

GUIDELINES – WHISTLEBLOWER PROTECTION POLICY

Developed: Nov 2019
Revised: Nov 2020



**EDMUND RICE EDUCATION
AUSTRALIA**

1. Introduction

Edmund Rice Education Australia (EREA) is committed to ethical behaviour that is aligned with the values contained within the EREA Charter and Touchstones and EREA Code of Conduct and complies with all relevant laws and regulations.

A whistleblower is a person who makes a disclosure, outside normal operational channels, whether anonymously or not, with respect to serious conduct such as corruption, fraud or some other illegal or undesirable activity observed within an EREA member entity.

EREA is committed to providing a supportive environment for any person making a whistleblower disclosure and will use our best endeavors to ensure that no individual making a whistleblower disclosure, is personally disadvantaged by having made a disclosure in good faith. This includes protection from dismissal or demotion, any form of reprisal including retaliation, harassment or victimisation.

EREA has a Whistleblower Protection Policy accompanied by Guidelines, available through each member school's CompliSpace PolicyPlus site. EREA's Whistleblower process sets out key roles and responsibilities and outlines processes with respect to ensuring transparency and accessibility for all key stakeholders including staff, parents, carers, volunteers, contractors, students and suppliers. It also sets out internal management reporting requirements and responsibilities with respect to the ongoing maintenance and review of the Whistleblower function at EREA.

All EREA governing body and staff members are required to undertake an internal training course with respect to the objectives and practical application of EREA's Whistleblower Policy and Guidelines. The course is available on the Staff Learning System.

2. Objectives

The objectives of the Whistleblower Protection Policy and Guidelines are to:

- encourage the reporting of actual or suspected wrongdoing that cannot appropriately be reported through normal reporting channels;
- describe clearly the process for making a whistleblower disclosure and the types of matters that should be reported;
- describe clearly the process for investigating a whistleblower disclosure;
- outline how EREA manages whistleblower disclosures in a way that will support and protect the whistleblower, as well as ensure fairness for a person named in the disclosure.
- give effect to the spirit of whistleblower legislation that prohibits regulated organisations from taking adverse action against any staff member, or a supplier of services or goods.
[Note that EREA is not regulated by whistleblower laws under the Corporations Act.]

3. Scope

EREA's Whistleblower Protection Policy and accompanying Guidelines are available to all current or former:

- EREA Council and Board Members

- EREA Executive Director
- EREA National Directors and Mission Team staff members
- Principals, Deputy Principals & Business Managers
- permanent, part-time and casual staff (teaching and non-teaching)
- volunteers
- contractors
- suppliers
- parents and carers
- students
- other key stakeholders

4. Types of Conduct to be Reported

EREAs Whistleblower Protection Policy and accompanying Guidelines are designed to capture actual or suspected wrongdoing that a person providing the disclosure considers cannot reasonably be managed through existing internal reporting procedures.

Examples of wrongdoing that may be reportable include:

- fraud, forgery, misappropriation, misuse, misdirection, misapplication, maladministration or waste of funds
- gross mismanagement
- grooming and/or child abuse
- conflicts of interest, nepotism, favouritism
- theft, embezzlement, tax evasion
- corruption, dishonesty involving influence
- coercion, harassment or discrimination by, or affecting any staff, volunteers or contractors
- assault, blackmail, taking or offering bribes
- abuse of public trust
- misleading or deceptive conduct of any kind, including conduct or representations that amount to improper or misleading accounting or financial reporting practices by or affecting EREA
- other criminally prosecutable offences
- failure to report, or concealment of, an indictable offence
- unreasonable danger to health or safety of others
- failure to act in accordance with applicable professional and ethical standards
- blatant disregard for organisational policies
- a significant threat to the environment
- significant breach of the terms of any contract that binds EREA
- other serious acts such as refusing to carry out lawful and/or reasonable actions under a contract
- other serious misconduct that may materially damage EREA's reputation, or may otherwise be detrimental to EREA and its member entities
- any other act that would otherwise be considered, by a reasonable person, to be serious improper conduct, or an improper state of affairs, or circumstances.

Wrongdoing would also include a deliberate attempt to conceal any of the actions described above.

A person making a whistleblower disclosure is expected to act in good faith and have reasonable grounds for believing that wrongdoing has occurred.

A whistleblower should not use the whistleblower service to report a personal work-related grievance, a third-party complaint or a child protection incident that could be effectively managed through existing internal reporting procedures.

Examples of grievances that may be personal work-related are:

- An interpersonal conflict between the discloser and another employee;
- Decisions that do not involve a breach of workplace laws, for example:
 - I. About the engagement, transfer or promotion of the discloser
 - II. About the terms and conditions of engagement of the discloser
 - III. To suspend or terminate the engagement of the discloser, or otherwise discipline the discloser.
- Claims of a vexatious or mischievous nature that are 'disguised' as an attempted whistleblower disclosure.

If a disclosure is made through the whistleblower service that does **not** meet the threshold of reportable wrongdoing such as that listed above, it may be referred by EREA to the appropriately delegated authority to manage and will be recorded as not being a disclosable matter for the purposes of whistleblower protection.

Protection of anonymity does not apply in the same strictness to disclosures that are not disclosable matters, however confidentiality will be maintained as appropriate.

5. Whistleblower Support & Protection

EREA is committed to providing a supportive environment for any person making a whistleblower disclosure and will use our best endeavours to ensure that no individual making a whistleblower disclosure, is personally disadvantaged by having made a disclosure in good faith. This includes protection from dismissal or demotion, any form of reprisal including retaliation, harassment or victimisation.

Further details of support and protections provided are set out below.

Anonymity and Confidentiality

EREA will, as far as reasonably possible, provide to whistleblowers the ability to make a report anonymously and will take all reasonable steps to reduce the risk that the discloser will be identified as a result of the investigation.

EREA engages McInnes Wilson Lawyers Pty Ltd (McInnes Wilson Lawyers) as our external eligible recipient of disclosures, on a temporary basis. One of the primary purposes of retaining McInnes Wilson Lawyers is to allow whistleblowers to disclose their identity to McInnes Wilson Lawyers only and to keep their identity confidential from EREA.

If a whistleblower provides their identity to McInnes Wilson Lawyers it can assist in any subsequent investigation, and will also allow McInnes Wilson Lawyers to follow up and seek any clarification or provide feedback.

If the whistleblower's identity is disclosed to McInnes Wilson Lawyers, they will at the first opportunity discuss with the whistleblower the issues of anonymity and confidentiality and the degree of risk that their identity may become known during an investigation.

Information received from a whistleblower will be held in the strictest confidence and will only be disclosed to a person not connected with the investigation if:

- the whistleblower has been consulted and consents in writing to the disclosure; or
- McInnes Wilson Lawyers is compelled by law to do so.

McInnes Wilson Lawyers will advise the whistleblower if matters change in a way that affects their ability to protect the whistleblower's identity and will give the whistleblower as much warning as reasonably possible if it appears likely that their identity will become known.

Supportive Environment

EREA is committed to providing a supportive environment for any person making a whistleblower disclosure. In particular, a whistleblower can expect that:

- any request for anonymity is respected and if their identity is revealed it will, as far as possible, remain confidential and only be disclosed on an "as needed basis"
- the details of their disclosure will remain confidential to the extent that is practical in the circumstances and will only be released on an "as needed basis" during the investigation phase, or as required by law
- they will be protected from retaliation, harassment or victimisation
- should retaliation occur, it will be treated as serious misconduct and the perpetrator of the retaliation will be subject to disciplinary action.

Where a whistleblower provides their identity to McInnes Wilson Lawyers but not to EREA, it is the role of McInnes Wilson Lawyers to ensure that they are supported throughout the investigation process.

Where a whistleblower provides their identity directly to EREA it is the role of EREA's Whistleblower Protection Officer who received the disclosure to ensure that they are supported throughout the investigation process.

McInnes Wilson Lawyers and/or EREA's Whistleblower Protection Officer will also advise the whistleblower of professional support services, such as confidential professional counselling services, that may be available.

Even though McInnes Wilson Lawyers is engaged to receive whistleblower disclosures, this is on a temporary basis. It is envisaged that before March 2020, EREA will retain a separate external service provider to act as an eligible recipient of whistleblowing disclosures.

Protection from Retaliation, Harassment or Victimisation

EREA is committed to ensuring the highest standards of ethical conduct across the organisation and is supportive in creating and maintaining a "speak-up culture", where all staff members are encouraged to identify issues in the workplace and participate in resolving them. This includes "speaking up" through existing internal reporting procedures contained in our Internal Grievance, Complaints Handling, and Child Protection Policies.

EREA does not tolerate retaliation, harassment or victimisation being taken against whistleblowers for reporting actual or suspected wrongdoing, including when suspicions are not substantiated following a thorough investigation.

EREA takes steps to promote awareness to all staff of their responsibilities to treat their colleagues and stakeholders with respect, and never to engage in behaviour that is discriminatory or that characterises bullying or harassment. These responsibilities encompass acknowledging that reporting actual or suspected wrongdoing is integral to an ethical culture, and nobody who reports actual or suspected wrongdoing should experience retaliation, harassment or victimisation as a result.

If a whistleblower provides their identity when making a whistleblower disclosure, EREA's Whistleblower Protection Officer will proactively monitor the workplace for signs of retaliation, harassment or victimisation and intervene when necessary. A whistleblower who experiences retaliation, harassment or victimisation should immediately report it to EREA's Whistleblower Protection Officer. Any such conduct may be treated as serious misconduct and the perpetrator of the retaliation may be subject to disciplinary action.

Immunity from Internal Disciplinary Action

To promote a culture that encourages whistleblower disclosures it is EREA's policy that where a whistleblower has acted in good faith, and the individual involved has not engaged in serious misconduct or illegal activity, the whistleblower will be provided with immunity from internal disciplinary proceedings that may have otherwise arisen from the matters that are the subject of the whistleblower disclosure.

Civil, Criminal and Administrative Liability Protection

When made in good faith, a person making a qualifying whistleblower disclosure is protected from the following in relation to that disclosure:

- Civil liability such as any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation;
- Criminal liability such as the attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure); and
- Administrative liability such as any disciplinary action for making the disclosure.

These protections do not grant immunity for any misconduct a whistleblower discloser has engaged in that is revealed in their disclosure.

Legal Advice, Compensation & Other Remedies

A qualifying person who intends to, or actually makes a whistleblower disclosure is entitled to seek independent legal advice in relation to the matter, at their own expense.

Whistleblower disclosers (or any other employee or person) can seek compensation and other remedies through the courts if:

- They suffer loss, damage or injury because of a whistleblower disclosure; and
- It is alleged that EREA failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct identified.

A whistleblower discloser may also contact relevant regulatory bodies (such as Commonwealth and State Government agencies) if they believe they have suffered detriment.

Public Interest Disclosures and Emergency Disclosures

A 'public interest disclosure' is the disclosure of information to a journalist or a parliamentarian, where:

- At least 90 days have passed since the whistleblower disclosure was lodged
- The whistleblower discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure
- The whistleblower discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest
- Before making the public interest disclosure, the whistleblower discloser has given written notice to EREA's external Whistleblower Service Provider stating that:
 - I. the public interest disclosure includes sufficient information to identify the whistleblower disclosure
 - II. the whistleblower discloser intends to make a public interest disclosure

An 'emergency disclosure' is the disclosure of information to a journalist or parliamentarian, where:

- The whistleblower discloser has previously made the disclosure as per the EREA Whistleblower Protection Policy and Guidelines, as prescribed
- The whistleblower discloser 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
- Before making the emergency disclosure, the whistleblower discloser has given written notice to EREA's external Whistleblower Service Provider that:
 - I. The emergency disclosure includes sufficient information to identify the whistleblower disclosure
 - II. The whistleblower discloser intends to make an emergency disclosure

The extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

6. Investigating a Whistleblower Disclosure

All reports, other than those that are not disclosable matters, will be investigated by a Whistleblower Investigator.

Whistleblower Investigators must be independent of the whistleblower, or any person being the subject of the reported conduct.

Whistleblower Investigators will have reasonable access to independent specialist advice if required and will as far as reasonably possible, follow best practice in investigations including ensuring that all reports of actual or suspected wrongdoing will be investigated in a way that adheres to the principles of objectivity, procedural fairness, confidentiality and natural justice. This includes providing fair treatment to people who have been mentioned in a report of actual or suspected wrongdoing, by informing them of the substance of statements that have been made about them and giving them a reasonable opportunity to respond.

It is acknowledged that an investigation may not be able to be undertaken if the discloser is not able to be contacted (eg if a disclosure is made anonymously and the discloser has refused or omitted to provide a means of contacting them).

7. Provision of Feedback

If the whistleblower's identity is known to the Whistleblower Investigator then, where possible EREA

will provide feedback to the whistleblower during the course of the investigation and will ensure that the whistleblower will be informed of the outcome of an investigation and in particular:

- if the whistleblower’s concern was substantiated, the action that has been taken or will be taken to address the issues;
- if the whistleblower’s concern was not substantiated, that no further action will be taken unless further information becomes available.

8. How to Make a Whistleblower Disclosure

To provide effective protection of whistleblowers, including allowing continuous discussion with anonymous whistleblowers, EREA has authorised McInnes Wilson Lawyers to act as an eligible recipient of disclosures.

A whistleblower disclosure to McInnes Wilson Lawyers may be provided on an anonymous basis or on the basis that the whistleblower’s identity is disclosed to McInnes Wilson Lawyers only and kept confidential from EREA. The provision of the whistleblower’s identity to McInnes Wilson Lawyers can assist in any subsequent investigation and allow McInnes Wilson Lawyers to follow up and seek any clarification or feedback.

Concerns can be raised by submitting a whistleblower disclosure directly to McInnes Wilson Lawyers through any of the following methods:

McInnes Wilson Lawyers
345 Queen Street, Central Plaza
Brisbane City QLD 4000

John Hamilton – Principal, McInnes Wilson Lawyers
Phone: (07) 3231 0623
Email: jhamilton@mcw.com.au

A whistleblower should not use the external whistleblower service to report a personal work-related grievance, a third-party complaint or a child protection incident that could be effectively managed through EREA’s normal internal processes contained within the Internal Grievance, Complaints Handling, and Child Protection Policies.

If a whistleblower disclosure is made through the whistleblower service that does not meet the threshold of reportable wrongdoing such as that listed above in section four of Guidelines, it may be referred by EREA’s Whistleblower Protection Officer to the appropriate delegated authority to manage and will be recorded as not being a disclosable matter. Protection of anonymity does not apply in the same strictness to disclosures that are not disclosable matters, however confidentiality will be maintained as appropriate.