

# **Malek Fahd Islamic School Limited**



## **Whistleblower Policy and Procedures**

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**Policy custodian**

Risk, Audit and Compliance Committee Chair/Principal

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# MFIS Whistleblower Policy and Procedures

## Purpose

Malek Fahd Islamic School is committed to the highest standards of conduct and ethical behaviour and encourages disclosure of wrongdoing.

In accordance with the provisions of the *Corporations Act* related to whistleblowing, the purpose of this policy is to ensure that individuals who disclose serious wrongdoing in relation to the School, can do so safely, securely and with confidence that they will be protected and supported.

## Scope

This policy applies only to **qualifying disclosures**. A qualifying disclosure is when an **eligible whistleblower** makes a disclosure to an **eligible recipient**, and the eligible whistleblower has **reasonable grounds to suspect** that the information concerns a **disclosable matter**.

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 Handling Policy and Procedures*.

Disclosures about reportable conduct will be addressed in accordance with the School's *Child Protection Policy and Procedures*.

Disclosures regarding a grievance between staff members about work matters, including work relationships and decisions made by other staff members which impact on their work, may be addressed in accordance with the School's *Staff Grievance Policy and Procedures*

Unlawful discrimination, harassment or bullying complaints may be addressed in accordance with the School's *Discrimination, Harassment and Bullying Statement*.

## Eligible whistleblowers

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

- a Board 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.

### **Anonymous disclosures**

A disclosure can be made anonymously and still be protected under the *Corporations Act*. An eligible whistleblower 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 whistleblowers to provide their names.

If an eligible whistleblower wishes to disclose anonymously, the whistleblower should provide sufficient information to allow the matter to be properly investigated. The School encourages the whistleblower 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 whistleblower, as appropriate.

### **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*.

### **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.

### **Eligible recipients**

The School's eligible recipients include:

- a Board member
- the Principal
- the Business Manager
- a Deputy Principal
- the School's auditor
- one of the School's Disclosure Coordinators
  - Ms Mehar Khan, Head of Campus Beaumont Hills
  - Sheikh Fawaz Kamaz, School Chaplain
  - Ms Kelli Cato, Director of Professional Practice and Innovation
- the School's external whistleblower disclosure service provider, AccessEAP.

### **Making a qualifying disclosure**

While an eligible whistleblower can make a disclosure directly to any eligible recipient, the School strongly encourages whistleblowers to make a disclosure to AccessEAP by:

- calling the Integrity Hotline on (02) 8247 9177

- sending an email to [info@accesseap.com.au](mailto:info@accesseap.com.au)
- sending a letter to AccessEAP, Level 8, 75 Castlereagh Street, Sydney, NSW, 2000.

Where a disclosure is made to an eligible recipient who is not the Principal, then subject to the confidentiality protections set out below, the disclosure will generally be passed onto the Principal for investigation. If the disclosure relates to the conduct of the Principal, the disclosure will be passed onto the Board Chair for investigation.

If an eligible whistleblower wishes to obtain additional information about whistleblowing procedures and protections before formally making their disclosure, they can contact one of the School's Disclosure Coordinators or an independent legal advisor.

**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.

**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 first disclosure to ASIC, APRA or a prescribed Commonwealth authority; 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.

**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.

#### **Receiving a disclosure**

Upon receiving a disclosure, the Principal 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 or the disclosure concerns matters that should be managed in accordance with the School's *Complaints Handling Policy and Procedures*, *Child Protection Policy and Procedures*, *Staff Grievance Policy and Procedures* or *Discrimination, Harassment and Bullying Statement*.

#### **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 Principal 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 Principal will determine:

- the nature and scope of the investigation



- who should lead the investigation, typically a qualified and experienced independent external investigator
- 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, and hence the applicable timeframe will be different. However, the School's intent is to complete an investigation as soon as practicable).

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, if it is not able to contact the eligible whistleblower, for example, if a disclosure is made anonymously and a means of contact is not provided.

Where practicable, whistleblowers will receive updates about when the investigation has begun, while the investigation is in progress and after the investigation has been finalised. The frequency and timeframe of any updates may vary depending on the nature of the disclosure. The School will also have regard to confidentiality considerations when providing updates.

#### **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 School's employee assistance program (EAP) services will be available to employees affected by the disclosure, should they require that support.

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 whistleblower.

### **Confidentiality and records**

Under the *Corporations Act*, the identity of the whistleblower of a qualifying disclosure and information which is likely to lead to the identification of the whistleblower 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 whistleblower.

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 whistleblower. This disclosure could include NSW Police, the NSW Office of the Children's Guardian, 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 whistleblower 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 whistleblower will be identified as a result of the information being disclosed.

Breach of these confidentiality protections regarding whistleblower's identity and information likely to lead to the identification of the whistleblower 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.

### **Whistleblower protections and support**

**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 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.

**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.

**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@mfis.nsw.edu.au](mailto:principal@mfis.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 Chair of the Board, via email at [board@mfis.nsw.edu.au](mailto:board@mfis.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
  - 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 whistleblower'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 employee assistance program (EAP) services will be available to eligible whistleblowers who are employees, should they require that support. If a whistleblower who is not an employee wishes to obtain support, such as counselling or other professional support, they should contact the Principal via email at [principal@mfis.nsw.edu.au](mailto:principal@mfis.nsw.edu.au).

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.

### **Contact**

If you have any queries about this policy, please contact one of the School's Disclosure Coordinators for advice.

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### **Review of policy**

This policy will be reviewed triennially, and the reviewed document submitted to the Board for approval by the last Board meeting in the calendar year of the review. The next review is due in 2023.