAIR TREATMENT

5.1 What support will be provided to eligible whistleblowers?

DOSCEL is committed to transparency and to building an environment in which officers and employees feel comfortable raising legitimate issues relating to misconduct or any improper state of affairs or circumstances that may be affecting DOSCEL and how it operates.

When a disclosure is received, DOSCEL will assess each disclosure to determine whether it qualifies for protection and whether a formal, in-depth investigation is required.

Whenever an eligible disclosure is made and within the limits of the obligations of confidentiality imposed under legislation and this Policy, the Whistleblower Protection Officer will:

- (a) reiterate the requirements of this Policy with any affected persons in order to ensure that the protections afforded under the Whistleblower Protection Scheme are not undermined
- (b) offer all whistleblowers access to DOSCEL's Employee Assistance Program.

Eligible whistleblowers will be provided with regular updates (if they can be contacted). The frequency and timeframe of these updates may vary depending on the nature of the disclosure.

5.2 When and how will DOSCEL investigate the matter/s disclosed?

Eligible disclosures will often be investigated internally by the Whistleblower Protection Officer. However, it may sometimes be appropriate for investigations to be carried out by others within DOSCEL, or externally, on DOSCEL's behalf. This will depend on the seriousness of any allegations made in the disclosure and on the person/s to whom they relate. Any investigation will be undertaken as quickly as practicable, having regard to DOSCEL's obligations with respect to natural justice.

Natural justice will always be observed in taking action to manage and investigate the matters raised by an eligible disclosure, including in relation to any employee of DOSCEL who is mentioned in a disclosure, or to whom a disclosure relates. Any action taken as the result of a disclosure will only occur where there is cogent evidence of the alleged misconduct or improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.

The Whistleblower Protection Officer is responsible for:

- (a) conducting or coordinating any investigation into any report received from a whistleblower, including assessing whether a disclosure is protected
- (b) documenting and handling all matters in relation to the report and any subsequent investigation.

The Whistleblower Protection Officer will, at all times:

- (a) act impartially, fairly and objectively, without any pre-conceived opinion on the whistleblower or the subject matter, or any conflicts of interest
- (b) have direct and unrestricted access to reasonable financial, legal and operational assistance from DOSCEL as required for any investigation.

Unless prevented by applicable laws, a person who is the subject of a disclosure may be:

- (a) informed as to the allegations being made against them and the substance of any adverse comment that may be included in a report or other document arising out of the investigation
- (b) given a right to respond to the allegations.

A person who is the subject of the disclosure, and the discloser, will also be offered access to relevant support services, such as counselling.

If it is reasonably necessary for investigating the issues raised in the disclosure, information which might lead to the identification of the discloser may be disclosed, provided that:

- (a) the information does not include the discloser's identity; and
- (b) DOSCEL has removed information relating to the discloser's identity or other information that is likely to lead to their identification (e.g. name, position title).

DOSCEL may not be able to conduct an investigation if the identity of the discloser is not known and/or it is not possible to contact the discloser. The ability of DOSCEL to investigate the matter may also be impacted if the disclosure is made anonymously and the discloser will not consent to their identity, or information which might lead to the disclosure of their identity, being disclosed during the investigation.

It may not always be appropriate to provide details of the outcome of the investigation to the discloser – each matter must be assessed on a case by case basis.

5.3 Records

Clear and current records will be kept of the progress and outcome of all investigations into matters raised by eligible disclosures. The method for documenting and reporting the findings of any investigation will depend on the nature of the disclosure.

All records will be stored in keeping with confidentiality requirements.

6 VEXATIOUS DISCLOSURES

A whistleblower will only be protected under the Whistleblower Protection Scheme if they have reasonable grounds to suspect that the information that they disclose concerns conduct or affairs falling within the scope of the Whistleblower Protection Scheme. The protections under the Whistleblower Protection Scheme will not extend to vexatious complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for DOSCEL to take disciplinary action against any person who did not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

7 OTHER MATTERS

It is the responsibility of all DOSCEL officers and employees to comply with, be aware of, and understand the scope of, the Whistleblower Protection Scheme and the protections that it affords eligible whistleblowers. This Policy will be made available to officers and employees via the DOSCEL website and relevant intranet sites. The Policy will also be published on DOSCEL's website, for access by those outside the organisation.

Any breach of this Policy may result in disciplinary action, up to and including termination of employment.

This Policy is not a term of any contract, including any contract of employment, and does not impose any contractual duties, implied or otherwise, on DOSCEL or its officers and employees. This Policy may be varied by DOSCEL from time to time.

8 RELATED DOCUMENTS

- (a) *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth)
- (b) *Corporations Act 2001* (Cth)
- (c) *Tax Administration Act 1953* (Cth)
- (d) *Fair Work Act 2009* (Cth)

9 REFERENCES

If at any time you have any questions regarding this Policy, your obligations, protections or any other matters outlined above, we encourage you to contact your manager in the first instance. If you do not feel comfortable talking with your manager, please contact the DOSCEL Whistleblower Protection Officers on the details available on DOSCEL website or via email whistleblower@doscel.catholic.edu.au

10 REVIEW

Implementation Date: December 2019

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