



## **Protected Disclosures**

### **Rationale**

The Protected Disclosures (Protection of Whistleblowers) Act 2022 enables a discloser to report serious wrongdoing to an appropriate authority at any time rather than making a disclosure directly to the College.

### **Objectives**

- To provide definitions of *protected disclosure* and *serious wrongdoing* such as it applies to being the basis for a protected disclosure
- To explain conditions for disclosure
- To explain who can make a disclosure
- To outline protections and procedures for disclosers

### **Guidelines**

1. A disclosure of information is a ***protected disclosure*** if the discloser -
  - a. believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and
  - b. discloses information about that in accordance with this Act; and
  - c. does not disclose it in bad faith.

Such disclosers will be protected against retaliatory or disciplinary action and will not be liable for civil or criminal proceedings related to the disclosure.

2. ***Serious wrongdoing*** includes any act, omission, or course of conduct in (or by) any organisation that is one or more of the following:
  - a. an offence
  - b. a serious risk to -
    - i. public health; or
    - ii. public safety; or
    - iii. the health or safety of any individual; or
    - iv. the environment
  - c. a serious risk to the maintenance of law, including -
    - i. the prevention, investigation, and detection of offences; or
    - ii. the right to a fair trial
  - d. an unlawful, a corrupt, or an irregular use of public funds or public resources
  - e. oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by -
    - i. an employee (if the organisation is a public sector organisation)

- ii. a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government.
3. Before making a disclosure, the discloser should be sure the following conditions are met:
  - a. the information is about serious wrongdoing in or by the school, or in or by the Board; and
  - b. the discloser believes on reasonable grounds the information to be true or is likely to be true; and
  - c. the discloser wishes the wrongdoing to be investigated; and
  - d. the discloser wishes the disclosure to be protected.
4. Anyone who makes a disclosure and who has acted in accordance with the procedure outlined in this policy:
  - a. may bring a personal grievance in respect of retaliatory action from their employers
  - b. may access the anti-discrimination provisions of the Human Rights Act in respect of retaliatory action from their employers
  - c. are not liable for any civil or criminal proceedings, or to a disciplinary hearing by reason of having made or referred to a disclosure
  - d. will, as outlined in the Procedure below, have their disclosure treated with the utmost confidentiality
  - e. is entitled to support through practical assistance and advice
5. The protections provided in this section will not be available to disclosers making allegations they know to be false or where they have acted in bad faith.
6. Any discloser who wishes to make a protected disclosure should do so using the following procedure:
  - a. the discloser should submit the disclosure in writing
  - b. the disclosure should contain details of the nature of the serious wrongdoing, the name or names of people involved and the surrounding facts including details relating to the time and/or place of the wrongdoing if known or relevant
  - c. a signed copy of the written disclosure must be sent to the Principal or an appropriate authority, including but not limited to: Commissioner of Police, Controller and Auditor General, Director of the Serious Fraud Office, Inspector of General Intelligence and Security, Ombudsman, Parliamentary Commissioner for the Environment, Police Complaints Authority, Solicitor General, State Service Commissioner, Health and Disability Commissioner, the head of every public sector organisation
  - d. if it is believed that the Principal is involved in the wrongdoing that would make it inappropriate to disclose to him/her, then the disclosure can be made to the Board Presiding Member of Kavanagh College
  - e. on receipt of a disclosure, the receiver must, within 20 working days, examine seriously the allegations of wrongdoing and decide whether a full investigation is warranted, or decide that no action is required. If warranted, the investigation will be carried out by the receiver or arranged to occur as quickly as possible through an appropriate authority
  - f. all disclosures will be treated with utmost confidence. When undertaking an investigation, and when writing the report, the receiver will use their best endeavours not to reveal information that can or is likely to identify the disclosing person, unless the person consents in writing or if the receiver reasonably believes that disclosures of identifying information is essential -
    - i. to ensure an effective investigation; or
    - ii. to prevent serious risk to public health or public safety or the environment; or
    - iii. having regard to the principles of natural justice.
7. At the conclusion of the investigation, the receiver, or the appropriate authority, will prepare a report of the investigation with recommendations for action if appropriate, which will be sent to the discloser.
8. A further disclosure may be made to a Minister or an Ombudsman if the discloser reasonably believes that the receiver -
  - a. has decided not to investigate; or
  - b. has decided to investigate but not made progress with the investigation within reasonable time; or
  - c. has investigated but has not taken or recommended any action; and
  - d. continues to believe on reasonable grounds that the information disclosed is true or is likely to be true.



9. Nothing in these procedures limits any protection, privilege, immunity, or defence, whether statutory or otherwise, relating to the disclosure of information.

**Review:** This procedure will be reviewed according to the Board triennial programme of self-review.

**Reviewed:** August 2022

Related Resources:

Protected Disclosures Policy  
Protected Disclosures (Protection of Whistleblowers) Act 2022  
Concerns and Complaints Policy and Procedure