



## SECTION 1.4: WHISTLEBLOWER POLICY

### The Australian Ballet School

**RESPONSIBLE:** Board

**VERSION 1 APPROVED BY THE BOARD:** December 2019

**LATEST VERSION:** November 2021

**REVIEW DATE:** November 2024 (or earlier if Legislative amendments require)

**POLICY ACCESS LOCATION:** Staff Portal, Student Portal, The Australian Ballet School website

#### 1. OVERVIEW

The Australian Ballet School (School) is committed to fostering a culture of openness, honesty, support, integrity, empathy respect and accountability. To uphold these aims, it is important for all members of the School Community to feel confident in speaking up if wrongdoing, dangerous or inappropriate behaviour or other dangers on the School Premises or in the conduct of the School Activities is observed.

Members of the School Community are encouraged to speak up with confidence to their line manager (for Staff Members), teachers (for students) or point of contact within the School, if there are concerns, without fear of retaliation. However, the nature or severity of the concern may require Confidential communication promptly to the Director of the School (Director) or another **Eligible Recipient**.

This policy sets out the rights of an **Eligible Whistleblower** under the *Corporations Act 2001* (Cth) (Corporations Act) and the *Taxation Administration Act 1953* (Cth) (Taxation Administration Act) but is not intended to be limited to the application of those Acts. It promotes the disclosure by individuals of wrongdoing occurring within the School, so that appropriate action can be taken. However, the fact that this policy is intended to cover disclosures by a parent or student, who is not an Eligible Whistleblower does not mean that a disclosure by such a person will not receive the same protection as is provided by those Acts; rather, the School will do all it can within the law to provide similar protection. The policy reinforces that a person can do so without fear, harassment, **Victimisation** or **Threat of Victimisation**, subsequent discrimination or disadvantage. Subject to the law, the School will treat all information disclosed in a confidential manner, conduct a fair and objective investigation and take necessary remedial steps or notify relevant authorities.

**Related Policies:** This policy is part of the School's governance framework and should be read in conjunction with other policies and procedures, including Code of Conduct (1.2), Conflict of Interest (1.3), Risk Management (1.5), Privacy Policy (4.1), Archives and Records Management Policy (4.1.2) (under review), Equality, Respect and Diversity Policy (5.1.2) (under review) and Child Safe Standards (6.4).

## 2. WHO DOES THIS POLICY APPLY TO

This policy applies to all members of the School Community.

## 3. DEFINITIONS

**Eligible Whistleblower (Whistleblower):** the Corporations Act and the Taxation Administration Act define who is an “eligible whistleblower” for the purpose of each of those Acts in almost identical terms. For the purpose of this policy, an "Eligible Whistleblower" is an individual who is, or has been (i) a member of the Board, (ii) an employee, (iii) a person who has or currently supplies services or goods to the School or is or was an employee of such an individual, (iv) a volunteer of the School, (v) an individual who is an associate of the School, or (vi) a relative or dependent of these individuals. An individual who is an associate of the School includes a director or secretary of the School or the Australian Ballet School Foundation Pty Ltd (which is the Trustee of the Australian Ballet School Trust).

Students and parents are not recognised as Eligible Whistleblowers under the Corporations Act and the Taxation Administration Act and are therefore not afforded the same level of protection under the law, as is identified in Section 1. **Overview** above. However, the School acknowledges the importance of these individuals and in so far as the law permits will treat them as if they were an Eligible Whistleblower and will take all reasonable steps to provide them with the same level of protection.

**Eligible Recipient:** a recipient of an eligible disclosure, being a member of the Board, the Director of the School (Director), the Executive Director, the auditor or a member of an external audit team conducting an audit of the School, and a person authorised by the School to receive disclosures that may be a Protected Disclosure. The Taxation Administration Act provides that what may be a "protected disclosure" made to the Commissioner of Taxation will be treated in the same way as if it had been made to an Eligible Recipient. Further, under the Taxation Administration Act a registered tax agent or business activity statement agent is an Eligible Recipient. The Board has designated the Director as the primary person to whom an eligible disclosure is to be made, hereafter referred to in this policy as the **Designated Officer**. If there is a concern or a perceived or actual conflict of interest exists with informing the Director, then the Executive Director or a member of the Board should be informed instead. The Director is responsible for the overall maintenance and operation of this policy which includes initiating a record of concerns raised, the investigative report and subsequent outcome. Where necessary the Board will be involved.

**Protected Disclosure** a disclosure that qualifies for protection under the Corporations Act is a disclosure made to an Eligible Recipient by a Whistleblower, who has reasonable grounds to suspect, that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to the School which indicates that the School or an officer or employee of the School has engaged in conduct that constitutes an offence against or a contravention of the acts set out in section 1317AA(5)(c), or the matters set out in section 1317AA(5)(d), (e) and (f) of the Corporations Act: section 1317AA of the Corporations Act is attached to this policy. A disclosure that qualifies for protection under the Taxation Administration Act, if made to the Commissioner of Taxation, is one where the Whistleblower considers that the information may assist the Commissioner to perform his or her functions or duties under a taxation law in relation to the School; or is a disclosure made to an Eligible Recipient by a Whistleblower, who has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of the School and the Whistleblower considers that the information may assist the Eligible Recipient to perform functions or duties in relation to the tax affairs of the School. The Taxation Administration

Act defines “tax affairs” as meaning affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner of Taxation: section 14ZZT of the Taxation Administration Act is attached to this policy.

In addition, the School extends the definition to include any information disclosed by a Whistleblower, who has reasonable grounds to suspect, that an officer, Staff Member contractor/consultant, volunteer or other person who has business dealings with the School has engaged in conduct which is:

- (a) dishonest, fraudulent or corrupt, including bribery and theft;
- (b) is illegal or in contravention of a State or Commonwealth law concerning violence, discrimination, occupational health and safety;
- (c) is unethical or in breach of the Policies of the School, in particular but without any limitation, those concerning discrimination and bullying;
- (d) may cause financial loss to the School or damage the reputation or standing in the community of the School; or
- (e) other conduct of the nature that this policy is designed to cover such as suspected wrongdoing, breaches of law or dangers that fall outside the scope of other policies: see under Section 4. **Policy**.

**Victimisation:** conduct that causes any **detriment** to another person when the person engaging in that conduct believes or suspects the other person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under the Corporations Act and the belief or suspicion is the reason, or part of the reason, for the conduct.

**Threat of Victimisation** occurs where a person makes a threat to another person to cause a detriment to that other person or another person and the person making the threat intends the other person to fear the threat will be carried out and the person making the threat does so because a person makes a disclosure that qualifies for protection under the Corporations Act or may make a disclosure that would qualify for protection under the Corporations Act. A threat may be express or implied and conditional or unconditional. **Detriment** includes dismissal of a Staff Member; injury of a Staff Member in their employment; alteration of a Staff Member’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 harm; damage to a person’s property; damage to a person’s reputation; damage to a person’s business or financial position; or any other damage to a person.

#### 4. POLICY

It is the School's policy to:

- Encourage the disclosure by individuals of suspected wrongdoing, breaches of law or dangers that fall outside the scope of other policies without fear of reprisal;
- Foster a commitment to the positive action of, “when in doubt, speak up”;
- Provide a framework and pathway to raise concerns and to receive feedback on any action taken;
- Support and protect individuals who make disclosures under this policy;
- Promotion of a culture of integrity, confidence/trust and accountability;
- Conduct investigations in a thorough, fair and unbiased manner;
- Take all appropriate action (including disciplinary), to address and rectify any wrongdoing and where necessary, advise the relevant authorities.

The School recognises that individuals who disclose wrongdoing within the School can rely on protection under this policy.

This policy does not apply to disclosures to the extent that the disclosure concerns a personal work-related grievance and does not concern a contravention of section 1317AC of the Corporations Act that involves detriment caused, or threat of detriment made, to the discloser. A personal-work related disclosure is one where the information disclosed concerns a personal work-related grievance of the discloser and the information does not concern a contravention, or an alleged contravention, of section 1317AC of the Corporations Act that involves detriment caused to the discloser or a threat made to the discloser. Examples of grievances that may be personal work-related grievances are (i) an interpersonal conflict between the discloser and another employee; (ii) a decision relating to the engagement, transfer or promotion of the discloser; (iii) a decision relating to the terms and condition of engagement of the discloser; and (iv) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser. There are policies and procedures in place to enable Staff Members to lodge a grievance relating to their employment/individual, personal circumstances in the workplace.

This policy covers suspected wrongdoing, breaches of law or dangers that fall outside the scope of other policies: see definition of Protected Disclosure above. These include:

- Criminal activity, corruption;
- Safeguarding and child protection concerns;
- Bribery;
- Practices endangering or damaging to the environment;
- Disclosures related to miscarriage of justice;
- Failure to comply with any legal professional obligation or regulatory requirements;
- Any other unlawful or unethical/biased conduct in the workplace, this includes being in breach of the School's Code of Conduct;
- Conduct which may cause financial or non-financial loss to the School or may otherwise be detrimental to the interests of the School;
- Behaviour contrary to the written policies and procedures of School;
- Practices endangering the health or safety of Staff Members, students, contractors, subcontractors, parents/carers, visitors or the general public.

If there is uncertainty whether a matter is within the scope of this policy, then advice should be sought on a confidential basis from the Designated Officer or another Eligible Recipient.

Nothing within this policy is intended to prevent or over-rule individuals from complying with the statutory obligations in accordance with *Victorian Child Safe Standards*.

## **5. PROCEDURES**

### **5.1 Disclosure of wrongdoing:**

The School encourages early disclosure of any concerns covered by this policy, so as to assist the School to take action as soon as possible.

This can be made either orally or in writing on a confidential or non-confidential basis. If a written report is submitted, the following format is suggested:

- The background and history of the concern (providing relevant dates);
- The reason for the concern, the facts on which the concern is based;
- The person or persons responsible for the wrongdoing.

Suspected wrongdoing should be raised with the Designated Officer; or where there may be a conflict of interest or concerns of complicit behaviour, with another Eligible Recipient.

Where an individual believes there is an issue of suspected wrongdoing which requires investigation, it is strongly recommended that this policy is accessed as the primary source rather than using public disclosure.

If a disclosure is made orally, the Eligible Recipient will make a comprehensive record of the disclosure and request the Whistleblower to sign the record of the disclosure. Whether the disclosure is made orally or in writing, the Eligible Recipient will:

- Discuss with the Whistleblower, the investigative procedure to be followed based upon the nature of the disclosure;
- Discuss with the Whistleblower the confidentiality restrictions in respect of the disclosure and the Whistleblower's identity;
- Outline a timeframe for investigating the disclosure, including whether feedback will be forthcoming to the Whistleblower.

Concerns communicated anonymously are less powerful but will be considered by the Eligible Recipient. Where there is anonymous disclosure, the School may not be able to carry out an investigation and a thorough investigation is likely to be compromised as accuracy and credibility are more difficult to establish. Further, in the case of an anonymous disclosure, it may be very difficult for the School to comply with the requirements of **Natural Justice**.

#### 5.2 Investigating a wrongdoing:

1. The School will respond to disclosures covered by this policy by investigating all matters raised.
2. Investigations will be conducted promptly and on a fair and impartial basis, separately from the Whistleblower or the person or part of the School that is subject to the disclosure.
3. The investigation will be conducted in a manner fitting the nature and circumstances of the disclosure. The person tasked to conduct the investigation may seek the assistance of other individuals within or external to the School with the relevant expertise and as a consequence, may make disclosures of information to those individual(s) on a confidential basis.
4. In acknowledgement of the pursuit of Natural Justice and transparency, the matters under investigation may be made known to the person or persons who are the subject of the disclosure. Depending on the individual nature of the investigation, they may be required to provide information, answer questions and given an adequate opportunity to respond to the concerns.
5. A Whistleblower will be informed of reports of progress, at the discretion of the authorized officer and the outcome of an investigation.
6. A report of the investigation will be written. This will provide a record of the conduct, ultimate effectiveness and outcome of the investigation and should include all enquiries made and critical decisions taken. If necessary, this will also form the basis of a review of the outcome.

#### 5.3 Confidentiality:

Protected Disclosures will be treated in confidence (so far as the law, any investigation and the circumstances allow). Subject to any legal requirements, the circumstances of the individual investigation and the need for it to be carried out fairly and in accordance with the principles of procedural fairness, and any consequential disciplinary outcomes, the School is committed to preserving the confidentiality of:

- The identity of the Whistleblower;
- Information that is likely to lead to the identification of the Whistleblower, except where it is reasonably necessary for the purposes of investigating the conduct disclosed and all reasonable steps are to be taken to reduce the risk of identification of the Whistleblower;
- The identity of the person/persons subject to the disclosure;
- Any Staff Member otherwise mentioned in disclosures;
- The details of the disclosure.

The Corporations Act permits the disclosure of the identity of the Whistleblower or information that is likely to lead to their identification if a "protected disclosure" (within the meaning of that Act) is made to the Australian Securities and Investment Commission, the Australian Prudential Regulatory Authority or a member of the Australian Federal Police, a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the Whistleblower protection provisions under that Act, or if made with the consent of the Whistleblower. The Taxation Administration Act permits the disclosure of the identity of the Whistleblower or information that is likely to lead to their identification if a "protected disclosure" (within the meaning of that Act) is made to the Commissioner of Taxation, a member of the Australian Federal Police, a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the Whistleblower protection provisions under that Act, or if made with the consent of the Whistleblower. Information passed on to a person from a Whistleblower in relation to matters that are part of a Protected Disclosure must not be released to any other (additional) people without the consent of the Whistleblower or the authority of the Designated Officer.

The identity of the Whistleblower or any information that is likely to identify the Whistleblower must not be released to anyone not involved in the investigation, without the consent of the Whistleblower or authority of the Designated Officer.

#### 5.4 Protection of the Whistleblower:

A Whistleblower is entitled to protection under this policy and must not be subject to Victimisation or the Threat of Victimisation. Failure to comply contravenes the law and may result in a term of imprisonment, a fine or a civil penalty.

Complaints about a breach of confidentiality, Victimisation or Threat of Victimisation in relation to a Whistleblower's disclosure or attempted disclosure of a wrongdoing should be directed immediately to the Designated Officer or, where there may be a conflict of interest or concerns of complicit behaviour, to another Eligible Recipient. Such complaints will be investigated as a separate matter and recorded accordingly.

If a breach of confidentiality, Victimisation or Threat of Victimisation occurs, then the Designated Officer or other Eligible Recipient will undertake all reasonable steps to protect the Whistleblower and stop the activity. This may include disciplinary action against those involved in the breach or behaviour.

Although Whistleblowers have the right to report wrongdoing anonymously, the School strongly recommends they identify themselves so the Whistleblower can avail themselves of the benefit of the policy.

Where appropriate, the Designated Officer or other Eligible Recipient and the Whistleblower may decide to take specifically identified steps to protect the Whistleblower. This may include:

- Granting leave of absence to the Whistleblower or the person(s) who is subject to the Protected Disclosure for the period of the investigation;
- Where any meetings are required during the investigation process, conducting them off-site if deemed necessary;
- In the case of students, make alternative arrangements for the assessment/marking of their studies.

#### 5.5 Inappropriate Allegations:

If a person makes a Protected Disclosure that is false, malicious or for personal gain then disciplinary action may be taken and protection under this policy withdrawn.

#### 6. Publication of this Policy:

The School will make this policy available on its website. The School will notify by email (where the School has an email address) all members of the School Community of the existence of this policy. Each new Staff Member commencing from the date of this policy being adopted by the Board will be required to acknowledge having read and understood the policy as part of their induction program.

### **CORPORATIONS ACT 2001 - SECT 1317AA**

#### **Disclosures qualifying for protection under this Part**

Disclosure to ASIC, APRA or prescribed body

(1) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to a regulated entity; and

(b) the disclosure is made to any of the following:

(i) ASIC;

(ii) APRA;

(iii) a Commonwealth authority prescribed for the purposes of this subparagraph in relation to the regulated entity; and

(c) subsection (4) or (5) applies to the disclosure.

Note: Section 1317AAD (public interest disclosure and emergency disclosure) and paragraph 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a disclosure covered by this subsection.

#### Disclosure to eligible recipients

(2) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to a regulated entity; and

(b) the disclosure is made to an eligible recipient in relation to the regulated entity; and

(c) subsection (4) or (5) applies to the disclosure.

#### Disclosure to legal practitioner

(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

#### Disclosable matters

(4) This subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to:

(a) the regulated entity; or

(b) if the regulated entity is a body corporate--a related body corporate of the regulated entity.

(5) Without limiting subsection (4), this subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:

(a) the regulated entity, or an officer or employee of the regulated entity;

(b) if the regulated entity is a body corporate--a related body corporate of the regulated entity, or an officer or employee of a related body corporate of the regulated entity;

has engaged in conduct that:

(c) constitutes an offence against, or a contravention of, a provision of any of the following:

(i) this Act;

(ii) the ASIC Act;

(iii) the *Banking Act 1959* ;

(iv) the *Financial Sector (Collection of Data) Act 2001* ;

(v) the *Insurance Act 1973* ;

(vi) the *Life Insurance Act 1995* ;

(vii) the *National Consumer Credit Protection Act 2009* ;

(viii) the *Superannuation Industry (Supervision) Act 1993* ;

(ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii);

or

(d) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or

(e) represents a danger to the public or the financial system; or

(f) is prescribed by the regulations for the purposes of this paragraph.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.



## TAXATION ADMINISTRATION ACT 1953 - SECT 14ZZT

### Disclosures qualifying for protection under this Part

(1) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:

(a) the discloser is an [eligible whistleblower](#) in relation to an [entity](#) (within the meaning of the *Income Tax Assessment Act 1997*); and

(b) the disclosure is made to the [Commissioner](#); and

(c) the discloser considers that the information may assist the [Commissioner](#) to perform his or her functions or duties under a [taxation law](#) in relation to the [entity](#) or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the [entity](#).

(2) A disclosure of information by an individual (the **discloser**) qualifies for protection under this Part if:

(a) the discloser is an [eligible whistleblower](#) in relation to an [entity](#) (within the meaning of the *Income Tax Assessment Act 1997*); and

(b) the disclosure is made to an [eligible recipient](#) in relation to the [entity](#); and

(c) the discloser has reasonable grounds to suspect that the information indicates misconduct, or an improper [state](#) of affairs or circumstances, in relation to the [tax affairs](#) of the [entity](#) or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the [entity](#); and

(d) the discloser considers that the information may assist the [eligible recipient](#) to perform functions or duties in relation to the [tax affairs](#) of the [entity](#) or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the [entity](#).

(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

(4) In this section:

**"tax affairs"** means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the [Commissioner](#).

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

