



# PROVINCE WIDE POLICY

## Australian Province of the Society of Jesus

### Whistleblower

<b>Section</b>	Governance (Corporate)
<b>Policy Number</b>	GVC.13.00.00
<b>Application</b>	Incorporated Ministries of the Province
<b>Endorsing Body</b>	Ministries Commission
<b>Last Endorsed</b>	New document
<b>Next Review</b>	12 months from approval and every 2 years thereafter
<b>Version</b>	1.0
<b>Written By</b>	Province Director of Professional Standards
<b>Approved By</b>	Fr Brian F. McCoy SJ - Provincial

### 1. POLICY STATEMENT

Consistent with the Province’s [Code of Conduct \(Code\)](#) and the Society of Jesus’ Instruction on the Administration of Goods (**IAG**), this Policy demonstrates our commitment to upholding the highest standards of professional and personal conduct and articulating ‘our way of proceeding’ (a way of acting and interacting with people, social structures and the environment that respects and fosters their dignity, freedom and relationship with their Creator) in the stewardship of the assets and ministries entrusted to our care.

The Province encourages the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving the incorporated ministries of the Province and seeks to provide protections for those persons who make a report, so they may do so confidentially and without fear of intimidation, disadvantage or reprisal.

This Policy applies to all Jesuits and Partners in Mission involved with an incorporated ministry of the Province.

### 2. PURPOSE

To outline the disclosure processes of Reportable matters in respect of suspected wrongdoing as a means of promoting an ethical framework in managing the risk of fraud, illegal or corrupt conduct, based on the Code of Conduct.

### 3. KEY REQUIREMENTS

The Province’s commitment is supported by these key requirements with each incorporated ministry maintaining evidence of these requirements:

- [Code of Conduct](#) – adherence to the Code’s primary obligations, particularly responsible stewardship of Province resources and protection of its trust in the wider community, the duty to preserve standards of equity and respect, and a commitment to act with integrity and to be accountable for actions in performing work or work-related functions;
- [Reporting and protections](#) – a well understood system to enable confidential disclosure of Reportable matters by Jesuits and Partners in Mission in respect of suspected wrongdoing in an incorporated Province Ministry, along with seeking to provide protections to such disclosers;
- [Investigation and response](#) – provision by the Province of an investigation and response framework that is objective, confidential, independent and based on fair treatment; and

- Education and training – communicate and embed awareness of the key requirements, including the creation and maintenance of appropriate records.

#### 4. ACTIONS TO ACHIEVE IMPLEMENTATION OF THIS POLICY

Heads of Ministries are responsible for implementing this policy and its requirements. The active involvement and commitment of an incorporated ministry’s leadership team is essential to ensure the effective application of the policy.

Incorporated ministries **must** implement whistleblower procedures, accessible for all staff, people who engage with the ministry and the public, to support this policy as set out in Appendix 1.

##### *Heads of Incorporated Ministries*

#### 4.1 Communicate details of the Province Protected Disclosure Officers

Review and, where necessary, strengthen communication that encourages Jesuits, Partners in Mission and Contractors engaged in an incorporated ministry to raise matters at any time with their manager or Head of Ministry, and to make them aware that disclosures of Reportable matters can be made to any one of the Protected Disclosure Officers listed below:

Protected Officer	Disclosure	Contact details
<i>Province Director of Professional Standards</i>		Phone: 03 9810 7300 Email: <a href="mailto:professionalstandards@sjasl.org.au">professionalstandards@sjasl.org.au</a>
<i>Province Socius</i>		Phone: 03 9810 7300 Email: <a href="mailto:socius@sjasl.org.au">socius@sjasl.org.au</a>
<i>Province Manager of Human Resources</i>		Phone: 03 9810 7300 Email: <a href="mailto:humanresources@sjasl.org.au">humanresources@sjasl.org.au</a>

Review and, where necessary, strengthen procedures for making this Policy accessible and updated on the incorporated ministry website.

#### 4.2 Reference to disclosure requirements

Refer to disclosure requirements in ministry procedures on, for example, the acceptable use of ministry resources, financial management, gifts and benefits, and electronic communication.

#### 4.3 Provision of education and training

Provide information, education and training to communicate and embed awareness of disclosure procedures and any changes to those procedures e.g. document and disseminate information to Jesuits and Partners in Mission through on-boarding practices, team discussions, hard copy documentation posted on dedicated notice boards, internet and intranet.

Ensure disclosure requirements are communicated to interested parties such as external recruitment agents/labour suppliers through inclusion of an incorporated ministry’s requirements in contractual documents, information to visitors and induction processes.

##### *Province Director of Professional Standards*

#### 4.4 Strengthen the framework of disclosure investigation and response

Establish a Disclosures Panel to consider action on disclosures received. The Panel to normally comprise the Provincial, the Province Socius, the Province Director of Professional Standards, the Province Manager of Human Resources and other employees as directed by the Provincial. Any member of the panel shall be an “eligible recipient” within the meaning of s. 1317AAC of the *Corporations Act 2001 (Cth)* except where the disclosure concerns conduct of one of these people. If the disclosure concerns a member of the Disclosures Panel other than the Provincial, the

Provincial shall be an “eligible recipient”. If the disclosure concerns conduct of the Provincial, the Superior General of the Society of Jesus shall be an eligible recipient and the appropriate Protected Disclosures Officer [Reports to be posted to Borgo S. Spirito 4, 00193, Roma Italy, in two envelopes, the interior one being marked “SOLI”, if sent by a Jesuit].

Review and, where necessary, strengthen the Province’s disclosure investigation and response processes to ensure they are objective, confidential, independent and based on fair treatment.

Provide support and guidance to those making disclosures as to what will happen in relation to the information received and taking all necessary steps to ensure that the identity of the person who made the disclosure, and any employee who is the subject of a disclosure, are kept confidential (where this is practical and reasonable).

## 5. Monitor and Review of Policy

This Policy will be monitored for compliance and effectiveness by the Director of Professional Standards. This Policy will be reviewed after 12 months from approval and at least every two years thereafter.

The Ministries Commission will endorse changes to this Policy prior to approval by the Provincial. Policy changes will be communicated to Jesuits, Partners in Mission and other stakeholders, including being placed on the Province and ministry websites.

Interim reviews will occur at any time as required in response to either feedback or changes in legislation/IAG, policy or practices to ensure the information is current, useful and easy to understand.

Any Jesuit, Partner in Mission or Contractor engaged in an incorporated Province Ministry who requires assistance in understanding this Policy should in the first instance contact their Head of Ministry. Further questions or concerns about this Policy or its application should then be directed to the Province’s Director of Professional Standards.

## 6. Definitions

Name	Description
<b>Code of Conduct</b>	The Province-approved document which sets out what personal and professional standards mean for the Province, the Province’s primary obligations and the associated behaviour that are expected of all Jesuits, Partners in Mission and Contractors, and how to report inappropriate behaviour. See: <a href="https://jesuit.org.au/wp-content/uploads/Code-of-Conduct.pdf">https://jesuit.org.au/wp-content/uploads/Code-of-Conduct.pdf</a>
<b>Contractor</b>	Means a person who is not an employee but is engaged under an independent service contract to complete a specific job or project within a specified time frame for an agreed price. The Code of Conduct applies to Contractors who are permitted to be unsupervised while on ministry grounds e.g. engaged using a tender process and formal induction.
<b>Delegate</b>	Covers the positions of delegates for Social Ministries, Jesuit and Ignatian Spirituality, Jesuit Life and Formation, Pastoral and Diocesan Ministries, Communication Ministries, and the Chair of Jesuit Education Australia and Education Ministries. These delegates are part of the Ministries Commission which functions as the Provincial’s executive management team (see definition below).
<b>Disclosure</b>	Notification of an allegation of wrongdoing e.g. breach of the Code of Conduct, corrupt conduct, fraud, maladministration or serious and substantial waste.
<b>Document control</b>	Jesuits, Partners in Mission or Contractors who work with printed copies of this document must check the document regularly to monitor version control. Documents are considered ‘uncontrolled if printed’, as indicated in the footer.
<b>Eligible recipient</b>	Means the following: (a) an officer or senior manager of the incorporated ministry or a related body corporate; (b) an auditor, or a member of an audit team conducting an audit, of the incorporated ministry or a related body corporate; (c) an actuary of the incorporated ministry or a related body corporate; (d) a person authorised by the incorporated ministry to receive disclosures that may qualify for protection under Part 9.4AAA of the Corporations Act 2001(Cth) or Part IVD of

<b>Name</b>	<b>Description</b>
	the Income Tax Assessment Act 1953(Cth), including any person named in clause 4.4 of this Policy.
<b>Head of Ministry</b>	Means the person who has day to day operational responsibility for an incorporated ministry, such as a Chief Executive Officer, Director or Principal.
<b>Jesuit</b>	Means any Priest or Brother member of the Society of Jesus or someone in formation for those roles (e.g. a novice or a scholastic).
<b>Ministries Commission</b>	Functions as the Provincial's executive management team, meeting regularly to review and plan the work of the Australian Province. Comprises the Socius, Delegates for Pastoral and Diocesan Ministries, Social Ministries, Jesuit and Ignatian Spirituality, Jesuit and Life Formation, Education Ministries and Chair of Jesuit Education Australia, Communication Ministries, Director of Professional Standards and Director of Finance and Special Projects.
<b>Partners in Mission</b>	Means a lay person involved in an incorporated ministry of the Province.
<b>Provincial</b>	The member of the Society of Jesus from time to time holding the office of Major Superior of the Province or, in the case of absence or indisposition, the acting Provincial or, in the event of the office of the Provincial being vacant at any time, the member of the Society of Jesus for the time being performing the duties of Provincial.
<b>Reportable matter</b>	Has the meaning given to that term in Appendix 1.
<b>Volunteer</b>	Means a person who is involved with an incorporated Province Ministry, generally without payment or financial reward. The Code of Conduct applies equally to volunteers as it does to Jesuits and Partners in Mission.

## 7. Version Control and Change History

<b>Version</b>	<b>Approved Date</b>	<b>Approved By</b>	<b>Short Description for Development or Review</b>	<b>Review Completed by</b>	<b>Consultation Process</b>
1.0	13/11/2019	Provincial	New document	N/A	N/A

## Appendix 1: Whistleblower Procedures

### PURPOSE

- You may have concerns about conduct within an incorporated Province Ministry which appears to you to be illegal, unethical or otherwise improper, but you may feel apprehensive about raising your concerns because of the fear of possible adverse repercussions to you. This might be the case, for example, if your concerns relate to conduct of your immediate superior.
- The aim of this Procedure is to help you feel confident about raising concerns internally, by offering a reporting and investigative mechanism that is objective, confidential, independent and protects you from reprisal or disadvantage.
- Under this Procedure:
  - you are encouraged to report your concerns, whether openly or, if preferred, anonymously;
  - if you report your concerns, you will be afforded confidentiality unless you indicate (or the law requires) otherwise;
  - concerns reported by you will be properly investigated with a view to establishing the truth and correcting any wrongdoing where possible;
  - you will be advised of the outcome of the investigation and any action taken as much as practicable; and
  - you will not be victimised or adversely affected because of your action in reporting your concerns provided of course, that there is a basis for your concerns, and that you have acted in good faith and without malicious intent.

### KEY REQUIREMENTS

- All Jesuits and Partners in Mission involved in an incorporated Province Ministry have a responsibility to help detect, prevent and report instances of suspicious activity or wrongdoing, referred to as a Reportable matter.
- What is a Reportable matter? You may make a report under this Procedure if you have reasonable grounds to suspect that a director, officer, employee, contractor, supplier, tenderer or other person who has business dealings with an incorporated Province Ministry has engaged in conduct which:
  - is dishonest, fraudulent or corrupt, including bribery;
  - is illegal activity (such as theft, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law);
  - is unethical or in breach of Province or Province Ministry policies (such as dishonestly altering records or data, adopting questionable accounting practices or willfully breaching the Province Code of Conduct or other policies or procedures);
  - is potentially damaging to the incorporated Province Ministry, an employee or a third party, such as unsafe work practices, environmental damage, health risks or abuse of property or resources;
  - amounts to an abuse of authority;
  - may cause financial loss to the incorporated Province Ministry or damage its reputation or be otherwise detrimental to its interests
  - involves harassment, discrimination, victimisation or bullying, other than personal work-related grievances as defined in the *Corporations Act 2001* (Cth) (i.e. is employment related and does not have significant implications for the regulated entity and does not concern other matters of protected information), unless that grievance has caused you detriment (as defined in the Act) or a significant threat (“work-related grievances”, as defined, should be dealt with via the ministry’s employment relations policy); and
  - involves any other kind of misconduct or an improper state of affairs or circumstances.

- Attachment A describes special protections for those who disclose information concerning misconduct or an improper state of affairs or circumstances in relation to the incorporated Province Ministry under the Corporations Act.
- Attachment B describes special protections for those making a disclosure regarding tax issues.

#### WHO CAN I MAKE A REPORT TO?

- The Province has several channels for making a report if you become aware of any issue or behaviour which you consider to be a Reportable matter. We request that reports are made to any one of our Protected Disclosure Officers listed below, who, with the Provincial, form the Disclosures Panel:

Protected Disclosure Officer	Contact details
<i>Province Director of Professional Standards</i>	Phone: 03 9810 7300 Email: <a href="mailto:professionalstandards@sjasl.org.au">professionalstandards@sjasl.org.au</a>
<i>Province Socius</i>	Phone: 03 9810 7300 Email: <a href="mailto:socius@sjasl.org.au">socius@sjasl.org.au</a>
<i>Province Manager of Human Resources</i>	Phone: 03 9810 7300 Email: <a href="mailto:humanresources@sjasl.org.au">humanresources@sjasl.org.au</a>

- You may also raise the matter with an ‘officer’ or ‘senior manager’ of the Province. This includes a director, or a senior manager in the Province including the Chair of the relevant governing board, the relevant Provincial Delegate or relevant Provincial Assistant who makes, or participates in making, decisions that affect the whole, or a substantial part, of the Province or a Province Ministry, or who has the capacity to affect significantly the Province or an incorporated Province Ministry’s financial standing.
- Any of the above shall be an “eligible recipient” within the meaning of s. 1317AAC of the *Corporations Act 2001* (Cth) except where the disclosure concerns conduct of one of these people.
- If the disclosure concerns a member of the Disclosures Panel other than the Provincial, the Provincial shall be an “eligible recipient”.
- If the disclosure concerns conduct of the Provincial, the Superior General of the Society of Jesus [Reports to be posted to Borgo S. Spirito 4, 00193, Roma Italy, in two envelopes, the interior one being marked “SOLI”, if sent by a Jesuit] shall be an “eligible recipient”.
- Reports may also be posted to 130 Power Street, Hawthorn, Vic, 3122 (marked to the attention of one of the Protected Disclosure Officers).

#### INVESTIGATION OF A REPORTABLE MATTER

- The Province will investigate all matters reported under this Procedure as soon as practicable after the matter has been reported. A Protected Disclosure Officer may, with your consent, appoint a person to assist in the investigation of a report. Where appropriate, the Province will provide feedback to you regarding the investigation’s progress and/or outcome (subject to considerations of the privacy of those against whom allegations are made).
- The investigation will be conducted in an objective and fair manner, and otherwise as is reasonable and appropriate having regard to the rights of both the discloser and the person against whom the allegations are made and the nature of the Reportable matter and the circumstances.
- While the investigation process and enquiries adopted will be determined by the nature and substance of the report, in general, as soon as practicable upon receipt of the report, if the report is not anonymous, a Protected Disclosure Officer or investigator will contact you to discuss the investigation process including who may be contacted and such other matters as are relevant to the investigation.

## PROTECTIONS AVAILABLE

- The Province is committed to ensuring confidentiality in respect of all matters raised under this Procedure, and that those who make a report are treated fairly and do not suffer detriment.
  - a) Protection against detrimental conduct
    - Detrimental treatment includes dismissal, demotion, harassment, discrimination, disciplinary action, bias, threats or other unfavorable treatment connected with making a report; and
    - If you are subjected to detrimental treatment because of making a report under this Procedure, you should inform a protected disclosure officer, officer or senior manager within your relevant Province Ministry immediately.
  - b) Protection of your identity and confidentiality
    - Subject to compliance with legal requirements, upon receiving a report under this Procedure, the Province will only share your identity as the person making a disclosure or information likely to reveal your identity if:
      - you consent;
      - the concern is reported to the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Tax Commissioner or the Australian Federal Police (AFP); or
      - the concern is raised with a lawyer for the purpose of obtaining legal advice or representation.
    - If the Province needs to investigate a report, it may disclose information that could lead to your identification, but it will take reasonable steps to reduce this risk. Any disclosures of your identity or information likely to reveal your identity will be made on a strictly confidential basis.
  - c) Protection of files and records
    - All files and records created from an investigation will be retained securely.
    - Unauthorised release of information to someone not involved in the investigation (i.e. protective disclosure officers or senior managers from the Province) without your consent as the person making a disclosure will be a breach of this Procedure.
    - Those making a disclosure are assured that a release of information in breach of this Procedure will be regarded as a serious matter and will be dealt with under disciplinary procedures.
    - The Province seeks to provide appropriate protections to disclosers, noting the following national legislative protections:
      - The Corporations Act gives special protection to disclosures about breaches of that Act, provided certain conditions are met – refer to Attachment A for details.
      - The *Taxation Administration Act 1953 (Cth)* (Taxation Administration Act) also gives special protection to disclosures about breaches of any Australian tax law, provided certain conditions are met – refer to Attachment B for details.

## DUTIES OF JESUITS AND PARTNERS IN MISSION IN RELATION TO REPORTABLE MATTERS

- It is expected that Jesuits and Partners in Mission involved in an incorporated Province Ministry who become aware of actual or suspect on reasonable grounds, a potential Reportable matter, will make a report under this Procedure or under other applicable policies.

## ATTACHMENT A – SPECIAL PROTECTIONS UNDER THE CORPORATIONS ACT <sup>1</sup>

The Corporations Act gives special protection to disclosures about any misconduct or improper state of affairs relating to Province Ministries which are incorporated under that Act if the following conditions are satisfied:

1. the person making the disclosure is or has been:
  - a. an officer or employee of the Province or an incorporated Province Ministry;
  - b. an individual who supplies goods or services to an incorporated Province Ministry or an employee of a person who supplies goods or services to an incorporated Province Ministry;
  - c. an individual who is an associate of the incorporated Province Ministry; or
  - d. a relative, dependent or dependent of the spouse of any individual referred to at (a) to (c) above;
2. the report is made to:
  - a. a Protected Disclosure Officer;
  - b. an officer or senior manager of the incorporated Province Ministry;
  - c. an external auditor (or a member of that audit team) engaged by the Province or a Province Ministry;
  - d. ASIC;
  - e. APRA; or
  - f. a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act;
3. the person making the disclosure has reasonable grounds to suspect that the information being disclosed concerns misconduct, or an improper state of affairs or circumstances in relation to an incorporated Province Ministry. This may include a breach of legislation including the Corporations Act, an offence against the Commonwealth punishable by imprisonment for 12 months or more or conduct that represents a danger to the public or financial system.

Examples of conduct which may amount to a breach of the Corporations Act include: insider trading, insolvent trading, breach of the continuous disclosure rules, failure to keep accurate financial records, falsification of accounts, failure of a director or other officer to act with the care and diligence that a reasonable person would exercise, or to act in good faith in the best interests of the corporation or failure of a director to give notice of any material personal interest in a matter relating to the affairs of the company.

The protections given by the Corporations Act when these conditions are met are:

1. the discloser is immune from any civil, criminal (unless the disclosure is false) or administrative legal action (including disciplinary action) for making the disclosure;
2. no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the discloser for making the report;
3. in some circumstances, the reported information is not admissible against the discloser in criminal proceedings or in proceedings for the imposition of a penalty;<sup>2</sup>
4. anyone who causes or threatens to cause detriment to a discloser or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and may be liable for damages;
5. a discloser's identity cannot be disclosed to a Court or tribunal except where considered necessary; and

<sup>1</sup> See Part 9.4AAA of the *Corporations Act 2001 (Cth)*.<sup>1</sup>

<sup>2</sup> Such as where the disclosure has been made to ASIC or APRA, or where the disclosure qualifies as a public interest or emergency disclosure.



- 6. the person receiving the report commits an offence if they disclose the substance of the report or the discloser's identity, without the discloser's consent, to anyone except ASIC, APRA, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

**CONFIDENTIALITY**

If a report is made, the identity of the discloser must be kept confidential unless one of the following exceptions applies:

- a. the discloser consents to the disclosure of their identity;
- b. disclosure of details that might reveal the discloser's identity is reasonably necessary for the effective investigation of the matter;
- c. the concern is reported to ASIC, APRA, or the AFP; or
- d. the concern is raised with a lawyer for the purpose of obtaining legal advice or representation.

## ATTACHMENT B – SPECIAL PROTECTIONS UNDER THE TAXATION ADMINISTRATION ACT

The Taxation Administration Act gives special protection to disclosures about a breach of any Australian tax law by an incorporated Province Ministry, or misconduct in relation to the tax affairs of such ministry if the following conditions are satisfied:

1. the discloser is or has been:
  - a. an officer or employee of the incorporated Province Ministry;
  - b. an individual who supplies goods or services to the incorporated Province Ministry (whether paid or unpaid) or an employee of a person who supplies goods or services (whether paid or unpaid) to the incorporated Province Ministry;
  - c. an individual who is an associate of the incorporated Province Ministry;
  - d. a spouse, child, dependent or dependent of the spouse of any individual referred to at (a) to (c) above;
2. the report is made to:
  - a. a Protected Disclosure Officer;
  - b. a director, secretary or senior manager of the incorporated Province Ministry;
  - c. any external auditors (or a member of that audit team) engaged by the incorporated Province Ministry;
  - d. a registered tax agent or BAS agent who provides tax or BAS services to the incorporated Province Ministry;
  - e. any other employee or officer of the incorporated Province Ministry who has functions or duties relating to tax affairs of the company (e.g. an internal accountant) (Province recipients);
  - f. the Commissioner of Taxation; or
  - g. a lawyer for the purpose of obtaining legal advice or representation in relation to a report; and
3. if the report is made to a Province recipient, the discloser:
  - a. 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 incorporated Province Ministry or an associate of that company; and
  - b. considers that the information may assist the Province recipient to perform functions or duties in relation to the tax affairs of the incorporated Province Ministry or an associate of the incorporated Province Ministry; and
4. if the report is made to the Commissioner of Taxation, the discloser considers that the information may assist the Province recipient to perform functions or duties in relation to the tax affairs of the incorporated Province Ministry or an associate of the ministry.

The protections given by the Taxation Administration Act when these conditions are met are:

1. the discloser is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
2. no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the discloser for making the report;
3. where the disclosure was made to the Commissioner of Taxation, the reported information is not admissible against the discloser in criminal proceedings or in proceedings for the imposition of a penalty, except where the proceedings are concerned with whether the information is false;
4. unless the discloser has acted unreasonably, a discloser cannot be ordered to pay costs in any legal proceedings in relation to a report;

5. anyone who causes or threatens to cause detriment to a discloser or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and liable to pay damages;
6. a discloser's identity cannot be disclosed to a Court or tribunal except where considered necessary;
7. the person receiving the report commits an offence if they disclose the substance of the report or the discloser's identity, without the discloser's consent, to anyone except the Commissioner of Taxation, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

#### **CONFIDENTIALITY**

If a report is made, the identity of the discloser will be kept confidential unless one of the following exceptions applies:

8. the discloser consents to the disclosure of their identity;
9. disclosure of details that might reveal their identity is reasonably necessary for the effective investigation of the allegations;
10. the concern is reported to the Commissioner of Taxation or the AFP; or
11. the concern is raised with a lawyer for the purpose obtaining legal advice or representation.