



KOROWAL SCHOOL

Innovating education with care | K - 12

Korowal School Limited

Protected Disclosures Policy and Procedures

Contents

1. Document Control	3
2. Policy Statement.....	4
3. Purpose.....	4
4. Scope.....	5
5. Related Policies	5
6. Legislation and Related Documents.....	5
7. Definitions	6
8. Responsibilities.....	8
8.1. Korowal School Board	8
8.2. Korowal External Protected Disclosure Service (KEPDS)	8
8.3. Discloser Protection Officer	8
8.4. Eligible Discloser.....	9
8.5. Person subject of a complain under this Policy.....	9
9. What Constitutes a Protected Disclosure?.....	9
10. What Does Not Constitute a Protected Disclosure?	10
10.1. Personal work-related grievances.....	10
10.2. Personal work-related grievances.....	10
11. Reporting an Eligible Disclosure.....	11
12. Anonymous Disclosures	12
13. Protections.....	12
14. Confidentiality	13
15. Prohibited Detrimental Action.....	14
16. Staff Awareness and Training.....	14
17. Complaint Management Procedures.....	15
17.1. Stage 1.....	15
17.2. Stage 2.....	15
17.3. Stage 3.....	15
18. Processes	15
18.1. Management Processes	15
18.2. Investigations under this Policy.....	15
19. Communications Regarding Findings and Outcomes.....	16
20. Closure and Record Keeping.....	17
21. Further Information	17

1. Document Control

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2. Policy Statement

Korowal School Ltd (the 'School') is committed to the highest standards of moral, ethical and legal behaviour and seeks to create, maintain and nurture positive partnerships with all members of our community. This includes an open environment in which students, parents, staff and others are able to raise concerns regarding actual or suspected undesirable, unethical or unlawful conduct. The School will not tolerate, any current or historical wrongdoing by its employees, or board members. As such, we encourage the reporting of any such conduct.

The School recognises that any genuine commitment to detecting and preventing undesirable or illegal conduct must include a mechanism whereby students, parents, staff and others are able to report their concerns freely and without fear of reprisal, victimisation, or intimidation. The School has in place policies and procedures for general complaints and grievances to be reported and managed. However, to ensure that the School's legal obligations to manage the receipt of more serious matters is secured, we have developed this Protected Disclosures Policy and Procedure. This document provides a mechanism for reporting of conduct that is of a most serious nature (which can also be referred to as a whistleblower complaint) and encourages such reporting. Such a complaint may warrant certain protections and is best suited to be reported under this Protected Disclosures Policy and Procedure (the 'Policy').

3. Purpose

The purpose of this Policy is to:

- Ensure that any individual who discloses potential serious wrongdoing, (which may involve misconduct, or corrupt or illegal activity) in relation to the conduct of personnel engaged by the School, can do so safely and with confidence that they will be protected and supported to the best of the School's capacity in accordance with Part 9.4AAA of the Corporations Act 2001 (Cth) (the 'Act').
- Demonstrate the School's commitment to an open and transparent environment and outline the management process for matters of serious wrongdoing or misconduct covered by This Policy.
- Ensure the protection of individuals who, in good faith, report conduct which they reasonably believe to be serious misconduct, or corrupt or illegal activity, without fear of reprisal or discriminatory treatment.
- Assist in ensuring that matters of serious wrongdoing and/or misconduct are identified and dealt with appropriately so as to create and maintain a safe community for the School, and to ensure its operation is consistent with the School's vision and ethos.
- Provide clear information about how protected disclosures will be managed by the School.

4. Scope

This Policy covers all complaints that are caught by Part 9.4AAA of the Act.

This Policy applies to all students, parents, staff and other members of the School community that may be an *Eligible Discloser* (defined at section 5) and who seek to disclose an *Eligible Disclosure* (defined at section 5) under this Policy.

This policy must not be used to:

- a. replace the Complaints and Grievances Policy and Procedure,
- b. replace the Anti-Bullying Policy and Procedure,
- c. replace the mandatory reporting requirements for Reportable Conduct under the School's Child Protection Framework or by law,
- d. question genuine financial or business decisions taken by the School, and/or
- e. reconsider any matters which have already been addressed under any other School policy or procedure.

the School reserves the right to review and revise this Policy at any time without prior notice or consent, subject to approval by the Board.

5. Related Policies

This policy is part of the *Child Protection Framework* and should be read in conjunction with that document. This policy is also related to the School's other policies including but not limited to:

- *Child Protection Records and Information Exchange Policy*
- *Employee Code of Conduct*
- *Promoting Child Safety in the Workplace Policy*
- *Protected Disclosures Policy and Procedures*

6. Legislation and Related Documents

This Policy has been drafted to comply with the following documents and legislation:

- *Children and Young Persons (Care and Protection) Act 1998* (NSW)
- *Children's Guardian Act 2019* (NSW)
- *Child Protection (Working with Children) Act 2012* (NSW)
- Child Safe Standards Final Report: Royal Commission into Institutional Responses to Child Sexual Abuse

7. Definitions

For a full list of definitions please see the School's *Definitions Register*:

https://www.korowal.nsw.edu.au/imagesDB/wysiwyg/0.Definitions_2022.pdf

Term	Definitions
Employees	This includes all employees, contractors, volunteers, work experience participants and student placements who are engaged by the School in working with children.
Discloser Protection Officer (DPO)	<p>An employee of the School who is appointed and trained to hold this position.</p> <p>This role involves supporting the Eligible Discloser during the relevant process. This may include:</p> <ul style="list-style-type: none"> • Offering confidential professional counselling support, • Liaising with the External Disclosure Service, and • Other support services where required under this Policy.
Eligible Discloser (also often referred to as the Whistleblower)	<p>The person who is entitled to bring forward a complaint under this Policy.</p> <p>The person must be a current or former:</p> <ul style="list-style-type: none"> • employee of the School, or a related company or organisation, • officer (usually that means a director or company secretary) of the School, or a related company or organisation, • contractor, or an employee of a contractor, who has supplied goods or services to the School, or a related company or organisation, This can be either paid or unpaid, and can include volunteers. • associate of the School (usually a person that the School acts in concert with) • trustee, custodian or investment manager of a superannuation entity, or an officer, employee, or a goods or service provider to a trustee, custodian, investment manager, or • spouse, relative or dependent of one of the people referred to above.

Term	Definitions
Eligible Disclosure	A disclosure by an Eligible Discloser to an Eligible Recipient which is assessed as qualifying for the protections offered under this Policy and the Act.
Eligible Recipient	<p>The person that a disclosure must be made to for this Policy to apply, being:</p> <ul style="list-style-type: none"> • a director, company secretary, company officer, or senior manager of the School, or a related company or organisation, • an auditor, or a member of the audit team, of the School, or a related company or organisation, • an actuary of the School, or a related company or organisation, • a person authorised by the School to receive protected disclosures • Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA), or • the lawyer of the Eligible Discloser.
Korowal External Protected Disclosure Service (KEPDS)	An external legal service established by the School to receive and manage all protected disclosures. KEPDS reports directly to the Chair of the Board. The contact for the KEPDS is contained in this document.
Procedural Fairness	<p>A legal principal that ensures fair decision making. Generally, procedural fairness requires:</p> <ol style="list-style-type: none"> (a) decisions to be made without bias or conflict of interest; and (b) decisions to be based on logic and reasonableness; (c) an opportunity to be provided to a person who may be adversely affected by any decision made to receive details of the disclosure and to provide a response; and (d) that the response of the person subject of the disclosure is taken into considerations before any decisions are made.
Respondent/s	The person/s subject of the alleged conduct which has been reported as an Eligible Disclosure under this Policy.

8. Responsibilities

8.1. Korowal School Board

The Board of Directors of the School delegates the receipt of an Eligible Disclosure and the assessment of the disclosure under this Policy, and the operational management of a Protected Disclosure, to the Korowal External Protected Disclosure Service (KEPDS). The KEPDS reports directly to the Chair of the Board. All final decision making in relation to a protected disclosures is the responsibility of the Chair of the Board.

Where the disclosure relates to the conduct of the Chair of the Board, the matter must be referred to the KEPDS. The KEPDS will report jointly to the Deputy Chair of the Board, and the Principal, who together are responsible for all final decision making. Such decisions should be in line with the recommendations of the KEPDS.

The Chair of the Board may delegate this responsibility to the Principal from time to time where appropriate.

8.2. Korowal External Protected Disclosure Service (KEPDS)

The KEPDS is an external service that offers professional expertise in the assessment and management of such complaints. The School Board is responsible for engaging a suitable service to undertake the role of the KEPDS.

The KEPDS is responsible for:

- Receiving Eligible Disclosures either through the School website, directly from a complainant, or a referral from an Eligible Recipient of the School.
- Undertaking the initial assessment of a disclosure made under this Policy to determine if this Policy applies and whether the disclosure qualifies for protections under this Policy.
- Referring any disclosures that are not qualified for management under this Policy back to the School to be managed under an appropriate policy.
- Determining a suitable process to manage the Protected Disclosure, and managing the process once determined.
- Completing a risk assessment for the School in respect of any Protected Disclosure under this Policy.
- Engaging appropriately qualified, independent external investigators to investigate a Protected Disclosure under this Policy when required.

8.3. Discloser Protection Officer

A Discloser Protection Officer may be appointed by the KEPDS in consultation with the Chair to support an Eligible Discloser throughout the process. Such support may include providing updates to the Eligible Discloser about the process, offering professional counseling support and/or other similar supports.

8.4. Eligible Discloser

An Eligible Discloser is expected to co-operate with any investigation process arising from their disclosure and to retain confidentiality about the matter. The meaning of confidentiality is described in this Policy at section 12.

It is important to note that making a report under this Policy may not protect the Eligible Discloser from consequences flowing from their own wrongdoing if they were involved in the wrongdoing that is being reported.

8.5. Person subject of a complain under this Policy

The person whom the disclosure relates to is expected to co-operate with any investigation arising from the disclosure and to retain confidentiality about the matter. The meaning of confidentiality is described in this Policy at section 12.

This person has a right to obtain legal or other professional advice in respect of their rights under this Policy and at law.

9. What Constitutes a Protected Disclosure?

A disclosure that qualifies for protections under this Policy is referred to as a Protected Disclosure. This means it has been assessed as meeting the criteria to be managed under this Policy, and that it also qualifies for certain protections.

To meet the criteria for this Policy, and qualify for protections, the disclosure must:

- a. Be lodged by an Eligible Discloser;
- b. Be lodged with an Eligible Recipient; and
- c. Involve sufficient subject matter to meet the definition of an Eligible Disclosure (see section 7.3 below)

To be an Eligible Disclosure, the disclosure must reasonably be considered to constitute the following (should the alleged conduct be substantiated):

- a. An allegation of serious misconduct (defined by the Act to include “fraud, default, breach of trust or breach of duty”), or an improper state of affairs or circumstances in relation to the School; and/or
- b. Information that the School or one of its staff has engaged in conduct that constitutes an offence against, or a contravention of, the Act, and/or the *Australian Securities and Investments Commission Act 2001* (Cth) and/or any instrument made under these Acts; and/or
- c. An offence against, or a contravention of any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
- d. A danger to the public; and/or
- e. A danger to the financial system and security of the School.

There is nothing within this Policy which prevents an Eligible Discloser from making a report to the Australian Securities and Investments Commission (ASIC) or a Commonwealth

authority as prescribed in the *Corporations Regulations 2001* (Cth).

This Policy does not affect any mandatory reporting requirement/s as prescribed by any Commonwealth or State/Territory legislation.

10. What Does Not Constitute a Protected Disclosure?

10.1. Personal work-related grievances

The Board of Directors of the School delegates the receipt of an Eligible Disclosure and the assessment of the disclosure under this Policy, and the operational management of a Protected Disclosure, to the Korowal External Protected Disclosure Service (KEPDS).

A disclosure does not qualify for protection under this Policy if:

- a. That information concerns a grievance relating to the Eligible Discloser's employment, or former employment, having (or tending to have) implications for the Eligible Discloser personally; and
- b. The information does not concern circumstances set out in section 7.3 above, nor relates to an act of reprisal or retaliation for a disclosure made under this Policy.

Examples of personal work-related grievances that do not qualify under this Policy include:

- a. an interpersonal conflict between the discloser and another employee;
- b. a decision relating to the terms and conditions of employment of the discloser;
- c. a decision relating to the employment, transfer or promotion of the discloser; or
- d. a decision to suspend or terminate the employment of the discloser, or otherwise to discipline the discloser.

10.2. Personal work-related grievances

Where it is established that the Eligible Discloser has not acted in good faith, or that they have knowingly made a false report of wrongdoing (including where the allegation has been made maliciously, vexatiously or without any reasonable basis), they may be subjected to disciplinary proceedings which may result in dismissal (if the person is engaged by the School on a paid or voluntary basis), and/or banning from the School premises, and/or cancellation of their enrolment as a student.

Persons who make a disclosure under this Policy must ensure that, as far as possible, their reports are factually accurate, complete, based on firsthand knowledge, and presented in an unbiased fashion (with any potential perception of bias of the discloser to be disclosed).

Where a person makes a disclosure under this Policy which is based on a reasonable belief and made in good faith, and the disclosure is found to be unsubstantiated, the fact that the allegation is unsubstantiated does not alone constitute a false disclosure.

11. Reporting an Eligible Disclosure

An Eligible Discloser must report the relevant disclosure to an Eligible Recipient.

At the School, the nominated Eligible Recipients are:

- **Korowal School Principal**
Barb Fitzgerald
bfitzgerald@korowal.nsw.edu.au
- **Korowal School Board – Chair**
Christopher Lee
chair@korowal.nsw.edu.au
- **Korowal External Protected Disclosure Service**
via confidential online form accessed via the School's website
<https://www.emailmeform.com/builder/form/T9H9eQd8E64F1>

An Eligible Disclosure may also be accepted if it is:

- a. Made to a qualified legal practitioner for the purpose of taking legal advice in relation to the operation of the protected disclosure provisions (also known as the whistleblower provisions) within the Act; and/or
- b. A public interest disclosure, which may be made to a member of the Parliament, or to a journalist, only after the information has been previously disclosed to ASIC, the Australian Prudential Regulation Authority (APRA), or another prescribed Commonwealth authority, and:
 - at least 90 days has passed since the whistleblower made the first disclosure to ASIC, APRA or a prescribed Commonwealth authority; and
 - the Eligible Discloser does not have reasonable grounds to believe action is being, or has been, taken to address the information in the disclosure; and
 - the Eligible Discloser has reasonable grounds to believe that making a further disclosure of the information would be in the public interest; and
 - before making the disclosure, the Eligible Discloser gives written notice to the original recipient that includes sufficient information to identify the previous disclosure and states that they intend to make a public interest disclosure; and
 - the extent of information disclosed is no greater than necessary to inform the recipient of the disclosable matter.
- c. An emergency disclosure, which may be made to a member of Parliament or a journalist only if the information has been previously disclosed to ASIC, APRA or a prescribed Commonwealth authority, and:
 - there are reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons

- or to the natural environment; and
 - before making the disclosure, the Eligible Discloser gives notice to the original recipient that includes sufficient information to identify the previous disclosure and states that they intend to make an emergency disclosure; and
 - the disclosure of information is no greater than necessary to inform the recipient of the substantial and imminent danger.
- d. It is recommended that an Eligible Discloser should consider obtaining independent legal advice before making a public interest disclosure or emergency disclosure (as above at 9.3.2 and 9.3.3).

12. Anonymous Disclosures

An Eligible Disclosure may be made anonymously, and anonymous disclosures may attract protection under this Policy.

However, in some cases, anonymous disclosures can be more difficult to investigate. As such, strategies may be put in place to assist anonymous disclosures to progress. This may include the use of pseudonym for the Eligible Discloser, or the Eligible Discloser providing an alternate means of contacting them so that any follow up questions can be provided to this contact.

13. Protections

The School Management and Board will take all reasonable action to mitigate the risks faced by an Eligible Discloser who has made a disclosure in good faith.

An Eligible Discloser who believes that either they personally, their family member/s, or their close acquaintance/s, have been the victim of any harassment, persecution or discrimination, as a result of their disclosure, should immediately report the matter to the Discloser Protection Officer.

There are three main protections available to an Eligible Discloser, following a disclosure which has been made in good faith, being:

- a. An Eligible Discloser is protected from any civil liability, criminal liability, administrative liability (including disciplinary action) for making an Eligible Disclosure in accordance with this Policy. Further, no contractual or other remedy may be enforced or exercised against the Eligible Discloser on the basis of an Eligible Disclosure. However, this protection does not apply if the Eligible Discloser is found to have been involved in misconduct of their own;
- b. The identity, or information likely to identify the Eligible Discloser is to be kept confidential by the School. However, the Eligible Discloser can provide written

consent to the release of the identifying information, which overrides this protection. It is a legal requirement for the School to adhere to this confidentiality unless an exception applies (see section 14).

- c. The protection from Detrimental Action (as defined at section 15) for having made the Eligible Disclosure.

14. Confidentiality

Any disclosure that qualifies for protection under this Policy is to be managed with the strictest of confidentiality.

Unless the Eligible Discloser consents, it is a breach of the protections under this Policy for a person to disclose an Eligible Discloser's identity or any information that may lead to their identification.

However, there may be some circumstances where the School will ask for the Eligible Discloser's consent to disclose their identity, or information that may lead to their identification. This will be assessed on a case-by-case basis. For example, this may arise when consent is needed to appropriately investigate and resolve the matter and/or prevent the disclosable matter occurring again. Such consents would only be requested to facilitate any investigation and/or resolution of the matter which could not be resolved through other means. If consent is withheld, it may not be possible to adequately investigate and respond to the disclosure, if at all.

There are also some circumstances of exception under which the School may be able to lawfully disclose the identity, or information which may lead to the identification of an Eligible Discloser.

The exceptions in which the School may disclose the Eligible Discloser's identity without their consent, are to the following:

- a. ASIC, the Australian Federal Police (AFP), and/or the Commissioner of Taxation (in relation to tax matters); and/or
- b. A qualified legal practitioner for the purposes of obtaining legal advice or legal representation about the disclosure; and/or
- c. To a body prescribed by the Corporations Regulations 2001 (Cth); and/or

It may also be lawful to disclose the identity or information which may lead to the identified of the Eligible Discloser, if this is reasonably necessary for the purpose of adequately investigating the disclosure. For this to be lawful, the School must first take all reasonable steps to reduce the risk that the Eligible Discloser will be identified as a result of the disclosure.

ASIC and/or the AFP can disclose the identity of an Eligible Discloser, or information that is likely to lead to their identification, to a Commonwealth, State or Territory authority to assist

in the performance of their functions or duties.

If there is a reasonable belief that there was a breach of confidentiality, an Eligible Discloser can lodge a complaint with the Eligible Recipient under this Policy or an appropriate regulator for investigation.

15. Prohibited Detrimental Action

The threat of detrimental action is considered unlawful if the person making the threat intended to cause the Eligible Discloser fear of detrimental action, or where they were reckless as to whether the Eligible Discloser would fear detrimental action, as a result of their disclosure.

Threats may be express or implied, and/or conditional or unconditional.

For the purpose of this Policy, 'detrimental action' includes:

- Dismissal of an employee; and/or
- Injuring an employee in their employment; and/or
- Altering an employee's position or duties to their disadvantage (and without their consent); and/or
- Discriminating between an employee and other employees; and/or
- Harassing or intimidating a person; and/or
- Harming or injuring a person; and/or
- Damaging a person's property, reputation and/or their business or financial positions; and/or
- Any other damage to a person

If it is necessary for the School to take reasonable administrative action (including temporary measures) to protect an Eligible Discloser from detrimental action (for example, changing their reporting line where their disclosure relates to a manager), such actions will not constitute detrimental action.

The standard and genuine management of any separate performance issues of the Eligible Discloser will not constitute detrimental action.

16. Staff Awareness and Training

the School will ensure that all staff are informed about this Policy, changes in relevant laws as they occur, and how they can make a disclosure under this Policy where required. This information will be provided through a variety of platforms, including but not limited to the School intranet, upon their induction to the organisation and/or through other training. Any personnel designated as an Eligible Recipient under this Policy, who holds any other responsibility under this Policy, will be provided with further training regarding their role.

17. Complaint Management Procedures

The following three stages constitute the procedures to be followed in managing a disclosure made under this Policy.

17.1. Stage 1

Stage 1 includes:

- a. Receipt and acknowledgement of the disclosure by the Eligible Recipient.
- b. Initial assessment as to whether this Policy, and the relevant protections apply to the disclosure to be undertaken by the KEPDS. Further, an assessment as to the appropriate policy and process to manage the disclosure (whether it is this Policy, or another relevant policy).
- c. Communication of the outcome of the initial assessment by KEPDS, including the rationale for the decision.
- d. Where this Policy does not apply, referral of the disclosure to the relevant policy or process for the management and completion of the matter.
- e. Where required, the making of any external reports. For example, to ASIC, or NSW Police or other authority.
- f. Completion of a risk assessment and management plan by KEPDS.
- g. Implementation of any support services identified in the risk assessment, or any other interim risk management strategies, in response to the disclosure and its nature.

17.2. Stage 2

Stage 2 includes the completion of an investigation into the alleged conduct, or other suitable process, as required (as outlined under Section 16 below).

17.3. Stage 3

Stage 2 includes:

- a. Determination of the findings and/or outcomes of this disclosure.
- b. Relevant communications regarding those findings and outcomes.
- c. Closure of the matter, where applicable.

18. Processes

18.1. Management Processes

The standard and genuine management of any separate performance or conduct issues of the Eligible Discloser will not constitute detrimental action.

18.2. Investigations under this Policy

If the matter is determined suitable for an investigation under this Policy the following will occur:

- a. Full details of the allegations are obtained to develop an investigation plan;
- b. The Investigator appointed will make reasonable enquiries to gather relevant information to assess if the alleged conduct occurred. This may include conducting interviews or obtaining statements with relevant witnesses, reviewing documentation, undertaking a site inspection, obtaining specialist forensic advice or services and obtaining the response and information submitted from the person who is the subject of the disclosure (the Respondent).
- c. The Respondent is informed at the appropriate time and without undue delay, of sufficient details to enable them to provide a response to the allegations;
- d. The Respondent provides a response to the allegations;
- e. The Investigator will assess the information available, including the response of the Respondent, and recommend a finding to the Chair of the School Board;
- f. The Chair of the Board will then determine if there are any confidentiality or conflict of interest matters preventing the report being shared with the School Board. If there are not, the Board will determine whether to accept the finding and the final outcome. If there are reasons why the information cannot be shared with the School Board, the report may be redacted and provided to the Board before the next Board meeting or the Chair may determine the final finding and outcome (as per section 8.1, where the Chair of the Board is the subject of the disclosure, the Deputy Chair of the Board and the Principal will together act as the Chair of the Board for this purpose).
- g. The Respondent will be informed of the finding and may be provided reasonable information to understand the grounds upon which a finding has been made. Reasonable information does not mean that the Respondent will receive a copy of any investigation report or evidence gathered, unless required by law.
- h. The Eligible Discloser will be kept informed of the outcome of the investigation as reasonable in the circumstances, however, this will not include any information about the Respondent that is protected by privacy laws.
- i. At all times, the Eligible Discloser is supported by the Discloser Protection Officer and/or external supports such as a counselling services if required. Further, the Respondent is also offered appropriate supports throughout the process.

If the matter is not determined suitable for an investigation an alternative process may be implemented, as appropriate in the circumstances. This could include, but is not limited to:

- a. System review or improvement;
- b. A mediation or facilitated process;
- c. Remedial or disciplinary action;
- d. Some combination of the above; or
- e. No action

19. Communications Regarding Findings and Outcomes

The Eligible Discloser and Respondent will be informed when the process implemented in response to a Protected Disclosure is completed.

The Eligible Discloser may be informed of the finding when it is necessary and directly relevant to that person, however, they may not be informed of any outcomes that are protected by privacy laws including in relation to the Respondent or other personnel of the School.

The Respondent will be informed of the finding of any investigation of which they were the subject of, and in particular if an adverse finding is made.

the School is not under any obligation to communicate to the Eligible Discloser or Respondent about any outcomes from the process relating to any internal systems of the School.

A copy of any investigation report or evidence obtained during an investigation under this Policy is not provided to the Eligible Recipient or the Respondent unless required by law.

20. Closure and Record Keeping

The School will keep comprehensive records about:

- a. the steps taken to address an Eligible Disclosure;
- b. any findings or outcomes under this Policy to a Eligible Disclosure;
- c. the communications to the Eligible Discloser and Respondent in regard to the process under this Policy;
- d. any reports made to external authorities; and
- e. the outcomes implemented in response to a finding made under this Policy.

All information, documents, records and reports relating to an Eligible Disclosure made under this Policy, including investigation material, will be confidentially and securely stored by the School and only the School senior personnel with a professional responsibility in relation to matters under this Policy will have access to this information.

21. Further Information

Should further information be required about this Policy please contact the Principal, Korowal External Protected Disclosure Service or the Chair of the College Board.