



The Buddhist Society of Western Australia (Inc.)

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## **WHISTLEBLOWER POLICY & PROCEDURE**

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## **TERMINOLOGY**

**Association** – The Buddhist Society of WA (BSWA)

**Whistleblowing** – Disclosure by (or of) a witness of actual or suspected wrongdoing

**Whistleblower or Discloser** – A person who reports wrongdoing in accordance with this policy

## **PURPOSE**

The Buddhist Society of Western Australia and its committee is committed to operating ethically, legally, and properly in accordance with our code of conduct, regulations and applicable legislation, and our policies and procedures.

This policy has been developed for the BSWA (the “Association”) to identify wrongdoing that may not be uncovered unless there is a safe and secure means for disclosure. The purpose of this policy is to:

- To encourage more disclosures of wrongdoing;
- To provide a guideline for disclosures of wrongdoing;
- To help deter wrongdoing, in line with the Association’s governance framework;
- To ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- To ensure disclosures are dealt with appropriately and on a timely basis;
- To provide transparency around the Association’s framework for receiving, handling and investigating disclosures;
- To support the Association’s values;
- To support the Association’s long-term sustainability and reputation; and
- To meet the Association’s legal and regulatory obligations.

## **SCOPE**

This policy applies to:

- Committee members and Members of the Association;
- Staff and volunteers of the Association (may be current or former);
- Suppliers and contractors of the Association; and
- Relatives or dependants of any of the above, or a dependant of the spouse of any of the above.

A Discloser qualifies for protection as a Whistleblower under the Corporations Act if they are an eligible Whistleblower in relation to the Association and:

- They have made a disclosure of information relating to a ‘disclosable matter’ directly to an ‘eligible recipient’ or to ASIC, APRA or another Commonwealth body prescribed by regulation;

- They have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the Whistleblower provisions in the Corporations Act; or
- They have made an ‘emergency disclosure’ or ‘public interest disclosure’.

## **POLICY**

The BSWA would like to identify and address wrongdoing as early as possible. In addition, our approach is intended to help build confidence and trust in the Whistleblower policy, processes and procedures.

When a Discloser, such as an employee, member, volunteer, subcommittee member, or committee member of the BSWA, wishes in good faith and on reasonable grounds to report their concerns regarding an improper state of affairs or illegal or corrupt behaviour regarding the Association, it is the BSWA’s policy to encourage the reporting of such concerns.

### **Reportable Conduct**

This policy covers the following types of wrongdoing but not limited to:

- Illegal conduct, violence or threatened violence, and criminal damage against property;
- Fraud, money laundering or misappropriation of funds;
- Offering or accepting a bribe;
- Financial irregularities;
- Failure to comply with, or breach of, legal or regulatory requirements;
- Engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made, or be planning to make, a disclosure;
- Improper conduct relating to accounting, internal controls, compliance, actuarial, audit or other matters of concern to the Whistleblower;
- A serious impropriety or an improper state of affairs or circumstances;
- Endangering health or safety;
- Damaging or substantially risking damage to the environment; and
- Concealing reportable conduct.

This list is not exhaustive. Information that indicates a significant risk to public safety or the stability or confidence in the BSWA is also a disclosable matter, even if it does not involve a breach of a particular law.

A whistleblower can still qualify for protection even if their disclosure turns out to be incorrect.

Personal grievances shall be handled by the BSWA’s Grievance Procedures. Personal grievances may still qualify for protection if it also falls under the categories outlined above, or:

- It includes information about misconduct;
- The Association has breached employment or other laws, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser’s personal circumstances;

- The discloser suffers from or is threatened with detriment for making a disclosure; or
- The discloser seeks legal advice or legal representation about the operation of the Whistleblower protections under the Corporations Act.

While it is understood that disclosers may have some information leading to a suspicion, but not all the details, deliberate false reporting (i.e. a report that the discloser knows to be untrue) is not tolerated or accepted by the Association.

### **Who Can Receive A Disclosure**

If concerns cannot be resolved by Subcommittee Chairs, Supervisors, or person in charge of their area of work to resolve any issues, we encourage Disclosers to engage this Whistleblower policy.

Persons authorised by the BSWA to receive Whistleblower complaints are:

- Operations Manager;
- Secretary;
- Vice President;
- President;
- Treasurer.

These persons shall then function as the BSWA's designated Whistleblower Protection Officer for the complaint.

Outside of the Association, should they feel it is necessary, Disclosers may make their reports to any person or office independent of the organisation as defined by the Corporations Act, ACNC, or the duly constituted authorities responsible for the enforcement of the law in the relevant area. This includes:

- Legal practitioners;
- ASIC, APRA or another Commonwealth body prescribed by regulation;
- Journalists and members of Commonwealth, state or territory parliaments (parliamentarians), under certain circumstances.
- An auditor or actuary of the BSWA
- Any other external person or organisation that the Association has authorised to receive a disclosure.

A Discloser can also contact any member of the Committee or the Operations Manager to obtain additional information before making a disclosure.

Disclosers need to make a disclosure directly to one of the Association's eligible recipients mentioned above to be able to qualify for protection as a Whistleblower under the Corporations Act.

Whilst we encourage reporting concerns to the BSWA, Whistleblowers can also make a disclosure directly to regulatory bodies, or other external parties, about a disclosable matter and qualify for the protection under the Corporations Act without making a prior disclosure to the Association.

Disclosures of information relating to disclosable matters can be made to and qualify for protection under the Corporations Act.

### **Legal Protection for Disclosers**

The protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act.

Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the Whistleblower provisions in the Corporations Act are protected (even if the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter')

This protection applies regardless of whether any concerns raised in a report are found to be true, provided that Whistleblowers are acting honestly and ethically and made the report on reasonable grounds.

This protection also applies to individuals conducting, assisting, or participating in an investigation. You will also be entitled to the protection if you make a report of Reportable Conduct to an external body under this Policy.

Anyone found to be victimising or disadvantaging another individual for making a disclosure under this Policy will be disciplined and may be dismissed or subject to criminal or civil penalties.

### **Confidentiality and Anonymity**

If the complainant wishes to make their complaint anonymously to an internal representative of the BSWA, their wish shall be honoured except insofar as it may be overridden by due process of law. The complainant should be informed that the maintenance of such anonymity may make it less likely that the alleged breach can be substantiated in any subsequent investigation.

Where anonymity has been requested the complainant is required to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorized persons.

### **Protection from detrimental acts or omissions**

The BSWA or its representatives shall not engage in conduct that causes detriment to a discloser (or another person), in relation to a disclosure, if the report is made in good faith and on reasonable grounds. Nor shall the BSWA or its representatives make threats to cause detriment.

Detrimental conduct can be defined as:

- retaliation, dismissal, suspension, demotion, or termination of an employee;
- injury of an employee in his or her employment;
- alteration of an employee's position or duties to his or her disadvantage;
- discrimination between an employee and other employees of the same employer;
- harassment or intimidation of a person;
- harm or injury to a person, including psychological harm;

- damage to a person’s property;
- damage to a person’s reputation;
- damage to a person’s business or financial position;
- any other damage to a person;
- revealing discloser's identity as a Whistleblower without their consent or contrary to law; or
- threatening to carry out any of the above actions.

We encourage Disclosers to seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO, if they believe they have suffered detriment or retaliation. Disclosers can seek compensation and other remedies through the courts for retaliation or detriment if:

- they suffer loss, damage or injury because of a disclosure; and
- the Association failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

A discloser is protected from any of the following in relation to their disclosure:

- civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)); and
- administrative liability (e.g. disciplinary action for making the disclosure).

It should be noted that protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

## **PROCEDURE**

### **How to Make A Disclosure**

Reports should be made on our website’s Contact Us section to one of the persons outlined in the ‘*Who Can Receive A Disclosure*’ section in this document. Reports may also be done over the phone or by email.

The person receiving the complaint shall be considered the Whistleblower Protection Officer for the complaint.

### **Making an Anonymous Disclosure**

Disclosures can be made anonymously and still be protected. A discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. A discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations.

A discloser who wishes to remain anonymous should maintain ongoing two-way communication with the Association, so the Association can ask follow-up questions or provide feedback.

To protect anonymity:

- Disclosers should make their concerns known through a private telephone number and anonymised email addresses, or through the Contact Us section of our website without providing personally identifiable information; and
- A discloser may adopt a pseudonym for the purpose of their disclosure. This may be appropriate in circumstances where the discloser's identity is known to their supervisor, the Whistleblower protection officer or equivalent but the discloser prefers not to disclose their identity to others.

If a Discloser wishes to remain anonymous, the Whistleblower Protection Officer shall do the following to protect the confidentiality of a discloser's identity:

- all personal information or reference to the discloser witnessing an event will be redacted;
- the discloser will be referred to in a gender-neutral context;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- All paper and electronic documents and other material relating to disclosures will be stored securely;
- Access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure;

Without the discloser's consent, the Association cannot disclose information that is likely to lead to the identification of the discloser as part of its investigation process unless:

- the information does not include the discloser's identity;
- the Association removes information relating to the discloser's identity or other information that is likely to lead to the identification of the discloser (e.g. the discloser's name, position title and other identifying details); and
- it is reasonably necessary for investigating the issues raised in the disclosure.

### **Information Required To Make a Disclosure**

For a report to be investigated, it must contain enough information to form a reasonable basis for investigation. It is important therefore that you provide as much information as possible.

This includes any known details about the events underlying the report such as the:

- Date;
- Time;
- Location;
- Name of person(s) involved;
- Possible witnesses to the events; and
- Evidence of the events (e.g. documents, emails).

In your report, please include any steps you may have already taken to report the matter elsewhere or to resolve the concern.

## **Handling A Disclosure**

The Whistleblower Protection Officer will need to assess each disclosure to determine whether:

- it qualifies for protection; and
- a formal, in-depth investigation is required.

While all reasonable attempts will be taken by the Association, it needs to be acknowledged that there are limitations of the Association's investigation process. The Association may not be able to undertake an investigation if it is not able to contact the discloser (e.g. if a disclosure is made anonymously and the discloser has refused to provide, or has not provided, a means of contacting them).

In practice, the Association may investigate a disclosure by asking the discloser for consent to a limited disclosure.

The Association may also investigate a disclosure by conducting a broad review on the subject matter or the work area disclosed. In addition, it could investigate an anonymous disclosure, even if it cannot get in contact with the discloser, if the discloser has provided sufficient information to the Association and the Association removes information that is likely to lead to the identification of the discloser.

## **Investigating A Disclosure**

The Whistleblower Protection Officer to whom the disclosure was made shall notify the Operations Manager (unless the matter involves them or a conflict of interest). The Whistleblower Protection Officer and the Operations Manager shall be responsible for ensuring that an investigation of the charges is established and adequately resourced.

Terms of reference for the investigation will be drawn up, in consultation with the Operations Manager (unless the matter involves them or a conflict of interest), to clarify the key issues to be investigated.

An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

This includes:

1. Assess the report of reportable conduct;
2. Consider whether there are any conflicts of interest prior to investigating;
3. Determine whether external authorities need to be notified;
4. Determine whether and how to investigate; and
5. Appoint an unbiased Whistleblowing Investigator if appropriate.

If an investigation is deemed necessary, it will be conducted fairly, objectively and in a timely manner. The investigation process will vary depending on the nature of the reportable conduct and the amount of information provided.

A report will be prepared when an investigation is complete. This report will include:

- the allegations
- a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions
- the conclusions reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis
- recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

The report will be provided to the person making the allegation (with, if necessary, any applicable confidentiality stipulations) and any person(s) being accused.

### **Keeping Disclosers Informed**

A discloser will be provided with regular updates, if the discloser can be contacted (including through anonymous channels). The frequency and timeframe may vary depending on the nature of the disclosure. The Association will ensure that anonymity is not compromised when providing regular updates.

At the conclusion of the investigation, a report will be prepared outlining:

- A finding of all relevant facts;
- A determination as to whether the allegation(s) have been substantiated or otherwise; and
- The action that will be taken, which may include disciplinary action and dismissal.

The disciplinary action will be dependent on the severity, nature and circumstances of the reportable conduct.

Where possible and appropriate, having regard to Association's privacy and confidentiality obligations, the Whistleblower will be informed of the outcome of any investigation into their concerns.

It should be noted that the method for documenting and reporting the findings will depend on the nature of the disclosure. There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser.

### **Fair Treatment of Individuals Mentioned in a Disclosure**

The BSWA follows procedural fairness and the principles of natural justice. Any process undertaken will be objective, fair, and independent, and each disclosure will be assessed separately and confidentially when it is practical and appropriate.

If a disclosed matter is investigated, the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported;

Individuals who are accused of misconduct in a report must be:

- Informed of any investigations or accusations against them;

- Have a case be heard without bias or conflict of interest;
- Have the case be acted on only in evidence;
- Be given an opportunity to respond to allegations before any findings are made and before any action (if appropriate) is taken;
- Persons who are the subject of a disclosure will be given access to support services (e.g. counselling) upon their request or if the Association has reasonable cause to believe they are suffering from duress

### ***Appendix***

For any matters not covered by this policy, the BSWA shall consult with best practices issued in the the publication ‘*Whistleblowing at your not-for-profit*’ by the Institute of Community Directors.

For additional information on Whistleblower disclosures and protections please review publications on <https://www.acnc.gov.au> and the ‘*Whistleblowing at your not-for-profit*’ or contact the Operations Manager at [opsmanager@bswa.org](mailto:opsmanager@bswa.org).

Regulatory agencies such as ASIC, APRA, and ACNC have separate whistleblowing procedures such as Public Interest and Emergency Disclosures which should be consulted if a Discloser wishes to do so.