



<b>Policy Name</b>	<b>WHISTLEBLOWER POLICY</b>
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<b>Head of Policy</b>	College Principal
<b>Management Responsibility</b>	College Executive Board of Directors
<b>Attention</b>	<ul style="list-style-type: none"><li>• Staff</li><li>• Directors of the Board</li><li>• Volunteers</li></ul>
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<b>Related Legislation</b>	<ul style="list-style-type: none"><li>• <i>Corporations Act 2001 (Cth) s.1317</i></li><li>• <i>Taxation Administration Act 1953</i></li></ul>
<b>Related College Policies</b>	<ul style="list-style-type: none"><li>• Anti-Bullying Policies &amp; Procedures (Years K-2, 3-6 and 7-12)</li><li>• Child Protection Policy &amp; Procedures</li><li>• Code of Conduct - Staff</li><li>• Complaints and Grievance Policy &amp; Procedures</li></ul>
<b>Endorsed By</b>	Board of Directors
<b>Access</b>	<input type="checkbox"/> College Intranet (Staff & Parents) <input checked="" type="checkbox"/> College Website <input checked="" type="checkbox"/> Staff Intranet only <input type="checkbox"/> Restricted - Board and/or College Executive <input type="checkbox"/> Restricted - Staff

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# 1. Introduction to this Policy

## 1.1 Purpose and scope

This Policy applies to Moriah College (**the College**) and is an important tool for helping the College to identify certain wrongdoing that may not be discovered unless there is a safe and secure means for disclosing such wrongdoing.

The purpose of this policy is to encourage and manage whistleblowing that is to manage **'qualifying disclosures'** (as defined), regarding **'disclosable matters'** (as defined) in relation to the College and to protect **'eligible whistleblowers'** or **'disclosers'** (as defined) who make such disclosures to an **'eligible recipient'** (as defined).

In addition, the purposes of this Policy include:

- to help deter wrongdoing, in line with the College's risk management and governance framework;
- to ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- to ensure disclosures are dealt with appropriately and on a timely basis;
- to provide transparency around the College's framework for receiving, handling and investigating disclosures;
- to support the College's values, code of conduct and other policies; and
- to support the College's long-term sustainability and reputation.

For the purposes of this Policy, the College comprises the following related entities:

- Moriah War Memorial College Association [ABN 98 077 604 961];
- The Moriah War Memorial Jewish College Association Limited [ABN 87 003 214 560];
- Kehillat Moriah Incorporated [ABN 16 284 221 251];
- Moriah College Parents' & Friends' Association [ABN 55 169 539 714];
- The Trustees for the Moriah College Building Fund [ABN 70 735 668 826]; and
- The Moriah College Foundation [ABN 53 670 925 736];

This Policy is available on eLy (the College's intranet) and the College's website.

## 1.2 Related policies

- Complaints or allegations of staff misconduct that do not meet the criteria of a qualifying (whistleblowing) disclosure will be addressed in accordance with the school's *Complaints and Grievance Policy (External)*.
- Disclosures about reportable conduct, will be addressed in accordance with the College'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, that are not whistleblowing disclosures, may be addressed in accordance with the school's *Complaints and Grievance Policy (External)* and the *Staff Code of Conduct* (see also section 3.3 below).
- Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the school's *Anti Bullying Policies*.

## 2. Who this Policy applies to

### 2.1 Eligible whistleblowers

A discloser who qualifies as an **eligible whistleblower** (referred to in this Policy variously as a **'discloser'** or **'eligible discloser'** or **'eligible whistleblower'**), is an individual who is, or has been, any of the following, in relation to the College:

- a Board member, Trustee, or Life Patron of the College;
- an employee;
- a person who supplies goods or services (whether for payment or as a volunteer);
- an employee of a person who supplies goods or services (whether for payment or as a volunteer);
- an individual who is an associate of the College (as defined in the *Corporations Act*); and
- a relative, dependent or spouse (or dependents of a spouse), of any individual described above.

## 3. Matters this Policy applies to

### 3.1 Qualifying disclosures

In order to be protected by this Policy, a disclosure must be a **qualifying disclosure**, that is where an **eligible whistleblower** makes:

- a disclosure directly to an **eligible recipient**, or to ASIC, APRA or other Commonwealth body prescribed by regulation;
- a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the *Corporations Act*;
- an 'emergency disclosure' or 'public interest disclosure' to a journalist or member of parliament (see ss1317AAD(1) and (2) of the *Corporations Act*), preferably after obtaining independent legal advice;

and the 'eligible whistleblower' has **reasonable grounds to suspect** that the information concerns a **disclosable matter**.

A disclosure which is not a qualifying disclosure, is not protected under the *Corporations Act*, the *Tax Administration Act* or by this Policy, but may be protected under other legislation such as the *Fair Work Act 2009*.

### 3.2 Disclosable matters that qualify for Protection under this Policy

A disclosable matter is a disclosure of information where the eligible whistleblower has reasonable grounds to suspect that the information relating to the College 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 systems or is prescribed by legislation.

A disclosable matter may include any conduct in relation to the operation of the College that involves:

- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- fraud, unlawful or corrupt use of funds;
- offering or accepting a bribe;
- improper accounting or financial irregularities;
- failure to comply with, or breach of, legal or regulatory requirements;
- engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure; and
- systemic practices that pose a serious risk to the health and safety of any person on the College's premises or during College activities.

A disclosable matter can include conduct that may not involve a contravention of a particular law.

### 3.3 Personal work-related grievances generally do not qualify for Protection under this Policy

Generally, disclosures that concern personal work-related grievances will **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 College that do not relate to the discloser; and
- does not concern conduct that is:
  - an alleged contravention of the *Corporations Act* and specified financial services laws; or
  - an offence against another law of the Commonwealth, which is punishable by imprisonment of 12 months or more; or
  - a danger to the public or financial system; or

Examples of disclosures regarding personal work-related grievances that will **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 that does not involve a breach of workplace laws;
- 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 College's *Complaints and Grievance Policy (External) and Code of Conduct - Staff*.

A disclosure **may** qualify for protection if it concerns a personal work-related grievance and also concerns alleged detriment (or a threat of detriment) to the discloser or if:

- the College 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* .

### 3.4 Reasonable grounds to suspect

A discloser has 'reasonable grounds to suspect that the information concerns a disclosable matter', if the discloser has a suspicion that could reasonably be formed based on the facts and information available to them. A discloser can still qualify for protection even if their disclosure turns out to be incorrect.

If a disclosure is made without 'reasonable grounds to suspect' (e.g. where the disclosure is unfounded), the disclosure will not be a qualifying disclosure and the discloser will not have the protections provided for under this Policy, the *Corporations Act* and the *Tax Administration Act*.

This Policy limits protection for disclosures about solely personal employment related matters, while preserving protection for disclosures about systematic issues or reprisals against a whistleblower.

## 4. Who can receive a qualifying disclosure

### 4.1 Eligible recipients

The role of an 'eligible recipient' is to receive disclosures that qualify for protection under this Policy. In order for the disclosure to be protected under this Policy it must be made by a discloser directly to an 'eligible recipient.'

An 'eligible recipient' is an individual who occupies any of the following roles, in relation to the College:

- the College Principal;
- the College Vice Principal;
- the Chief Financial Officer;
- a Board member, a Trustee, or a Life Patron, of the College;
- a legal practitioner for the purpose of obtaining legal advice or legal representation (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter');
- an auditor, or member of an audit team of the school or a related company; and
- an actuary of the school or a related company.

As noted in section 3.1 above, a discloser can make a disclosure directly to regulatory bodies, or to a journalist or member of Parliament (only in case of public interest or emergency disclosures).

A discloser may wish to obtain additional information before formally making their disclosure and can do so by contacting the College's Director of People & Culture.

## 5. How to make a qualifying disclosure

### 5.1 Making a qualifying disclosure

While an eligible whistleblower can make a disclosure to any eligible recipient, the College encourages them to make a disclosure directly to the College Principal in writing - by post, hand delivery, or via email at [collegeprincipal@moriah.nsw.edu.au](mailto:collegeprincipal@moriah.nsw.edu.au)

If it is not appropriate for the disclosure to be made to the College Principal, the eligible whistleblower is encouraged to make the disclosure, directly to the President of the Board in writing - by post, hand delivery, or via email at [moriahpresident@moriah.nsw.edu.au](mailto:moriahpresident@moriah.nsw.edu.au)

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

A disclosure can be made outside the hours of operation of the College.

### 5.2 Anonymous disclosures

A disclosure can be made anonymously and still be protected under this Policy.

However, an anonymous disclosure may be difficult for the College to investigate. The College encourages disclosers to provide their names. A discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations. If a discloser wishes to disclose anonymously, the discloser should provide sufficient information to allow the matter to be properly investigated and the College encourages the discloser to provide an anonymous email address through which additional questions can be asked and information provided.

### 5.3 Public interest or emergency disclosures

An eligible whistleblower must not report a disclosable matter to a member of parliament or a journalist, unless it is a public interest disclosure or an emergency disclosure.

To make a public interest disclosure:

- the eligible whistleblower must have previously reported the disclosable matter to a regulator set out in section 3.1, and at least 90 days must have passed since that previous report;
- after that 90-day period, the eligible whistleblower must give the regulator who received that previous report, a written notice that:
  - includes sufficient information to identify the previous report; and
  - states that the eligible whistleblower intends to make a public interest disclosure;
- the eligible whistleblower must not have reasonable grounds to believe that action is being, or has been, taken to address the matters relating to the previous report;
- the eligible whistleblower must have reasonable grounds to believe that making a further report to a member of parliament or journalist would be in the public interest; and

- the eligible whistleblower must disclose information to the member of parliament or a journalist only to the extent necessary to inform him or her of the disclosable matter.

To make an emergency disclosure:

- the eligible whistleblower must have reasonable grounds to believe that the disclosable matter concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- the eligible whistleblower must have previously reported the Disclosable Matter to a regulator set out in section 3.1 and must also subsequently give it a written notice that:
  - includes sufficient information to identify the previous report; and
  - states that the eligible whistleblower intends to make an emergency disclosure; and
- the eligible whistleblower must disclose information to the member of parliament or a journalist only to the extent necessary to inform him or her of the substantial and imminent danger.

It is important to understand the above criteria for making a public interest disclosure or an emergency disclosure. The College recommends that whistleblowers contact an independent lawyer before making a public interest disclosure or an emergency disclosure.

## 6. 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 the requirement of confidentiality, are:

- disclosures to ASIC, the Australian Federal Police, a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections including this Policy or made with the consent of the discloser.
- The discloser's identity and information which is likely to lead to the identification of the discloser can also be provided to any Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions or duties. This 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 it is reasonably necessary for the purpose of investigating the matter, provided that all reasonable steps are taken to reduce the risk that the discloser will be identified as a result of the information being disclosed.

Breach of these confidentiality protections regarding the discloser's identity and information likely to lead to the identification of the discloser, is a criminal offence and may be the subject of criminal, civil and disciplinary proceedings.

Confidentiality must be observed in relation to handling and storing records.

## 7. Investigating a qualifying disclosure

### 7.1 Receiving a disclosure

Upon receiving a disclosure, the eligible recipient will assess the disclosure to determine whether it qualifies for protection under the *Corporations Act* and therefore is to be managed in accordance with this Policy (qualifying disclosure) or whether the disclosure concerns matters that should be managed in accordance with the College's related policies set out in section 1.2 above.

### 7.2 Investigating a qualifying disclosure

The manner in which the College investigates a qualifying disclosure, will depend on the nature of the disclosure.

An investigation will generally involve the making of inquiries or collection of evidence for the purpose of assessing the qualifying disclosure made by the whistleblower.

External professionals may be engaged to assist or conduct the investigation process.

In instances where the College reports the allegations within the qualifying disclosure to a third party, such as NSW Police, Australian Federal Police or Australian Securities and Investments Commission (ASIC), the investigation procedures of the relevant third party will generally take precedence.

The timing of an investigation will depend on the nature of the qualifying disclosure, the circumstances of the matter and whether the College is the primary investigator of the disclosure.

Employees about whom qualifying disclosures are made, will generally be given an opportunity to respond to the relevant allegations made in the qualifying disclosure.

An eligible whistleblower and the relevant parties to whom the qualifying disclosure relates, may choose to have an appropriate support person present at any meeting with representatives of the College.

The College will handle the disclosure confidentially, objectively fairly and independently and will keep and maintain appropriate records and documentation.

A discloser will be provided with regular updates, if the discloser can be contacted (including through anonymous channels), the frequency and timeframe of updates may vary depending on the nature of the disclosure, however there may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

## 8. Legal protections for Disclosers

### 8.1 Confidentiality protection

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.

### 8.2 Liability protection

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 qualifying disclosure.

Whistleblowers who make some types of qualifying disclosures (generally external to the College) 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.

In practice the College will take one or more of the following steps to protect the confidentiality of an eligible discloser:

- all personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in a gender-neutral context;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- disclosures will be handled and investigated by qualified staff.

Further the College will adopt the following procedures concerning record keeping:

- all paper and electronic documents and other materials relating to disclosures will be stored securely;
- access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;
- communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other staff; and
- each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

### 8.3 Detrimental conduct protection

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 (whether express, implied, conditional or unconditional) to cause detriment to a discloser 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; harassment or intimidation of a person; harm or injury to a person, including psychological harassment; damage to a person's property, reputation or business or financial position; or any other damage to a person.

In practice the College will protect disclosers from detriment by adopting measures including:

- processes for assessing the risk of detriment against a discloser and other persons which will commence as soon as possible after receiving a disclosure;
- providing support services (including counselling or other professional or legal services) to disclosers;
- strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation;
- actions for protecting a discloser from risk of detriment (e.g. allowing the discloser to perform their duties from another location, reassigning the discloser to another role at the same level, making other modifications to the discloser's workplace or the way they perform their work duties, or reassigning or relocating other staff involved in the disclosable matter);
- processes for ensuring that management are aware of their responsibilities to maintain the confidentiality of a disclosure, addressing the risks of isolation or harassment, managing conflicts, and ensuring fairness when managing the performance of, or taking other management action relating to, a discloser;
- procedures on how a discloser can lodge a complaint if they have suffered detriment, and the actions the entity may take in response to such complaints; and
- interventions for protecting a discloser if detriment has already occurred.

A discloser may seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO, if they believe they have suffered detriment.

A discloser (or any other employee or person), can seek compensation and other remedies through the courts if:

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

Remedies for being subjected to detriment could include:

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

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

If an eligible whistleblower believes they are being subjected to a detriment or a threat of detriment, this should immediately be reported in writing to the College Principal, via email at [collegeprincipal@moriah.nsw.edu.au](mailto:collegeprincipal@moriah.nsw.edu.au)

If it is not appropriate for the report to be made to the College Principal, the eligible whistleblower should report the matter, in writing, to the President of the Board, via email at [moriahpresident@moriah.nsw.edu.au](mailto:moriahpresident@moriah.nsw.edu.au) or to another eligible recipient specified in section 4.1 above.

An eligible discloser is encouraged to seek independent legal advice.

## 9. Additional support for eligible whistleblowers and other employees

The College's employee assistance program ([Info@AccessEAP.com.au](mailto:Info@AccessEAP.com.au)) services will be available to all eligible whistleblowers and other employees mentioned or affected by the disclosure, should they require that support. All such employees will be treated fairly.

## 10. Access to this policy

This Policy and any amendments to it, is available on eLy (the College's intranet) and is published on the College's website. In addition, College staff will be provided with a written summary of key aspect of the Policy.

## 11. Contact

If you have any queries about this policy, you should contact the Director of People and Culture for advice at [Concerns@moriah.nsw.edu.au](mailto:Concerns@moriah.nsw.edu.au)