

WHISTLEBLOWER POLICY

AL NOORI MUSLIM SCHOOL

KNOWLEDGE IS
LIGHT

GOOD DEEDS
ARE PIETY



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1.0 Introduction

1.1 Purpose and scope

This policy applies to Al Noori Muslim School to ensure individuals who disclose wrongdoing in relation to the school can do so safely, securely and with confidence that they will be protected and supported. The policy is just one of several policies and procedures within Al Noori Muslim School to support ethical behaviour. The Whistleblower policy is intended as an alternative when all other internal reporting avenues have been exhausted, are not considered appropriate or are not available.

This policy will be published on the Al Noori Muslim School website and made available to all Board of Director members and employees.

1.2 Related policies

- Complaints or allegations of staff misconduct that do not meet the criteria of a whistleblowing disclosure will be addressed in accordance with the school's Complaints and Grievance Resolution Policy.
- Disclosures about reportable conduct will be addressed in accordance with the school's Child Protection Policy.
- 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 the school's Staff Code of Conduct Policy.
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the school's Discrimination, Harassment and Bullying Statement.

2.0 What is a qualifying disclosure?

A **qualifying disclosure** is when an **eligible whistleblower** makes a disclosure to an **eligible recipient** (AMS Disclosure Officer), and the eligible whistleblower has **reasonable grounds to suspect** that the information concerns a **disclosable matter**.

3.0 Who can make a qualifying disclosure?

3.1 Eligible whistleblowers

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

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

3.2 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. The school 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. The school encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided. It will also allow the school to report the progress of the investigation to the discloser, as appropriate.

4.0 Disclosable matters that qualify for protection

4.1 Disclosable matters

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

- misconduct;
- an improper state of affairs or circumstances;
- illegal activity (including conduct of officers and employees) – meaning activity in breach of the Corporations Act or specified financial services legislation, or an offence against any law of the Commonwealth punishable by imprisonment of 12 months or more; or
- conduct (including conduct of officers and employees) that represents a danger to the public or financial system.

This may include any conduct in relation to the operation of the school that involves:

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

If a disclosure is not about a disclosable matter, it will not qualify for whistleblower protection under the *Corporations Act*.

4.2 Reasonable grounds to suspect

Whether a discloser would have ‘reasonable grounds to suspect’ is based on the reasonableness of the reasons for 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.

4.3 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 school that do not relate 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; or

Examples of disclosures regarding personal work-related grievances that may not qualify for protection include:

- an interpersonal conflict between the discloser and another employee;
- a decision relating to the engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise discipline the discloser.

These matters will be addressed in accordance with the school's Complaints and Grievance Resolution Policy and Staff Code of Conduct Policy.

A personal work-related grievance 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 school 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

5.0 Who can receive a qualifying disclosure

Eligible recipients

The following are eligible recipients (AMS Disclosure Officer) who can receive a qualifying disclosure: Chairman; a Board of Directors member; Principal; In-house Counsel and Head of School Operations and Performance. These persons (AMS Disclosure Officers) are particularly authorised by the school to receive disclosures.

5.2 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure directly to any eligible recipient (AMS Disclosure Officer), the School encourages them to make a disclosure in writing to the Principal via email at principal@alnoori.nsw.edu.au.

If it is not appropriate for the disclosure to be made to the Principal, the eligible whistleblower is encouraged to make the disclosure, in writing, to the Chairman via email at chairman@alnoori.nsw.edu.au.

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

If an eligible whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making their disclosure, they can contact the In-house Counsel or Head of School Operations and Performance.

5.2.1 Recommended contents of written disclosure

When emailing a disclosure to an eligible recipient, the following information should be provided by the Whistleblower, where known:

- Full name of person or persons involved, including nick names. If names are not known description or position held within the school.
- Total number of persons involved in the suspected improper conduct.
- Other personal details known regarding person/persons alleged to be involved in the suspected improper conduct.
- Description of the alleged conduct or behaviour, including any relevant details including:
 - The nature of the alleged conduct;
 - When the conduct is alleged to have occurred; and
 - The persons involved in such conduct.
- Any physical evidence that the Whistleblower wishes to provide to support the allegation e.g.: documents, photographs, files, official records, invoices, emails, previous disclosures, computer files, bank or other financial records, equipment missing from asset registers, meeting minutes, known location of equipment, property or other physical evidence off site. (Note: It is not intended that the Whistleblower attempt or be required to collect any evidence, which is the role of the Investigating Officer under the Whistleblower Policy, but that any evidence already in their possession at the time of the Disclosure may be provided as part of the disclosure, if useful.)

- State whether they wish to remain anonymous and if feedback is required. If feedback is required, they need to include a method of contact i.e. email address, telephone number, etc. If anonymity is not required, include name (printed) and a preferred telephone contact number and email address.

5.3 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.

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

5.4 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 disclosure to ASIC, APRA or a prescribed Commonwealth authority 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
- 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.

An eligible whistleblower may wish to consider obtaining independent legal advice before making a public interest disclosure.

5.5 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
- 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 an emergency disclosure.

6.0 Investigating a qualifying disclosure

6.1 Receiving a disclosure

Upon receiving a disclosure, the recipient (Chairman, Principal, In-house Counsel and Head of School Operations and Performance) will assess the disclosure to determine whether it qualifies for protection under the *Corporations Act* and is to be managed in accordance with this policy (qualifying disclosure) or the disclosure concerns matters that should be managed in accordance with related policies (see section 1.2).

6.2 Investigating a qualifying disclosure

The School will acknowledge receipt of a disclosure within a reasonable period, assuming the 'eligible whistleblower' can be contacted (including through anonymous channels). The AMS Disclosure Officer will assess disclosures to determine whether:

- they fall within the Whistleblower Protection Scheme; and
- an investigation is required – and if so, how that investigation should be carried out.

Generally, if an investigation is required, the AMS Disclosure Officer will determine:

- the nature and scope of the investigation. The AMS Disclosure Officer will appoint an Investigating Officer to carry out the investigation in accordance with this Policy, who must follow the investigating procedure set out below.
- the nature of any technical, financial or legal advice that may be required to support the investigation; and
- the anticipated timeframe for the investigation. Each investigation will be different which will impact the applicable timeframe. However, the School's intent is to complete an investigation as soon as practicable.

The **objectives** of an investigation will be:

- To collate information relating to the Disclosure as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- To consider the information collected and to draw conclusions objectively and impartially;
- To maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- To make recommendations arising from the conclusions drawn, concerning remedial or other appropriate action.

The AMS Disclosure Officer will provide the Investigating Officer with **Terms of Reference** in writing, clearly identifying the parameters of the investigation. Reasonably regular status reports are required to be made by the Investigating Officer to the AMS Disclosure Officer.

The Investigating Officer will prepare an **investigation plan** for approval by the AMS Disclosure Officer. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?

- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the Whistleblower will be:

- Notified by the Investigating Officer that he or she has been appointed to conduct the investigation;
- Asked to clarify any matters; and
- Provide any additional material the Whistleblower might have.

The Investigating Officer will be sensitive to the Whistleblower's fear of reprisals and will be aware of any existing statutory protections provided. The Investigating Officer will have the authority to make all necessary inquiries with Al Noori Muslim School staff to satisfy the requirements of the Whistleblower Policy.

The Investigating Officer will make **contemporaneous notes of all discussions and phone calls**. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the Investigating Officer will take all reasonable steps to protect the identity of the Whistleblower in accordance with this Whistleblower Policy.

It is in the discretion of the Investigating Officer to allow any witness to have legal or other representation or support during an interview. If a witness has a reasonable need for legal representation or support, having in mind the principles of natural justice, permission will be granted.

After the investigation, the Investigating Officer will submit a **written report** of his or her findings to the AMS Disclosure Officer. The report will contain:

- The allegation/s;
- An account of all relevant information received and, if the Investigating Officer has rejected evidence as being unreliable, the reasons for this opinion being formed;
- The conclusions reached and the basis for them; and
- Any recommendations arising from the conclusions.

Where the Investigating Officer has found that the conduct disclosed by the Whistleblower has, on the balance of probabilities, occurred, recommendations made by the Investigating Officer will include:

- The steps that need to be taken by Al Noori Muslim School to prevent the conduct from continuing or occurring in the future; and
- Any action that should be taken by Al Noori Muslim School to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct or instigation of any relevant criminal proceedings.

Where the Investigating Officer's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

If anonymity has been requested, the report will not disclose, or likely to lead to the identification of the Whistleblower.

The AMS Disclosure Officer will provide the Investigating Officer's written report to the Principal setting out the findings of the investigation and recommending any remedial steps to be taken. The Principal will authorise any actions to be undertaken.

The AMS Disclosure Officer will report to the Al Noori Muslim School Board of Directors on all Disclosure investigations and outcomes. The AMS Disclosure Officer, if applicable, will ensure the Whistleblower is kept regularly informed concerning the handling of a Disclosure and any investigation. The AMS Disclosure Officer will notify the Whistleblower, of the outcome of any investigation relating to a Disclosure that they have made.

Where practicable, the School will keep the eligible whistleblower informed of the steps taken or to be taken (or if no action is to be taken, the reason for this), and provide appropriate updates, including about the completion of any investigation. However, the extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors the School considers relevant in the particular situation.

The School may not be able to undertake an investigation, or provide information about the process etc., if it is not able to contact the eligible whistleblower, for example, if a disclosure is made anonymously and has not provided a means of contact.

6.3 Fair treatment of employees mentioned in disclosures

The School 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.

The principles of **natural justice** will be followed in any investigation of a Disclosure. The principles of natural justice concern procedural fairness, the opportunity for any accused person to be heard and to ensure a fair decision is reached by an objective and impartial decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

Al Noori Muslim School will have regard to the following issues in ensuring procedural fairness:

- The person who is the subject of the Disclosure is entitled to know the allegations made against him or her in full and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the Disclosure is received, or the investigation has commenced);
- Confidentiality will be maintained with respect to the identity of any person about whom a Disclosure has been made unless and until any Disclosure is necessary on a 'need to know' basis;
- If the investigating Officer is contemplating making a report which is averse to the interests of any person, that person should be given the opportunity to put forward further material that may influence the outcome of the report and that person's defence should be fairly set out in the report;
- All relevant parties to a matter should be heard and all submissions should be considered;
- A decision should not be made until all reasonable inquiries have been made;
- The Investigating Officer or any decision maker should not have a personal or direct interest in the matter being investigated;

- All proceedings must be carried out fairly and without bias. Care will be taken to exclude perceived bias from the process; and
- The Investigating Officer must be impartial in assessing the credibility of the Whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

The school will document the steps of the investigation and the findings from the investigation and report those findings to those responsible in the school. 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. If the Whistleblower is not an Al Noori Muslim School employee, Al Noori Muslim School has discretion to require the person to sign a confidentiality agreement before notifying the person of the outcome of the investigation.

7.0 Confidentiality and records

Under the Corporations Act, the identity of the discloser of a qualifying disclosure and information which is likely to lead to the identification of the discloser must be kept confidential.

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

If a disclosure involves an issue which the school is required to report, the school may not be able to maintain the confidentiality of the identity of the disclosure. This disclosure could include NSW Police, the NSW Ombudsman, NSW Education Standards Authority or the 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 will be observed in relation to handling and storing records.

8.0 Whistleblower protections and support

8.1 Confidentiality

Eligible whistleblowers making a qualifying disclosure are protected by the requirement that their identity, and information that may lead to their identification, should be kept confidential, subject to relevant exceptions as set out in section 7 above.

The School 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.

8.2 Immunity

Eligible whistleblowers making a qualifying disclosure cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. No contractual or other remedy or right may be enforced or exercised against the person on the basis of the disclosure.

Whistleblowers who make some types of qualifying disclosures (generally external to the school) are also provided immunities to ensure that information they disclose is not admissible in evidence against them in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

These immunities do not prevent an eligible whistleblower being subject to criminal, civil or other liability for conduct that is revealed by the whistleblower, only that the information the person has disclosed is not admissible in certain proceedings against them.

8.3 Detriment

Eligible whistleblowers are also protected from victimisation - suffering any detriment by reason of the qualifying disclosure. It is unlawful for a person to engage in conduct against another person that causes, or will cause detriment, where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure.

Threats of detriment are also unlawful.

Detriment has a very broad meaning and includes dismissal of an employee, injuring an employee in their employment, alteration of an employee's position or duties to their disadvantage; discrimination between an employee and other employees; victimisation of a dependent of the discloser, harassment or intimidation of a person or harm or injury to a person, including psychological harassment; damage to a person's property, reputation or business or financial position.

If an eligible whistleblower believes they are being subjected to a detriment or a threat of detriment, this should immediately be reported in writing to the Principal via email at principal@alnoori.nsw.edu.au.

If it is not appropriate for the report to be made to the Principal, the eligible whistleblower should report the matter, in writing, to the Chairman of the Board of Director via email at chairman@alnoori.nsw.edu.au.

The School may also consider a range of other matters to protect an eligible whistleblower from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure. Steps it will take to help achieve this may include:

1. assessing whether anyone may have a motive to cause detriment— information could be gathered from an eligible whistleblower about:
 - the risk of their identity becoming known;
 - who they fear might cause detriment to them;
 - whether there are any existing conflicts or problems in the workplace; and
 - whether there have already been threats to cause detriment.
2. analysing and evaluating the likelihood of each risk and evaluating the severity of the consequences;

3. developing and implementing strategies to prevent or contain the risks—for anonymous disclosures, and assessing whether the discloser’s identity can be readily identified or may become apparent during an investigation;
4. monitoring and reassessing the risk of detriment where required—the risk of detriment may increase or change as an investigation progresses, and even after an investigation is finalised;
5. taking steps to ensure that:
 - disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
 - each disclosure will be assessed and may be the subject of an investigation;
 - the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed.

The School's provides eligible whistleblowers who are employees, with support. If a whistleblower wishes to obtain support, such as counselling or other professional support, they should contact the School Phycologists.

Remedies available to an eligible whistleblower for being subjected to detriment could include:

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

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

9.0 Contact

If you have any queries about this policy, you should contact the In-house Counsel or Head of School Operations and Performance, for advice.