



WHISTLEBLOWER POLICY

Policy	Whistleblower
Version	3
Date of Approval	June 2024
Date for Review	June 2026
Person Responsible Officer	Executive Director

Content:

<p>Purpose of Policy</p>	<p>This policy provides protection and measures so that people can raise concerns on a confidential basis without fear of reprisal. The policy complies with the Australian Securities and Investment Commission (ASIC) Corporations (Whistleblower Policies) Instrument 2019/1146, and sound governance requirements as detailed by the Australian Charities and Not-for-profits Commission (ACNC) and the Corporations Act 2001 (Cth) (Corporations Act).</p> <p>The purpose of this policy is to assist Kildare Ministries employees and others associated with Kildare Ministries to report improper activities in the workplace and to protect employees from retaliation for making any report in good faith.</p> <p>Adherence to the policy will also help Kildare Ministries maintain the highest standards of ethical behaviour and integrity.</p>																												
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<p>Scope and Application</p>	<p>This policy applies to current and former Kildare Ministries, consultants, committee members, contractors, volunteers and associates; and spouses and relatives or dependents of these individuals.</p> <p>The scope of this policy relates to circumstances in which an eligible Whistleblower has reasonable grounds to suspect that someone connected with Kildare Ministries has engaged in fraudulent or illegal behaviour, including but not limited to, an offence against certain Commonwealth laws or other misconduct, or an improper state of affairs or circumstances in relation to Kildare Ministries or the tax affairs of Kildare Ministries.</p> <p>This policy does not apply to personal work-related grievances (such as an interpersonal conflict, decisions relating to promotions, decisions relating to terms and conditions of engagement, or decisions relating to suspensions and terminations of employment) that do not have significant implications for Kildare Ministries, or relate to conduct (or alleged conduct) about Reportable Conduct.</p> <p>If this policy differs from applicable law, including but not limited to the Corporations Act, Kildare Ministries will apply the applicable law to the extent of any inconsistency.</p> <p>It is recognised that there are forms of alleged employee conduct committed against, with, or in, the presence of a child, such as relevant sexual offences, sexual misconduct, physical violence, behaviour that causes significant emotional or psychological harm and significant neglect that constitute 'reportable allegations'. The required management of these forms of conduct is dealt with under the Reportable Conduct Scheme. Other obligations may also be relevant, such as the reporting of alleged criminal behaviour to police and mandatory reporting to the State based authorities.</p> <p>In relation to former Kildare Ministries employees these are included for the time period of the statute of limitations relevant to the applicable law that the conduct allegedly occurred.</p>
<p>Background</p>	<p>Kildare Ministries comprises the educational and community works formerly governed by the NSW Province of the Brigidine Congregation, the Victorian Province of the Brigidine Congregation and the Presentation Congregation of Victoria. Kildare Ministries offers secondary school education and community services within an inclusive and socially just context. It attempts to nurture a vision of life in which the belief in the dignity of each individual, characterised by personal integrity and compassion, informs thinking and action and enables all to take their rightful place in Church and society.</p>
<p>Definitions</p>	<p>APRA APRA is the Australian Prudential Regulation Authority.</p> <p>ASIC ASIC is the Australian Securities and Investments Commission.</p> <p>ACNC</p>

ACNC is the Australian Charities and Not-For-Profit Commission

Corporations Act

Corporations Act is the *Corporations Act 2001* (Cth), as amended, varied or replaced from time to time.

Chair or Co-chair of TKM – refers the person or people who are the chair of the Trustees

Eligible Recipient - means a person to whom a Whistleblower may make a disclosure about fraudulent and illegal behaviour in accordance with this policy, including:

- A-Chair of TKM
- Executive Director of Kildare Ministries
- Kildare Ministries nominated Whistleblower Protection Officer (WPO).

An Eligible Recipient also includes ASIC, APRA or a legal practitioner.

Kildare Ministries includes:

- Trustees of Kildare Ministries
- Kildare Education Ministries
- Brigidine College, Indooroopilly
- Brigidine College, St Ives
- Clonard College, Geelong
- Kilbreda College, Mentone
- Kildare College, Adelaide
- Killester College, Springvale
- Marian College, Ararat
- Marian College, Sunshine West
- Star of the Sea College, Brighton
- St Joseph's College, Echuca
- Wellsprings for Women, Dandenong
- Saltbush, Balnarring Beach
- Brigidine Asylum Seekers Project, Albert Park
- Mission and Ministry Team, Albert Park

Whistleblower - a person to whom this policy applies, and who in good faith and whether anonymously or not, makes a disclosure about Reportable Conduct to an Eligible Recipient in accordance with this policy.

Fraudulent or illegal behaviour including Reportable Conduct is conduct by a person or persons connected with Kildare Ministries that constitutes:

- an offence against, or a contravention of, a provision of any of the following:
 - the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018;
 - the Australian Securities and Investments Commission Act 2001;
 - the Banking Act 1959;

	<ul style="list-style-type: none"> ○ the Financial Sector (Collection of Data) Act 2001; ○ the Insurance Act 1973; ○ the Life Insurance Act 1995; ○ the National Consumer Credit Protection Act 2009; ○ the Superannuation Industry (Supervision) Act 1993; <ul style="list-style-type: none"> ● an offence against any other law of the Commonwealth that is punishable by imprisonment, for a period of 12 or more months; ● misconduct, or an improper state of affairs or circumstances in relation to Kildare Ministries or the tax affairs of Kildare Ministries; or ● a danger to the public or financial systems. <p>Examples of legal breaches or breaches with the code of conduct may include, but are not necessarily limited to:</p> <ul style="list-style-type: none"> ● financial irregularities; ● corrupt conduct; ● criminal conduct; ● offering or accepting a bribe; ● failure to comply with any legal or regulatory obligation; and/or ● unethical or other serious improper conduct. <p>Victimisation within the meaning of this policy includes injury, damage or loss, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to a person’s employment, or threats of reprisal.</p>
<p>Policy</p>	<p>Where a Whistleblower has reasonable grounds to suspect that any person or persons connected with Kildare Ministries has engaged in fraudulent and illegal behaviour, that person is expected to report their concern to an Eligible Recipient. Disclosures may be made anonymously, and this anonymity shall as far as possible be preserved by Kildare Ministries.</p> <p>The Whistleblower shall not be subject to Victimisation or suffer any sanctions from Kildare Ministries on account of making a whistleblower report provided that their actions are:</p> <ul style="list-style-type: none"> ● based on reasonable grounds, and ● in accordance with this policy. <p>Any Eligible Recipient to whom such a disclosure is made shall:</p> <ul style="list-style-type: none"> ● if they believe the behaviour complained of to not relate to fraudulent or illegal behaviour or to be unquestionably trivial or fanciful, dismiss the allegation and notify the Whistleblower of their decision; or ● if they believe the behaviour complained of relates to fraudulent or illegal behaviour and is neither trivial nor fanciful, ensure that the allegation is investigated (where an investigation is considered warranted), a finding is made, and the Whistleblower is informed of the finding.

	<p>Any such investigation shall, to the extent reasonably practicable, observe the rules of natural justice and procedural fairness.</p> <p>A member of Kildare Ministries who is the subject of an investigation shall be entitled to due process. In particular, the person shall be notified of that fact as early as possible unless it is determined that to do so would be harmful to the investigation.</p> <p>In any event, a member of Kildare Ministries who is the subject of an investigation shall be given notice of the allegations and an opportunity to respond before any action is taken.</p> <p>Responsibilities</p> <p>Trustees of Kildare Ministries are responsible for adopting the Whistleblower Policy, and for nominating the Whistleblower Protection Officer (WPO).</p> <p>The Whistleblower Protection Officer is responsible for:</p> <ol style="list-style-type: none"> a. coordinating an investigation into any report of Reportable Conduct received from a Whistleblower; b. documenting and handling all matters in relation to the report and investigation; and c. finalising all investigations. <p>The Executive Director is the Whistleblower Protection Officer and is responsible for the implementation of this policy and for ensuring that all complaints about fraudulent or illegal behaviour are investigated and resolved. The Executive Director will advise the Trustees of Kildare Ministries of all complaints (noting the requirements in this policy relating to Whistleblower anonymity) and their resolution and will report at least annually on compliance activity relating to accounting or alleged financial improprieties.</p> <p>All employees, contractors and volunteers are responsible for reporting breaches of the law, organisational policies, or generally recognised principles of ethics to a person authorised to take action on such breaches.</p>
<p>Processes</p>	<p>Reporting internally</p> <p>Where a Whistleblower has reasonable grounds to suspect that any person or persons connected with Kildare Ministries has engaged in fraudulent or illegal behaviour, that person is expected to report their concern to an Eligible Recipient.</p> <p>External reporting entities</p> <p>If necessary, Whistleblowers may also report their concerns to:</p> <ul style="list-style-type: none"> • an auditor of Kildare Ministries; • the Australian Taxation Commissioner or a registered tax agent or BAS agent (in the case of tax related matters only); • the ASIC; • the APRA;

- the Australian Federal Police; or
- a legal practitioner (where the disclosure is made for the purpose of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act).

An Eligible Whistleblower who makes a Protected Disclosure in circumstances in which each of the following criteria is satisfied:

- a. at least 90 days have passed since the Protected Disclosure was made;
- b. the Eligible Whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the Protected Disclosure related;
- c. the Eligible Whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest;
- d. after 90 days has passed, the Eligible Whistleblower gave written notice to Kildare Ministries that included sufficient information to identify the initial Protected Disclosure, and stated the Eligible Whistleblower's intention to make a public interest disclosure;
- e. the public interest disclosure is made to either a member of Parliament or a journalist (as defined in the Corporations Act); and
- f. the extent of the information disclosed in the public interest is no greater than necessary to inform the member of Parliament or the journalist of the Reportable Conduct as defined in this Policy,

then the disclosure to the member of Parliament or the journalist will qualify as a Protected Disclosure (known as a public interest disclosure).

The Act also provides additional protections in relation to Reportable Conduct concerning a substantial and imminent danger to the health or safety of one or more persons or to the natural environment (known as an emergency disclosure).

An Eligible Whistleblower who believes this to be the case should notify the Eligible Recipient when making their Report.

Kildare Ministries recommends seeking independent advice before making a public interest disclosure or an emergency disclosure.

Any person making a report in accordance with this policy should be informed that:

- as far as lies in Kildare Ministries' power, the employee will not be disadvantaged or victimised for making such a report;
- if the Whistleblower wishes to make their report anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law; and
- reporting such a breach does not necessarily absolve the Whistleblower from the consequences of any involvement on their own part in the misconduct complained of.

Contents of a report

Any such report should where possible be in writing (they can however, also be received orally in person or by telephone, by post, email, text message or online via the Kildare Ministries website), and should contain, as appropriate, details of:

- the nature of the alleged fraudulent or illegal behaviour;
- the person or persons responsible for the fraudulent or illegal behaviour;
- the facts on which the Whistleblower's belief that a fraudulent or illegal behaviour has occurred, and has been committed by the person named, are founded;
- the nature and whereabouts of any further evidence that would substantiate the Whistleblower's allegations, if known.

Evidence to support such concerns should be brought forward at this time if it exists. The absence of such evidence will be taken into account in subsequent consideration of whether to open an investigation into the matter. However, absence of such evidence is not an absolute bar to the activation of the organisation's investigative procedures. The existence of such a concern is sufficient to trigger reporting responsibilities.

In contemplating the use of this policy, a person should consider whether the matter of concern may be more appropriately raised under the organisation's grievance procedures including disputes resolution policy.

False reports and Whistleblowers acting improperly

Anyone making a report concerning Reportable Conduct must have reasonable grounds for believing the information disclosed indicates a violation. Where it is substantiated that a Whistleblower has made a false report (including where the report of Reportable Conduct has been made maliciously, vexatiously or without basis), this may be considered serious misconduct and may result in disciplinary action being taken up to and including termination of employment or engagement with Kildare Ministries. Abusing the process outlined in this Policy and acting improperly in making a report undermines the effectiveness of this Policy.

Anonymity

If the Whistleblower wishes to make their report anonymously, their wish shall be honoured except insofar as it may be overridden by due process of law.

The Whistleblower should, however, be informed that the maintenance of such anonymity may limit Kildare Ministries' ability to gather further information to assist an investigation and/or make it less likely that the alleged Reportable Conduct can be substantiated in any subsequent investigation.

Where anonymity has been requested the Whistleblower is required to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorised persons.

From time to time in the course of investigating a report, it may be necessary to disclose other personal information which ultimately leads to the identification of the Whistleblower. In these circumstance, Kildare Ministries will take reasonable steps to reduce the risk of the Whistleblower being identified.

In addition, personal information may be used or disclosed where:

- (a) the use or disclosure is required or authorised by or under an Australian law, or a court/tribunal order, or otherwise permitted under privacy laws;
- (b) the use or disclosure is made with the individual's express or implied consent;
- (c) disclosure is necessary to prevent or lessen a serious threat to a person's health or safety; and/or
- (d) disclosure is necessary to protect or enforce Kildare Ministries' legal rights or interests, or to defend itself against any claims.

Investigation

On receiving a report of a breach, the Eligible Recipient shall:

- if they believe the behaviour complained of to not relate to Reportable Conduct or to be unquestionably trivial or fanciful, dismiss the allegation and notify the person making the allegation of their decision; or
- if they believe the behaviour complained of to be Reportable Conduct and neither trivial nor fanciful, put in motion the investigation process described below.

The Eligible Recipient shall notify the Executive Director, who shall be responsible for ensuring that an investigation of the allegation is established and resourced.

Terms of reference for the investigation will be drawn up, in consultation with the Executive Director to clarify the key issues to be investigated.

An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

Strict security and confidentiality will be maintained during the investigative process. Kildare Ministries may request that the Whistleblower consent to a limited disclosure, such as disclosure of the Whistleblower's identity to the Whistleblower Protection Officer and the appointed investigator, to facilitate the conduct of the investigation.

All information obtained will be properly secured to prevent unauthorised access. Where an investigation does not substantiate the Reportable Conduct, the fact that

	<p>the investigation has been carried out, the results of the investigation and the identity of the Respondent must be handled confidentially.</p> <p>All relevant witnesses will be interviewed and documents examined.</p> <p>Contemporaneous notes of all discussions, phone calls and interviews will be made.</p> <p>Where possible, interviews will be recorded. The principles of procedural fairness (natural justice) will be observed¹: In particular, where adverse comment about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.</p> <p>The person or persons conducting the investigation shall be as far as possible unbiased.</p> <p>All Trustees of Kildare Ministries, employees, contractors and volunteers shall cooperate with those carrying out the investigation promptly, fully and efficiently by answering relevant questions and complying with requests for information and records.</p> <p>Fair treatment of those mentioned</p> <p>Kildare Ministries recognises that its employees who are involved in matters the subject of a report may also need support.</p> <p>Kildare Ministries will not disclose the identity of any individual who may be involved in the subject matter of a report, except as required by the investigation process and except as set out in this policy.</p> <p>Kildare Ministries will take steps so that at the appropriate time individuals who are involved in or directly affected by the report are:</p> <ul style="list-style-type: none">• informed of the substance of the allegation(s);• given a fair and reasonable opportunity to answer the allegation(s) before a final decision is made; and• informed as to the substance of any adverse comment that may be included in a report arising from the investigation. <p>Findings</p> <p>Where an investigation does not substantiate the fraudulent or illegal behaviour, the fact that the investigation has been carried out, the results of the investigation</p>
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¹ Natural justice and procedural fairness do not require that the person affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.

and the identity of the Respondent must be handled confidentially. The means of documenting and reporting the investigation findings will depend on the nature of the fraudulent or illegal behaviour.

Information to Whistleblower

Subject to considerations of the privacy of those against whom the allegations are made and customary practices of confidentiality, the Whistleblower will be kept informed of:

- relevant progress of an investigation; and
- relevant outcomes of an investigation.

There may be circumstances where it is not appropriate to provide details of the findings/outcome of an investigation to the Whistleblower.

Protection available to Whistleblowers

Eligible Whistleblowers who make Protected Disclosures are protected from civil, criminal or administrative liability (including disciplinary action) for making a report or reportable conduct.

Where the Whistleblower has made a report in accordance with this policy, Kildare Ministries will ensure that measures are taken to protect the Whistleblower, even if any report is subsequently determined to be incorrect or is not substantiated.

To the extent possible, the Executive Director shall designate an officer to be responsible for ensuring that the Whistleblower suffers no detriment on account of their actions and to provide additional support for the person where necessary. For the avoidance of any uncertainty, detrimental conduct does not include administrative action that is reasonable for the purpose of protecting a Whistleblower who has made a report of Reportable Conduct from detriment and/or managing a Whistleblower's unsatisfactory performance at work in line with Kildare Ministries performance management processes.

Any officer, employee, contractor or volunteer of Kildare Ministries who retaliates against an actual or potential Whistleblower, or other party involved in the process of reporting any Reportable Conduct in accordance with this policy, may be subject to disciplinary action up to and including termination of employment or engagement. In certain circumstances, Victimisation of Whistleblowers can constitute a criminal offence.

When is Protection Not Available?

Not all reports are protected at law. Protection is not available where the report is:

- (a) a personal work-related grievance or does not relate to Reportable Conduct;
- (b) trivial or vexatious in nature with no substance. This will be treated in the same manner as a false report and may itself constitute misconduct; and/or

	<p>(c) an unsubstantiated allegation or an allegation which is found to have been maliciously, or knowingly false. These will be viewed seriously and may be subject to disciplinary action.</p> <p>Reporting Reportable Conduct does not excuse the Whistleblower from the consequences of any of their own involvement in the Reportable Conduct. This may include criminal proceedings or disciplinary action. However, the Whistleblower's conduct in making the report may be taken into consideration in determining what disciplinary action (if any) is appropriate.</p>
REMEDY	<p>In the event of a breach of the confidentiality and/or victimisation protections in this policy, a whistleblower (or another employee or person) may seek compensation or other remedies if they suffer loss or injury because of the breach. Any employee who considers they have been victimised or suffered a loss is encouraged to report this to the Whistleblower Protection Officer, an Eligible Recipient and/or to seek independent advice.</p>
GENERAL	<p>This Policy does not form part of any Kildare Ministries employment contract or other contract of engagement and may be changed by Kildare Ministries at any time.</p> <p>The current version of this Policy will be available on the Kildare Minsters Website: http://www.kildareministries.org.au/policies-and-guidelines.html</p> <p>A copy of the policy will also be provided to all employees and contractors as part of our on-boarding process. You may also request a copy of this policy or ask any questions of the Executive Director of Kildare Ministries at any time by emailing Nicole.mangelsdorf@kildareministries.org.au</p>
EVALUATION AND IMPROVEMENT	<p>Policy Implementation and Review</p> <p>Procedures:</p> <ol style="list-style-type: none"> 1. A regular audit of the implementation of this Policy is undertaken by the Governance and Policy committee. 2. All policies and procedures are reviewed at least once every three years and revised where necessary 3. Introduction of the policy is included in the induction process and read by all new employees, volunteers and contractors. 4. Any issues that may arise in relation to this Policy shall initially be discussed with the Executive Director. <p>Related Policies, Legislation and Documents</p> <p>Internal Policies</p> <ul style="list-style-type: none"> • Code of Conduct • Conflict of Interest Policy • Grievance Policy • Privacy Policy <p>Relevant Legislation or Standards</p> <ul style="list-style-type: none"> • <i>Corporations Act 2001</i> (Cth)