

## 1.0 Introduction

The Ballarat Foundation recognises that, as a Registered Charity with the Australian Charities and Not-for-Profits Commission, it has an obligation to comply with whistleblower protections as a compliance and good governance measure.

## 2.0 Purpose

The purpose of this policy is to confirm processes for:

- Disclosure of inappropriate activities within the entity
- Protections available support people who come forward with notifications of inappropriate activities
- Penalties for failure to provide these protections.

## 3.0 Policy Statement

The Ballarat Foundation encourages staff to identify and report instances of fraud and/or unconscionable conduct that occurs in the workplace. Incorporated entities such as the Foundation require processes of safe reporting to support the probity and open disclosure by the incorporated entity.

### 3.1 Who is a Whistleblower?

An eligible whistleblower, entitled to protection under the legislation, is someone who is or was:

- An employee or officer of the Ballarat Foundation
- An individual or employee of an entity that supplies goods or services to it (this includes volunteers and directors)
- Any other individual who is an associate of the Foundation
- Immediate family of any of the above including a dependent of the spouse of any of the above
- An individual prescribed by regulation as being an eligible whistleblower.

### 3.2 Qualifying Disclosures that Preserve Eligibility for Whistleblower Protection

Protection is provided to whistleblowers only if they make a qualifying disclosure to an Eligible Recipient.

A qualifying disclosure occurs if the Foundation, an employee, volunteer or director reports misconduct, an improper state of affairs or circumstances or other breach of the law that;

- Contravenes the *Corporations Act (2011)* or the *Australian Securities and Investments Commission Act (2001)*
- Constitutes an offence against another Commonwealth law that is punishable by imprisonment for twelve months or more
- Represents a danger to the public or the financial system, or
- Is prescribed by the regulations.

### 3.3 Eligible Recipients

A whistleblower will receive protection only if the disclosure is made to an Eligible Recipient who includes;

- The Australian Securities and Investments Commission (ASIC)
- The Australian Prudential Regulatory Authority (APRA)

- Other Commonwealth bodies noted in the regulations (though excluding the ACNC)
- A legal practitioner, but only to the extent of privileged discussions held in relation to the application of these protections
- A service officer or the CEO of the Ballarat Foundation
- An external auditor or other member of the audit team for the Ballarat Foundation
- Any other person the Foundation has directly authorized to receive a disclosure including a person external to the charity.

Most of the named organization have forms on their website to report forms of misconduct within their remit.

The ACNC may be contacted about a relevant event but they are not an Eligible Recipient and no such disclosure will be subject to the protections.

### 3.4 Nature of Protections

A whistleblower may be compensated for any loss, damage or injury they suffer as a result of their disclosure.

They cannot be dismissed from their employment, harassed or discriminated against and their confidentiality cannot be breached without potential criminal or civil penalty.

These protections apply both to actual disclosure and where there is suspicion a disclosure has been made.

### 3.5 Dealing with Protected Disclosures

- a) If an officer of the Foundation or a Director receives a protected disclosure relating to an inappropriate action by an officer or volunteer they are to:
  - Appropriately document the disclosure
  - Provide advice to the whistleblower and support reporting to the relevant government agency, that agency to be determined based on the nature of the breach
  - Advise the whistleblower that they will not be subject to any punitive action as a result of their disclosure
  - Provide resources including any required documentation or interviews to an entity that investigates a disclosure.
- b) Any documentation retained as a result of a disclosure or investigation must;
  - All personal information or reference to the discloser witnessing an event will be redacted;
  - The discloser will be referred to in a gender-neutral context;
  - Where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
  - Disclosures will be handled and investigated by qualified staff.
- c) Where the reported disclosure relates to a supervising officer (which may include the Chief Executive Officer) the following protocols are to be followed;
  - Reporting is to occur to the superior of the person conducting the alleged malfeasance. In most instances this will be the CEO but complaints relating to the CEO are to be referred to the Chair of the Board of Directors.
- d) In relation to documentation created as a result of a complaint or disclosure;

- All paper and electronic documents and other materials relating to disclosures will be stored securely;
- Access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;
- Only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser;
- Communications and documents relating to the investigation of a disclosure will not to be sent to an email address or to a printer that can be accessed by other staff; and
- Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

## 3.6 Awareness Building

The Ballarat Foundation will provide the terms of this policy on its public website so as to build stakeholder awareness of whistleblowing procedure and practice.

## 3.7 Training

Ballarat Foundation staff and volunteers will receive information and training in order to enhance their ability to make disclosures, receive them and provide appropriate documentation and outcomes.

## 4.0 Responsibilities

The Board and the CEO are responsible for the implementation of this policy.

## 5.0 Applies to

All Directors, staff, contractors and volunteers.

## 6.0 Definitions

**Qualifying Disclosures:** A qualifying disclosure occurs if the Foundation, an employee, volunteer or director reports misconduct, an improper state of affairs or circumstances or other breach of the law

**Unconscionable Conduct:** Gaining a personal advantage due to a position of trust or respect held over another. The advantage gained need not be financial in nature

**Whistleblower:** A person with inside knowledge of an organisation who reports misconduct or dishonest or illegal activity that may have occurred within that organisation

## 7.0 Related Documents

Ballarat Foundation Code of Conduct GOV015

Director Roles and Responsibilities Policy

## 8.0 References

Corporations Act 2001

Public Interest Disclosures Act 2012 (Vic)

ASIC Regulatory Guide 270 – Whistleblower Policies

ACNC Whistleblower Protections <https://www.acnc.gov.au/tools/factsheets/whistleblower- protections>