

Whistleblowing and Protection Policy

Document Title:	WHISTLEBLOWING AND PROTECTION POLICY	Date created:	4 December 2019
Version:	2	Date updated:	2 March 2020
Author:	Chief Operating Officer	Approver:	Chief Operating Officer
Approved by Board:			
Scheduled Review Date:	31 March 2020		

1. POLICY

- 1.1. This policy has been developed and implemented in accordance with the requirements of the Corporations Act 2001 (Cth) (the Act) and ASIC's Regulatory Guidelines (RG 270: Whistleblower Policies). Queensland Eye Institute also gives consideration to the Public Interest Disclosure Act 2013 and the Queensland Public Interest Disclosure Action 2010.
- 1.2. Queensland Eye Institute, which includes the Queensland Eye Institute Clinic, the Queensland Electro Diagnostic Imaging Centre (QEDIC) and Cordelia Dermatology (the Institute) is committed to the highest standards of conduct and ethical behaviour, research integrity and good corporate governance and to operating:
 - 1.2.1. legally, and in accordance with applicable legislation, regulations and guidelines;
 - 1.2.2. properly, in accordance with organisational policy and procedures; and
 - 1.2.3. ethically, in accordance with recognised ethical principles.Including by:
 - 1.2.4. 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;
 - 1.2.5. maintaining the legal, proper and ethical operations of the Institute and ensuring that any Whistleblower who makes a report, based on reasonable grounds, can do so:
 - 1.2.5.1. anonymously;
 - 1.2.5.2. without fear of intimidation, disadvantage or reprisal; and
 - 1.2.5.3. without being penalised by the Institute in any way.
- 1.3. 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.

2. PURPOSE

The purpose of this Policy is to:

- 2.1 ensure that the Institute maintains the highest standards of ethical behaviour and integrity;
- 2.2 define who can make a protected disclosure;
- 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 in a fair and timely manner;
- 2.7 ensure that the Institute protects the identity (including the disclosure of information that could lead to the identity) of Whistleblowers; and
- 2.8 protect Whistleblowers against Detriment.

3. WHO IS A WHISTLEBLOWER?

- 3.1 A Whistleblower is a person who:
 - 3.1.1 wishes to disclose, attempts to disclose, or discloses Reportable Conduct in accordance with this Policy; and
 - 3.1.1.1 is, or has been, an associate of the Institute, including an Institute Board Member, Director, officer, employee, student, contractor, supplier, tenderer or other person, paid or unpaid, who has business dealings with the Institute; or
 - 3.1.1.2 is a relative or dependent of a person listed in 3.1.1.1.

4. WHAT IS REPORTABLE CONDUCT?

- 4.1 Reportable Conduct is:
 - 4.1.1 conduct which is dishonest, fraudulent or corrupt, including financial fraud or bribery;
 - 4.1.2 illegal activity, including but not limited to theft, drug sale or use, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law;
 - 4.1.3 official misconduct or maladministration;
 - 4.1.4 unethical conduct or conduct in breach of the Institute's policies, including but not limited to dishonest alteration of company records or data, adoption of questionable accounting practices or wilful breaches of the Institute's Code of Conduct, or other policies or procedures;
 - 4.1.5 conduct that could be damaging to the Institute, an Institute employee or a third party, including but not limited to unsafe work practices, environmental damage, health risks, or abuse of Institute property or resources;
 - 4.1.6 conduct which amounts to an abuse of authority;
 - 4.1.7 conduct which amounts to wrongdoing;
 - 4.1.8 conduct which may cause financial loss to the Institute, damage its reputation or be otherwise detrimental to the Institute's interests;

- 4.1.9 conduct which involves harassment, discrimination, bullying or victimisation;
or
 - 4.1.10 conduct which involves any other kind of serious impropriety, including but not limited to:
 - 4.1.10.1 serious and substantial waste of public resources;
 - 4.1.10.2 practices endangering the health or safety of employees, stakeholders or the general public;
 - 4.1.10.3 practices endangering the environment; and
 - 4.1.10.4 research misconduct; and
 - 4.1.11 conduct which is not illegal may still fall within the definition of Reportable Conduct.
- 4.2 With the exception of matters covered under clause 4.4, Reportable Conduct does not include:
- 4.2.1 personal work-related grievances or interpersonal conflicts involving an employee that are not related to Reportable Conduct per clause 4.1;
 - 4.2.2 employee management or performance related matters; or
 - 4.2.3 decisions relating to engagement, transfer or promotion that are not related to Reportable Conduct per clause 4.1.
- 4.3 Matters which do not amount to Reportable Conduct can be raised under the Institute's other HR policies and procedures and, if they do not fall within the exception in clause 4.4, do not qualify a person raising those issues for protection under the Act or this Policy.
- 4.4 A disclosure made about or including non-Reportable Conduct may qualify for protection if:
- 4.4.1 the Whistleblower suffers from, or is threatened with, detriment for making the disclosure; or
 - 4.4.2 seeks advice from a legal practitioner regarding their rights under the Act; or
 - 4.4.3 the disclosure includes information that:
 - 4.4.3.1 pertains to Reportable Conduct;
 - 4.4.3.2 the Institute has breached laws punishable by imprisonment for a period of 12 months or more;
 - 4.4.3.3 the Institute has engaged in conduct that represents a danger to the public; or
 - 4.4.3.4 suggests misconduct beyond the Whistleblower's personal circumstances.
- 4.5 Anyone who deliberately makes a false disclosure or Report may be the subject of disciplinary action by the Institute in accordance with the Institute's Human Resource Policies and Procedures.

5 WHO IS ELIGIBLE TO RECEIVE A REPORT?

5.1 If a Whistleblower:

- 5.1.1 becomes aware of an issue or conduct that amounts to Reportable Conduct;
- 5.1.2 there are reasonable grounds for those concerns; and
- 5.1.3 they wish to report those concerns

then any Report must be made to an Eligible Recipient to qualify the Whistleblower for protection under the Act and this Policy.

5.2 An Eligible Recipient is:

- 5.2.1 A senior manager of the Institute including the Chief Executive Officer (Prof Mark Radford);
- 5.2.2 a member of an audit team conducting an audit of the Institute;
- 5.2.3 an actuary of the Institute;
- 5.2.4 an Institute Whistleblower Protection Officer (defined at 5.3) with authority to receive protected disclosures;
- 5.2.5 Our Auditors: the Institute's external whistleblower avenue;
- 5.2.6 a legal practitioner;
- 5.2.7 a relevant regulatory body; or
- 5.2.8 the authorities responsible for the enforcement of the law in the relevant area.

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.

5.4 The Institute's WPO is:

- 5.4.1 Ms Kelly Langdon, Chief Operating Officer, 0404 036 130,
Kelly_langdon@qei.org.au.

5.5 The Institute's WPOs details (including name, title, phone number and email address) will be published on the Institute's Intranet and updated regularly.

5.6 The Institute is committed to addressing all forms of wrongdoing, especially Reportable Conduct, as early as possible, and encourages Whistleblowers to make a disclosure directly to a WPO, an internal Eligible Recipient, or to Our Auditors: the Institute's external whistleblower disclosure avenue, as soon as possible after the conduct occurs or arises.

6 HOW SHOULD REPORTS BE MADE?

6.1 Reports of Reportable Conduct (Reports) should be provided in writing wherever possible and must be provided to an Eligible Recipient, including Our Auditors or the WPO.

6.2 Reports should contain as much detail as possible of:

- 6.2.1 the nature of the conduct alleged;
- 6.2.2 the person or people responsible for the conduct;
- 6.2.3 the facts on which the Whistleblower bases their belief that Reportable Conduct has occurred; and
- 6.2.4 the nature and whereabouts of any further evidence that would substantiate the Whistleblower's allegations.

6.3 Reports can be made to Eligible Recipients:

- 6.3.1 Anonymously;
- 6.3.2 Confidentially; or
- 6.3.3 Openly.

7 HOW WILL REPORTS BE RECEIVED AND RESPONDED TO?

7.1 Reports will be received:

- 7.1.1 Securely;
- 7.1.2 Within or outside of business hours; and
- 7.1.3 In accordance with the protections described in clause 8.

7.2 Reports will be responded to in accordance with the protections detailed in clause 8, particularly clause 8.7 and the following timeframes:

- 7.2.1 Within 48 business hours of the Institute receiving a Report, acknowledgement will be provided to the Whistleblower by a WPO; and
- 7.2.2 The Institute will then comply with the timeframes and process in clause 9, Investigations.

8 WHAT PROTECTIONS ARE OFFERED TO WHISTLEBLOWERS?

8.1 Identity protection

- 8.1.1 These protections apply to disclosures to all Eligible Recipients, including those external to the Institute;
- 8.1.2 A Whistleblower may choose to remain anonymous throughout all stages of a disclosure, including when the disclosure is made, throughout an investigation and after an investigation is finalised;
- 8.1.3 A Whistleblower may, at any stage, refuse to answer questions that may disclose their identity;
- 8.1.4 Where a Whistleblower has made a Report which qualifies for protection under this Policy, it is illegal for officers of the Institute to disclose the Whistleblower's identity, or to disclose information (obtained directly or indirectly) that is likely to lead to the identification of a Whistleblower, subject to the exceptions in 8.1.5;
- 8.1.5 The protections afforded to Whistleblowers in this clause 8.1 are subject to the following exceptions:
 - 8.1.5.1 The Institute may disclose identifying information when a disclosure is made to:

- 8.1.5.1.1 ASIC, APRA, the Australian Federal Police, or any other relevant Commonwealth or state or territory authority, for the purpose of assisting the authority in the performance of its functions or duties;
 - 8.1.5.1.2 A legal practitioner to obtain legal advice or legal representation in relation to the operation of the whistleblower provisions in the Act;
 - 8.1.5.1.3 A person or body prescribed by regulations; and/or
 - 8.1.5.1.4 With the consent of the Whistleblower.
- 8.1.6 The Institute may disclose information contained within the disclosure without the Whistleblower's consent if:
- 8.1.6.1 The information does not include the Whistleblower's identity;
 - 8.1.6.2 The Institute has taken all reasonable steps to reduce the risk that the Whistleblower will be identified from the information; and
 - 8.1.6.3 It is reasonably necessary for investigating the issues raised in the disclosure.
- 8.1.7 The Whistleblower is also required to maintain confidentiality regarding the issue.
- 8.2 Protection from detrimental conduct
- 8.2.1 The Institute will ensure that:
- 8.2.1.1 If a Whistleblower makes a disclosure or makes enquiries about making a disclosure, the Whistleblower will not suffer any Detriment;
 - 8.2.1.2 Practical measures set out in clause 8.7 are taken in order to protect a Whistleblower from detriment;
 - 8.2.1.3 The Institute will not threaten to cause Detriment to the Whistleblower on account of those actions, providing that those actions:
 - 8.2.1.3.1 are based on reasonable grounds; and
 - 8.2.1.3.2 comply with the procedures outlined in this Policy.
- 8.2.2 Detriment includes, but is not limited to, dismissal, demotion, harassment, discrimination, disciplinary action, damage to reputation, bias, threats or other unfavourable treatment connected with making a report.
- 8.2.3 Detriment does not include:
- 8.2.3.1 Managing unsatisfactory work performance in accordance with the Institute's performance management framework; or
 - 8.2.3.2 Action that it is reasonably practical for the Institute to take for the purpose of protecting a Whistleblower from Detriment e.g. with the Whistleblower's consent, changing the Whistleblower's direct manager or moving the Whistleblower to a separate office area.

8.2.4 The Institute encourages any person who believes that they may have suffered Detriment to seek independent legal advice.

8.3 Compensation

8.3.1 A Whistleblower or other stakeholder may seek compensation or other remedies through the courts if:

8.3.1.1 The Institute failed to take reasonable precautions and exercise due diligence to prevent Detriment; and

8.3.1.2 They suffer loss, damage or injury because of a disclosure.

8.3.2 The Institute encourages any person who believes that they may have a claim for compensation to seek independent legal advice.

8.4 Protection from civil, criminal and administrative liability

8.4.1 A Whistleblower is immune from:

8.4.1.1 Civil liability, for example any legal action against them by the Institute for breach of employment contract, confidentiality, or any other contractual obligation. This does not include protection from possible prosecution for making a false disclosure;

8.4.1.2 Criminal liability, for example prosecution of the Whistleblower for unlawfully releasing information. This does not include protection from possible prosecution for making a false disclosure; and

8.4.1.3 Administrative liability, for example any disciplinary action brought about as a consequence of the Whistleblower making the disclosure.

8.4.2 For the avoidance of doubt, these liability protections do not grant immunity to any Whistleblower for any misconduct that they may have engaged in that is revealed in their disclosure.

8.5 Protection if Reportable Conduct is disclosed to a member of parliament or a journalist

8.5.1 Protection will only be offered by the Institute to any Whistleblower who informs a Member of Parliament or journalist of concerns about Reportable Conduct if:

8.5.1.1 The Whistleblower has previously made a report regarding the matter to ASIC, APRA, or a prescribed Commonwealth authority; and

8.5.1.2 In the case of a public interest disclosure, at least 90 days have passed since the report was made; and

8.5.1.3 The Whistleblower does not have reasonable grounds to believe that action is being, or has been taken to address the report; and

8.5.1.4 The Whistleblower has reasonable grounds to believe that making a further report would be in the public interest; or

8.5.1.5 The Whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health and safety of a person, persons, or the environment; and

- 8.5.1.6 The Whistleblower provides written notification to the Institute that:
 - 8.5.1.6.1 Includes sufficient information to identify the previously made report;
 - 8.5.1.6.2 Clearly states that the Whistleblower intends to make a public interest disclosure per clauses 6.10.1.3 or an emergency disclosure per 6.10.1.4; and
 - 8.5.1.6.3 The information disclosed is no greater than necessary to inform the MP or journalist of the misconduct or the otherwise improper state of affairs.
- 8.5.1.7 The Institute encourages Whistleblowers to seek legal advice before making a public interest or emergency disclosure.

8.6 Protection if Reportable Conduct is disclosed via social media or to someone other than an Eligible Recipient

- 8.6.1 To be protected by the Institute, a Whistleblower must make any Reports to an Eligible Recipient in accordance with this Policy.
- 8.6.2 For the avoidance of doubt, the Institute cannot guarantee protection of Whistleblowers who do not comply with the procedures included in this Policy, including but not limited to circumstances where disclosures are made to people other than Eligible Recipients or via social media.

8.7 Support and practical protection for Whistleblowers

- 8.7.1 Where a Whistleblower has made a disclosure in good faith, the Whistleblower and their disclosure will qualify for protections under the Act and this Policy, even if the disclosure turns out to be incorrect or unsubstantiated.
- 8.7.2 The Institute will take practical steps to protect Whistleblowers from Detriment, including by:
 - 8.7.2.1 Conducting a risk assessment within 48 hours of receipt of a disclosure;
 - 8.7.2.2 Ensuring that all managers and Eligible Recipients are appropriately trained in responding to disclosures and protections for Whistleblowers;
 - 8.7.2.3 Offering, where appropriate and indicated, a Whistleblower , counselling, professional, legal services]; and/or
 - 8.7.2.4 Implementing strategies and support to help the Whistleblower to minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation, including allowing a Whistleblower workplace flexibility.
- 8.7.3 To reduce the risk of disclosing information or identity where a Whistleblower wishes to remain anonymous, the Institute will:
 - 8.7.3.1 redact all personal information or references to the Whistleblower;
 - 8.7.3.2 Use gender-neutral language;
 - 8.7.3.3 Where possible, contact the Whistleblower to help identify certain aspects of a disclosure which may inadvertently identify the Whistleblower; and
 - 8.7.3.4 Engage qualified people to handle and investigate disclosures.

- 8.7.4 To ensure record-keeping and information sharing processes are secure, the Institute will:
- 8.7.4.1 Securely store all paper and electronic documents relating to disclosures;
 - 8.7.4.2 Strictly limit access of information to those directly involved in managing and investigating the disclosure;
 - 8.7.4.3 Ensure that no one named or implicated in the disclosure or who has a conflict of interest with respect to the disclosure has access to paper and electronic documents relating to the disclosure;
 - 8.7.4.4 Ensure that only a restricted number of people directly involved in the handling and investigation of a disclosure, and none of whom has a conflict of interest, are aware of a Whistleblower's identity and then only with the Whistleblower's consent;
 - 8.7.4.5 Not use email addresses or printers that can be accessed by other staff, for communications and documents relevant to the disclosure or the investigation of a disclosure; and
 - 8.7.4.6 Remind each person involved with handling and investigating a disclosure of that person's confidentiality requirements, and that unauthorised disclosure of a Whistleblower's identity may have serious repercussions and be a criminal offence.

9. INVESTIGATION OF REPORTABLE CONDUCT

- 9.1 The Institute must ensure that an assessment is conducted on every matter disclosed under this Policy and assign an appropriate Eligible Recipient to determine whether:
 - 9.1.1 The disclosure and the Whistleblower qualify for protection; and
 - 9.1.2 A formal, in-depth investigation is required.
- 9.2 The Eligible Recipient assigned to manage a Report will be the Eligible Recipient who receives the Report unless that Eligible Recipient has any conflict of interest associated with the Report;
- 9.3 If the Eligible Recipient has any conflict of interest associated with the Report then the Report must be reassigned to another Eligible Recipient;
- 9.4 The assigned Eligible Recipient must acknowledge receipt of the Report within 48 hours business hours of receipt of the Report and may dismiss that Report if, and only if, on reasonable grounds, the assigned Eligible Recipient has a high degree of confidence that there is no substance to the complaint contained in the Report;
- 9.5 If the Eligible Recipient determines to dismiss the Report in accordance with clauses 9.2-9.4 (inc) then the Eligible Recipient must advise the Whistleblower, in writing, of that decision, within 48 business hours of making that decision;
- 9.6 If the assigned Eligible Recipient does not dismiss the complaint, the Eligible Recipient must within seven business days:

- 9.6.1 notify the Director that a Report has been received and appoint an independent, external expert to investigate the reported breach (an Investigator); or
 - 9.6.2 if the Director is implicated in the disclosure, notify the Chair of the Board that a Report has been received and appoint an Investigator; or
 - 9.6.3 if the Chair of the Board is implicated in the disclosure, appoint an Investigator.
- 9.7 The assigned Eligible Recipient must ensure that the Terms of Reference provided to the Investigator include:
- 9.7.1 all relevant questions to be investigated;
 - 9.7.2 that the scale of the investigation is in proportion to the seriousness of the allegation(s);
 - 9.7.3 allocation of sufficient resources;
 - 9.7.4 a requirement that confidentiality of all parties, including witnesses, is maintained;
 - 9.7.5 a requirement that procedural fairness be applied to all parties;
 - 9.7.6 a requirement that strict security is maintained during the investigative process;
 - 9.7.7 a requirement that information obtained is properly secured to prevent unauthorised access;
 - 9.7.8 a requirement that all relevant witnesses are interviewed and documents examined;
 - 9.7.9 a requirement that contemporaneous notes of all discussions, phone calls and interviews must be made; and
 - 9.7.10 a requirement that the Findings comply with clause 10 of this Policy;
- 9.8 If the Whistleblower can be contacted (via anonymous channels or otherwise) then the assigned Eligible Recipient will provide regular feedback to the Whistleblower regarding the progress of the investigation and/or outcomes, subject to considerations of the privacy of those against whom allegations are made;
- 9.9 The Institute's capacity to investigate a disclosure may be limited if the Eligible Recipient has no means of contacting the Whistleblower;
- 9.10 The investigation must be conducted in an objective and fair manner, including with respect to those who are named in the disclosure or affected by it, and otherwise as is reasonable and appropriate having regard to the nature of the Reportable Conduct and the circumstances, and including but not limited to providing information as to how the Institute will ensure the fair treatment of individuals mentioned in a disclosure.
- 9.11 Where the Whistleblower chooses to be anonymous the Institute must:
- 9.11.1 Via Our Auditors or another Eligible Recipient, provide an outline of how the findings of the investigation will be documented and reported, while protecting the Whistleblower's identity;

- 9.11.2 Recommend that the Whistleblower should maintain ongoing two-way communication with the Institute via Our Auditors throughout the process of investigation, so that the Institute can ask follow-up questions or provide feedback;
- 9.11.3 Advise the Whistleblower that they can refuse to answer questions if they consider that to do so will risk their identity being revealed, including during follow-up conversations; and
- 9.11.4 The Whistleblower must also maintain confidentiality regarding the issue and refrain from discussing the matter with unauthorised persons.

10. FINDINGS

- 10.1 A report of findings must be prepared by the Investigator and provided to the WPO when an investigation is complete (Findings).
- 10.2 The Findings must include:
 - 10.2.1 the allegations;
 - 10.2.2 a statement of all relevant findings of fact and the evidence relied upon to reach conclusions on each allegation;
 - 10.2.3 whether each allegation is substantiated;
 - 10.2.4 the basis for each conclusion reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis; and
 - 10.2.5 recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

11. POLICY ACCESSIBILITY AND TRAINING

- 11.1 This policy will be available to internal stakeholders of the Institute via wide dissemination of the policy including via:
 - 11.1.1 The Institute's intranet; and
 - 11.1.2 Appropriate workplace conduct training, including training as to what protections are available to stakeholders that make a disclosure covered by this Policy.
- 11.2 This policy will be made available to external stakeholders of the Institute via the Institute's website.
- 11.3 The Institute will provide specialist training to all of its Eligible Recipients and Whistleblower Protection Officers with regard to their responsibilities under this Policy.

12. AUTHORISATION

Signature of Board Secretary

Date of approval by the Board

Queensland Eye Institute Foundation