



## WHISTLEBLOWER POLICY

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### 1. POLICY

- 1.1. The Telethon Kids Institute “the Institute” is committed to the highest standards of conduct and ethical behaviour, research integrity and good corporate governance and to operating:
- 1.1.1. legally and in accordance with applicable legislation and regulations;
  - 1.1.2. properly, in accordance with organisational policy and procedures; and
  - 1.1.3. ethically, in accordance with recognised ethical principles.

This includes:

- 1.1.4. supporting Whistleblowers (defined at clause 3.1) to make reports based on reasonable grounds of Reportable Conduct (defined at clause 4) involving the Institute’s activities, including its scientific research;
  - 1.1.5. ensuring that any Whistleblower who makes a report based on reasonable grounds to assist in maintaining the legal, proper and ethical operations of the Institute, can do so:
    - 1.1.5.1. anonymously if they wish;
    - 1.1.5.2. without fear of intimidation, disadvantage or reprisal; and
    - 1.1.5.3. without being penalised in any way.
- 1.2 Officers, Directors, Employees and other associates of the Institute are required to cooperate with this commitment by maintaining legal, proper and ethical operations, and if necessary, by reporting non-compliant actions by others.
- 1.3 This Policy applies to the Institute.
- 1.4 This Policy will be made available to employees and officers of the Institute on the Institute’s Policy Library.

### 2. PURPOSE

The purpose of this Policy is to:

- 2.1. ensure the Institute maintains the highest standards of ethical behaviour and integrity
- 2.2. define who can make a protected disclosure (Whistleblowers)
- 2.3. define matters about which a protected disclosure can be made (Reportable Conduct)
- 2.4. identify who can receive a protected disclosure (Eligible Recipients)
- 2.5. encourage the reporting of matters that may cause harm to individuals, or financial or non-financial loss to the Institute, or damage to the Institute’s reputation

- 2.6. establish a process for the Institute to deal with reports from Whistleblowers
- 2.7. protect the identity (including the disclosure of information that could lead to the identity) of a Whistleblower
- 2.8. provide for the secure storage of the information provided by Whistleblowers under the Institute's processes and
- 2.9. protect Whistleblowers against detrimental conduct.

### **3. WHISTLEBLOWERS AND PROTECTIONS**

#### **3A WHAT IS A WHISTLEBLOWER?**

- 3.1. In Australia, the *Corporations Act 2001* (Cth) (Corporations Act) and the *Taxation Administration Act 1953* (Cth) (Tax Administration Act) provide for protection of whistleblowers (Whistleblower Regime).
- 3.2. Any disclosure made from 1 July 2019 under the Whistleblower Regime are called "protected disclosures".
- 3.3. A person can make a "protected disclosure" under the Whistleblower Regime if:
  - 3.3.1. they are an "eligible whistleblower"
  - 3.3.2. the disclosure is about a disclosable matter and
  - 3.3.3. the disclosure is made to a person who is eligible to receive a protected disclosure.
- 3.4. A Whistleblower is a person who:
  - 3.4.1. wishes to make, attempts to make, or makes a report of Reportable Conduct in accordance with this Policy; and
  - 3.4.2. is, or has been:
    - 3.4.2.1. an officer of the Institute
    - 3.4.2.2. an employee of the Institute
    - 3.4.2.3. a person who supplies goods or services to the Institute, and employees of those suppliers
    - 3.4.2.4. an individual who is an associate of the Institute, as that term is used in the Corporations Act (for example, a person who is acting together with the Institute)
    - 3.4.2.5. either:
      - a) in relation to the Corporations Act, a relative, dependant, or spouse of a dependant of any of the above individuals; or
      - b) in relation to the Tax Administration Act, a spouse, child, dependant, or spouse of a dependent of any of the above individuals.

#### **3B WHAT PROTECTIONS ARE AFFORDED TO WHISTLEBLOWERS BY THE INSTITUTE?**

If a Whistleblower has made a protected disclosure under the Whistleblower Regime, the following legal protections will apply:

- 3.5. It is unlawful for the Institute to disclose the identity or information that may lead to the identification of a Whistleblower unless the Institute is authorised to do so under the Whistleblower Regime.
- 3.6. There are limited circumstances in which the Institute is authorised to disclose identity or information that may lead to the identification of a Whistleblower, including:

- 3.6.1. if the disclosure is made with the whistleblower's consent; and
- 3.6.2. the disclosure is made to ASIC, APRA or a member of the Australian Federal Police (AFP).
- 3.7. If a Whistleblower does disclose their identity when making a protected disclosure, the person who receives the disclosure will treat the Whistleblower's identity confidentially in accordance with the above confidentiality protections. This includes how the Institute will handle and store documents regarding the protected disclosure.
- 3.8. In some circumstances, it may be necessary for the Institute to request the Whistleblower's consent to disclose their identity in order to effectively deal with the protected disclosure. The Whistleblower is under no obligation to provide consent, but the Institute encourages the Whistleblower to do so as it will enable the Institute to fully investigate a protected disclosure and take appropriate action.
- 3.9. If the Whistleblower does not consent to the disclosure of their identity, the matter may nevertheless be referred for investigation and the investigator will take all reasonable steps to reduce the risk of the Whistleblower being identified as a result of the investigation.
- 3.10. The Whistleblower is also requested to maintain confidentiality regarding the disclosure on their own account and to refrain from discussing the matter with any unauthorised persons.
- 3.11. Whistleblowers who make a protected disclosure under the Whistleblower Regime will be protected from certain legal action taken by the Institute or any individuals for making the disclosure, including:
  - 3.11.1. civil, criminal, and disciplinary action against the whistleblower and
  - 3.11.2. contractual action, such as termination of a contract on the basis that making a disclosure is a breach of that contract.
- 3.12. It is unlawful for a person to:
  - 3.12.1. engage in any conduct that causes any detriment or
  - 3.12.2. make a threat to cause any detriment,

to a Whistleblower or another person because the person engaging in the conduct believes or suspects that another person made, may have made, proposes to make, or could make, a protected disclosure.
- 3.13. "Detriment" includes dismissal, demotion, harassment, discrimination, disciplinary action, bias, threats, property damage, reputational damage and other types of damage to a person.
- 3.14. Penalties apply for engaging in any of the conduct referred to above. Any person involved in the contravention may be found liable.
- 3.15. If a person suffers, or is threatened, detriment in contravention of the Whistleblower Regime, the person may apply to the court for an order of compensation or another remedy against those who were involved in the contravention.

#### **4. WHAT IS REPORTABLE CONDUCT?**

- 4.1. Reportable Conduct under the Whistleblower Regime and this Policy is any information that the Whistleblower has reasonable grounds to suspect:
- 4.1.1. concerns misconduct or an improper state of affairs or circumstances in relation to the Institute or any employee or officer. Misconduct includes fraud, negligence, default, breach of trust and breach of duty. Conduct does not necessarily need to be "unlawful" to fall within the scope of "misconduct or an improper state of affairs or circumstances", and may include:
    - 4.1.1.1. systemic improper conduct within the Institute that is causing, or may cause, harm
    - 4.1.1.2. conduct that indicates a significant risk to public safety or the financial system
    - 4.1.1.3. conduct that is not in the interests of the public
    - 4.1.1.4. conduct that constitutes a contravention of the Corporations Act or the *Australian Securities and Investments Commission Act 2001* and
    - 4.1.1.5. conduct that constitutes an offence against any other law of the Commonwealth that is punishable by at least 12 months' imprisonment.
- 4.2. A disclosure that includes information about a personal work-related grievance (for example a disclosure about an interpersonal conflict between the Whistleblower and another employee, or a decision relating to the engagement, transfer or promotion of the Whistleblower) will not qualify for protection, unless the grievance:
- 4.2.1. also concerns allegations of victimisation of the Whistleblower for making a disclosure
  - 4.2.2. constitutes a contravention of specific legislation, including the Corporations Act or the *Australian Securities and Investments Commission Act 2001*
  - 4.2.3. constitutes an offence against any other law of the Commonwealth that is punishable by at least 12 months' imprisonment
  - 4.2.4. represents a danger to the public or the financial system or
  - 4.2.5. has significant implications for the Institute (or another entity) that do not relate to the Whistleblower.

#### **5. REPORTING**

##### **5A TO WHOM CAN A WHISTLEBLOWER REPORT WITHIN THE INSTITUTE?**

- 5.1 If you become aware, on reasonable grounds, of any issue or behavior that amounts to Reportable Conduct and you wish to report your concerns, then you are strongly encouraged to report that concern via the Institute's Whistleblower Form, accessible via the public facing website, as the preferred manner of disclosure (refer section 5D).
- 5.2 Whistleblowers have the option of directing their submitted forms internally, to the Risk and Compliance Manager and Senior Lawyer, or externally, to the Chair, Risk and Compliance Committee. The nominated recipient will direct the report through the most appropriate channels.

- 5.3 A Whistleblower Protection Officer (WPO) must be a senior manager of the Institute, designated, authorised and trained by the Institute to receive Whistleblower disclosures. The Institute's current WPOs are:
- 5.3.1 Chief Operating Officer;
  - 5.3.2 Director of Partnerships and Engagement;
  - 5.3.3 Director of Research;
  - 5.3.4 Director of Aboriginal Health; and
  - 5.3.5 Senior Lawyer
- 5.4 If you feel uncomfortable reporting a matter to one of the above individuals, protected disclosures can be made to the Institute through eligible recipients nominated within the Corporations Act and/or the Tax Administration Act.
- 5.5 A person who knowingly makes a false disclosure, or makes a false disclosure with malice and without having reasonable grounds to suspect that the disclosure relates to Reportable Conduct, will not qualify for protection under the Whistleblower Regime or this Policy and may be subject to disciplinary action.
- 5.6 If you are unsure if a potential disclosure would be a protected disclosure and do not know what to do, or need guidance on the Whistleblower Regime or this Policy, you can consult a WPO or the Institute's Senior Lawyer.

#### **5B TO WHOM CAN A WHISTLEBLOWER REPORT OUTSIDE OF THE INSTITUTE**

- 5.7 The Institute takes all protected disclosures seriously and will not tolerate any behaviour which constitutes misconduct or an improper state of affairs or circumstances in relation to the Institute. The Institute accordingly encourages its employees and others to raise their concerns via the official Whistleblower Form referred to in 5A and 5D of this Policy. This enables the Institute to address any wrongdoing as early as possible.
- 5.8 A Whistleblower may also make a protected disclosure to:
- 5.8.1 the Australian Securities and Investments Commission (**ASIC**) or the Australian Prudential Regulation Authority (**APRA**);
  - 5.8.2 a legal practitioner in order to obtain legal advice or legal representation in relation to the Whistleblower Regime; or
  - 5.8.3 in limited circumstances, a journalist or member of Parliament. This would need to meet the strict criteria set out under the Corporations Act. We recommend that you contact the Institute's Senior Lawyer if you wish to obtain further information regarding the strict criteria for making a protected disclosure to a journalist or member of Parliament.
- 5.9 If the protected disclosure relates to the tax affairs of the Institute, then a Whistleblower may make a protected disclosure to:
- 5.9.1 a legal practitioner in order to obtain legal advice or legal representation in relation to the Whistleblower Regime;
  - 5.9.2 in certain circumstances, the Commissioner of Taxation. We recommend that you contact the Institute's Senior Lawyer if you wish to obtain further information regarding this.

#### **5C WHAT IF I MAKE A DISCLOSURE THAT DOES NOT QUALIFY FOR PROTECTION UNDER THE WHISTLEBLOWER REGIME?**

- 5.10 If the requirements set out in Part 5 are not met, then a Whistleblower will not qualify for the legal protections under the Corporations Act or the Tax Administration Act. For

example, a Whistleblower will not qualify for the legal protections under the Corporations Act or the Tax Administration act if they have disclosed Reportable Conduct on social media.

- 5.11 However, a disclosure may be protected under other legislation. For example, a disclosure may amount to the exercise of a workplace right. Under the *Fair Work Act 2009* (Cth), the Institute is prohibited from taking adverse action against employees or contractors because they exercised or propose to exercise a workplace right.

#### **5D HOW SHOULD A REPORT BE MADE?**

- 5.12 Where possible, reports of Reportable Conduct should be made through the Institute's Whistleblower Form, accessible via the Institute's website. In completing and submitting the Form, Whistleblowers can elect to remain anonymous if they wish.
- 5.13 Whistleblowers can elect for disclosures to be directed internally, to the Risk and Compliance Manager and Senior Lawyer, or externally, to the Chair, Risk and Compliance Committee. Either recipient will treat the report confidentially, ensuring the matter is directed through the correct channels and managed in accordance with this Policy and applicable legislative requirements.

#### **5E WHAT OTHER INFORMATION SHOULD A WHISTLEBLOWER RECEIVE?**

- 5.14 Any Whistleblower who makes a report of Reportable Conduct in accordance with this Policy will be informed that:
- 5.14.1 the Institute will take all reasonable steps to ensure that the Whistleblower will not be disadvantaged for the act of making such a report
  - 5.14.2 the Whistleblower can remain anonymous and still receive protection and
  - 5.14.3 the Whistleblower will not necessarily be absolved from the consequences of their involvement in any misconduct complained of.

### **6. INVESTIGATION OF REPORTABLE CONDUCT**

- 6.1 The Institute, where appropriate, will investigate protected disclosures that are reported to the Institute in accordance with Part 5 of this Policy.
- 6.2 The Institute will need to make preliminary enquiries to:
- 6.2.1 assess whether the disclosure falls within the scope of the Whistleblower Regime; and
  - 6.2.2 how best to progress the issues raised in the disclosure, including whether or not a full investigation will be necessary and possible.
- 6.3 If an investigation is necessary and possible then, depending on the nature of the disclosable matter, a WPO may:
- 6.3.1 notify the Executive Director;
  - 6.3.2 if the Executive Director is implicated in the disclosure, notify the Chair of the Board; and
  - 6.3.3 appoint a person to investigate the reported breach (the Investigator).
- 6.4 The referral of a protected disclosure for investigation will be done in accordance with the confidentiality obligations that the Institute owes to the Whistleblower. If compliance with the Institute's confidentiality obligations will prevent it from conducting a fair investigation, the Institute will discuss this with the Whistleblower before progressing the matter.
- 6.5 It is important to understand that the Institute may not be able to commence or progress with an investigation into a protected disclosure in some circumstances, for example because:

- 6.5.1 the Whistleblower made the disclosure anonymously and did not provide any contact details for the Institute to obtain further information from the Whistleblower;
- 6.5.2 The Institute is unable to proceed with the investigation without disclosing the Whistleblower's identity, but the Whistleblower does not provide consent to such disclosure.
- 6.6 The investigation must be conducted in an objective and fair manner, and otherwise as is reasonable and appropriate having regard to the nature of the Reportable Conduct and the circumstances.
- 6.7 The Institute will aim to keep the Whistleblower informed of the progress of the investigation and its expected timescale. However, confidentiality concerns, if any, may prevent the Institute from providing specific details of the investigation or any disciplinary action taken as a result.
- 6.8 All staff should treat any information about the investigation as confidential. The Whistleblower is also required to maintain confidentiality regarding the disclosure on their own account and to refrain from discussing the matter with any unauthorised persons. If the Whistleblower fails to maintain the confidential nature of the disclosure, and the Whistleblower has previously withheld consent to disclose his/her identity, the Institute may conclude that the Whistleblower no longer wishes his/her identity to remain confidential and will seek to confirm this with the Whistleblower.

## **7. FINDINGS**

A report of findings must be prepared by the Investigator and provided to the WPO when an investigation is complete.

## **8. SUPPORT FOR WHISTLEBLOWERS**

- 8.1. By this Policy, the Institute is committed to ensuring all personnel feel supported and able to raise issues which relate to any misconduct or improper state of affairs or circumstances within the Institute.
- 8.2. Where a protected disclosure is made, the Institute will reiterate the requirements of this Policy and the Whistleblower Regime with any person concerned in the investigation of the disclosure.
- 8.3. The Institute will conduct investigations into protected disclosures in a manner which is fair in all of the circumstances and will have regard to the protections afforded to the Whistleblower and the privacy and fair treatment of persons referred to in the disclosure, including those to whom the disclosure relates.
- 8.4. The Institute will determine whether any disciplinary outcomes or other remedies are appropriate after an investigation into a protected disclosure is completed.
- 8.5. The Institute's Employee Wellbeing Service is available to employees concerned with a disclosure, including a Whistleblower and any person to whom a protected disclosure relates or who is referred to in a protected disclosure.

## **9. FAIR TREATMENT**

- 9.1. The Institute will not tolerate any reprisals or threats of reprisals made against

whistleblowers and will take appropriate steps to protect whistleblowers from such retaliation.

- 9.2. It is important that all investigations into protected disclosures are conducted in a procedurally fair and confidential manner, to ensure the fair treatment of any individuals named in the protected disclosure or to whom the protected disclosure relates.
- 9.3. No action will be taken against any individual implicated in a protected disclosure until an investigation has determined whether any allegations against them are substantiated. However, if appropriate, an implicated employee or officer may be temporarily stood down on full pay pending the outcome of the investigation.

## **10. ACCESS AND REVIEW**

- 10.1. This Policy is available on the Institute's Policy Library.
- 10.2. The Institute will review this Policy at least every three years in accordance with the Policy management Framework, with updates provided to the Board or delegated Sub-Committee for approval.
- 10.3. If you would like further information about how this Policy works and what it covers, please contact the Institute's Senior Lawyer via [whistleblower@telethonkids.org.au](mailto:whistleblower@telethonkids.org.au) who will treat your discussions confidentially.