



PROTECTED DISCLOSURES POLICY

Purpose

Lennox Head Community Preschool supported by The Management Committee as the approved provider of the education and care service, is committed to ensuring the safety, health and wellbeing of children in our care. We provide a safe and confidential process for reporting wrongdoing, misconduct, or any matter that may put the safety, welfare or wellbeing of a child or children at risk within our service.

We are committed to supporting and building a culture of integrity and accountability by encouraging the reporting of wrongdoing or suspected wrongdoing. We will ensure that anyone making a report can do so without fear of detrimental action.

The integrity of Lennox Head Community Preschool relies upon service leaders, educators, staff, volunteers, contractors and subcontractors, as well as parents and carers speaking up when they become aware of wrongdoing. We will not tolerate or condone the taking of any negative action or detrimental action against anyone who intends to disclose or has disclosed wrongdoing.

This policy sets out:

- how Lennox Head Community Preschool will deal with protected disclosures made under the Children (Education and Care Services) National Law (NSW) (the National Law)
- who to contact if you want to make a report
- how to make a report
- the protections available to you when you make a protected disclosure under the National Law.

This policy should be read in conjunction with the Code of Conduct and Child Safe Code of Conduct, Child Protection Policy, Grievance and Complaints Policy, Staff Policy, Related Party Transfers Policy Child Supervision and Safety Policy, and Confidentiality Policy.

Who this policy applies to

Management Committee, Employees, Volunteers, Contractors, Work Experience Students, Support workers (such as therapists and early intervention practitioners) and parents and/or carers.

When Lennox Head Preschool receives a protected disclosure, we have obligations including:

- protecting the maker of the protected disclosure, and
- dealing with the protected disclosure.

What is a Protected Disclosure?

This policy applies to protected disclosures under the National Law.

A protected disclosure means a disclosure of information or provision of documents -

- a) to the NSW Early Learning Commission in compliance with a request under, or in accordance with the National Law, or
- b) to the NSW Early Learning Commission or to a manager of an approved provider of an approved education and care service, if the person is making the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show -
 - I. an offence against the National Law has been or is being committed; or
 - II. the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk.

Examples of a protected disclosure may include:

- conduct that endangers or may endanger the safety, health or wellbeing of children
- inappropriate conduct towards children

- inappropriate discipline of a child
- breach of child protection requirements
- unsafe work practices
- illegal activity or a breach of the law
- failure to comply with the National Law or Regulations.
- taking or threatening to take detrimental action against a person who has made a disclosure, is suspected to have made or is planning to make a disclosure.

Protected Disclosures are not disclosures or concerns that relate **only** to a personal employment grievance or complaint, that does not have significant implications beyond the individual concerned. Examples include – performance concerns, employment related decisions that do not involve a breach of national laws and regulations, concerns related to engagement, remuneration or promotion (Fair Work), interpersonal conflict between employees (HR), disciplinary actions unrelated to protected disclosures.

Personal work-related grievances should be internally raised using the Grievances and Complaints Policy and Procedure.

If you are unsure if it is a protected disclosure, you are strongly encouraged to report all wrongdoing that you become aware of, even if you are not sure whether it qualifies as a protected disclosure. Reporting plays a crucial role in managing risk and ensuring the safety and integrity of our service. It is important for Lennox Head Community Preschool to understand what may be occurring as this helps uncover potential wrongdoing including misconduct. Once a report is made, Lennox Head Preschool is responsible for handing it appropriately and in accordance with our obligations under the National Law. If the report does not qualify as a protected disclosure, it may be managed under other internal policies such as our grievance and complaints policy or staffing policy.

Reporting

Making a report

Internally within Lennox Head Community Preschool

If you become aware of a matter, you should report it as soon as practicable.

You can make a report to the Director or nominated Supervisor

At Lennox Head Community Preschool, the Nominated Supervisor is Tamara (Tara) Wood and the Co-Director is Sophie Leonard and can be contacted on 0266877105 or emailed on mail@lennoxheadcommunitypreschool.com.au

If you wish to contact the Approved Provider Directly, the contact details of the management representatives can be found in the office.

Further contact details are outlined at the end of this Policy

Directly to The NSW Early Learning Commission

If you do not feel comfortable making a report within the service you can also make a report to the NSW Early Learning Commission as the regulatory authority in NSW.

If you wish to make a report to the NSW Early Learning Commission, you can do so by calling 1800 619 113 or by email: information@earlylearningcommission.nsw.gov.au. You can do so anonymously if you wish.

The contact details are outlined at the end of this Policy

Disclosure to be made honestly and on reasonable grounds

To obtain protections under the National Law, a report must be made honestly and on reasonable grounds. The person making the report must honestly believe, on reasonable grounds, that the disclosure shows or tends to show that an offence has been or is being committed under the National Law, or that the safety, health or wellbeing of a child or children being cared for by an education and care service is at risk.

A person will have reasonable grounds if there is a factual basis for the belief, taking in to account the circumstances and context.

You are not required to prove the allegations or concern. However, you are encouraged to provide any evidence, including documentation, to support the report.

If a report turns out to be incorrect or unsubstantiated, the reporter can still qualify for the protections under the National Law provided it was made honestly and on reasonable grounds.

How to make a protected disclosure

- *In writing* – by email or letter to the person who can receive your report
- *Through a discussion* – have a private discussion with the person who can receive our report. This could be done face to face or via telephone.
- *Anonymously* – write an email or letter or call a person who can receive your report without providing your name or any details that might identify you. A report can only be considered anonymous if there is no reasonable or practical way on communicating with the person making the report. (You will still be protected Under the National Law if you choose to remain anonymous. However, it may be difficult to investigate the matter if you cannot be contacted for further information.

What to include in a report

All reports should include as much detail as possible. Details should be factual and without personal interpretation

- All relevant dates, times and locations of key events
- Any names of persons involved in the suspected wrongdoing, their role, title and how they were involved
- Your description of the matter you are disclosing
- Possible witnesses to what you are disclosing
- Other information (including documents) you have that supports your report

Protections and remedies for reporters

Protection from detrimental action

When you make a protected disclosure, you are entitled to protections under the National Law.

We are committed to taking all reasonable steps to protect you from detriment because of making a protected disclosure or being suspected of making a protected disclosure. We are also committed to maintaining your confidentiality as much as possible while the protected disclosure is being dealt with.

We will not tolerate any type of detrimental action in response to a protected disclosure.

Detriment may include

- injury, damage or loss
- damage caused to property
- damage to reputation
- intimidation, bullying or harassment
- unfavourable treatment in relation to employment, career or profession discrimination, prejudice, or adverse treatment
- disciplinary action or proceedings

Once we become aware that a protected disclosure has been made, we will undertake a risk assessment and take steps to reduce the risk of detrimental action occurring.

Taking serious detrimental action in response to a protected disclosure is a criminal offence under the National Law.

The penalties that apply include:

- for an individual- \$34,200
- for a large childcare provider- \$51,600
- otherwise- \$172,200.

It is not a defence to a prosecution for a detrimental action offence that the suspicion or belief was mistaken.

A person accused of taking detrimental action must demonstrate the action was not influenced by any suspicion, belief or awareness that a protected disclosure had been or may be made.

A person who makes a protected disclosure may still be subject to reasonable management action, such as ordinary performance reviews or performance management, provided this action is not taken because of the protected disclosure.

Reporting detrimental actions

If you experience detrimental action as a result of your report, including bullying, intimidation, harassment, or other adverse treatment, you should report this immediately.

Reports can be made directly to the Nominated Supervisor, Director or Management Representative or to the NSW Early Learning Commission.

Recovery of Damages

A person may seek damages for injury, damage or loss suffered as a result of serious detrimental action. Liability for these damages is not affected by whether the suspicion or belief behind the action was mistaken. In proceedings to recover damages, the defendant must prove that they did not have the suspicion, belief or awareness, or that it was not a contributing factor to the detrimental action. Damages may include exemplary (punitive) damages. A person can apply for damages even if no criminal prosecution has been brought, or if the person has been acquitted of a serious detrimental action offence on the same, or substantially similar facts.

Ability to seek an injunction

A person who believes serious detrimental action has been taken against them or may be taken against them can apply to the Supreme Court for an injunction to prevent the action or stop it from continuing.

The terms of the injunction may (a) restrain a person from engaging in behaviour that would constitute serious detrimental action, or (b) require a person to do a thing or an act to remedy the conduct that constitutes serious detrimental action.

An injunction may-

- restrain a person from engaging in behaviour that would constitute serious detrimental action
- require a person to do a thing or an act to remedy the conduct that constitutes serious detrimental action.

Examples of what an injunction may include:

- requiring a formal apology to be made
- preventing an attempt to terminate a person's employment
- reinstating a person to the same or substantially similar role.

The Supreme Court may grant an interim injunction pending determination of the application.

A person can apply for an injunction even if no prosecution has been brought, or if the person has been acquitted of a serious detrimental action offence on the same, or substantially similar facts.

Immunity from costs orders

A person who makes an application for damages under the National Law, will not be liable to pay costs incurred by another party to the proceedings unless:

- the person instituted the proceedings vexatiously or without reasonable cause, or
- the person's unreasonable act or omission caused the other party to incur the costs.

A person who applies for an injunction under the National Law will not be liable to pay the other party's legal costs, unless:

- the proceedings were brought vexatiously or without reasonable cause, or
- the person's unreasonable act or omission caused the other party to incur the costs.

Immunity from civil and criminal liability

Some people are subject to a duty of confidentiality that prevents them from disclosing certain information obtained at work. To make a protected disclosure, it may be necessary to override or disregard these confidentiality duties. In such cases, a person who makes a protected disclosure cannot be disciplined, sued or criminally charged for breaching confidentiality.

This protection does not cover liability for the person's own past conduct that is disclosed as part of the protected disclosure.

A person making a protected disclosure may have a defence of absolute privilege under the Defamation Act 2005 in relation to defamation proceedings arising from the disclosure.

Confidentiality

We are committed to maintaining the confidentiality of anyone who makes a protected disclosure as far as possible while the matter is being addressed.

All information received from a person making a protected disclosure will be treated sensitively and confidentially. See Section below dealing with protecting the confidentiality of the maker of a protected disclosure.

How we will deal with your protected disclosure

Communicating with the maker of the protected disclosure

After receiving a report, we will assess the information to determine whether it is a protected disclosure, how it is to be handled, and whether an investigation is required.

The person who made the report will receive:

- A verbal acknowledgment that the report has been received by either the Approved Provider (Management) or Nominated Supervisor. This acknowledgement will:
 - Confirm the report will be assessed to identify whether it qualifies as a protected disclosure
 - Advise that the National Law applies to how the report is managed
 - provide clear information on how to access this protected disclosure policy
 - include details of a contact person and available support options.

Report is a protected disclosure

If the report is determined to be a protected disclosure, The Approved Provider or Nominated Supervisor will inform the person who made it how we intend to manage the report. This will happen as soon as possible after the report has been assessed.

Ways we may deal with a protected disclosure include:

- investigating the wrongdoing internally
- referring the report to a third party such as the NSW Early Learning Commission or other relevant agency.
- deciding to take no action on the report (i.e. not investigate it or refer it). If this occurs, we will explain the reasons for this decision to the person who made the disclosure.

If we investigate the wrongdoing, The Approved Provider or Nominated Supervisor will provide updates to the person making the protected disclosure verbally at key stages including:

- when the investigation begins
- while the investigation is in progress
- when the investigation has been finalised.

Once the investigation is complete, we may provide the person who made the disclosure with additional information. Subject to privacy and confidentiality requirements this information may include:

- A summary of the investigation results, including whether any wrongdoing was found
- Information about any action taken as a result of the investigation.

Some details of the findings or actions may need to remain confidential to comply with legal obligations. We will always balance the right of a person making the disclosure to know the outcome with our other legal obligations. If a disclosure was made anonymously, it may not be possible to provide updates or outcomes to the reporter.

Report not a protected disclosure

Not all reports of wrongdoing will be protected disclosures under the National Law. If we assess that a report is not a protected disclosure, we will inform the person who made the report.

Even if a report is not a protected disclosure, we will still need to assess the concern and determine whether it should be handled under another process or pathway, such as through our internal complaints or grievances procedures. If another process applies, the report will be managed according to the relevant policies.

Protecting the confidentiality of the maker of a public disclosure

We understand that people who make a protected disclosure may wish their identity, and the fact that they have made a report to remain confidential.

We are committed to maintaining confidentiality as far as possible while the protected disclosure is being managed.

The identity of a person making a protected disclosure will be kept confidential unless any of the following apply:

- They consent to this information being disclosed

- Where it is generally known that the person is the maker of the protected disclosure because of their voluntary self-identification as the maker
- Where the person who has received the protected disclosure reasonably considers it necessary to disclose the information to protect a person from detriment
- It is reasonably necessary to disclose the information during an investigation to ensure procedural fairness. In these cases, all reasonable steps will be taken to protect their identity
- Lennox Head Community Preschool is required or permitted to disclose this by law
- It is otherwise in the public interest to disclose the identifying information

We will take practical steps to avoid unnecessarily revealing information that could identify the person making the protected disclosure. Ways we may do this include:

- Limiting the number of people who are aware of the identity of the maker of the protected disclosure or information that could identify them.
- Ensuring that a person who does know the identity of the maker of the protected disclosure is reminded and aware of their obligation to keep that information confidential
- Access to emails, files or other documentation relative to the protected disclosure is limited to authorised persons only.

If confidentiality cannot be maintained or is unlikely to be maintained, The Lennox Head Community Preschool will:

- discuss with the maker of the protected disclosure the fact that their identity may become known.
- update the risk assessment and risk assessment plan.
- provide additional supports to the maker of the protected disclosure.
- remind persons who become aware of identifying information of the consequences for failing to maintain confidentiality and that engaging in serious detrimental action is a criminal offence and may also be a disciplinary matter.

How we will assess and minimise the risk of serious detrimental action

Once we become aware of a protected disclosure, we will assess and take steps to minimise the risk of serious detrimental action, other than reasonable management action, being taken against someone as a result of the disclosure.

There is no obligation on a person who receives a protected disclosure to disclose or confirm that a protected disclosure has been made. Wherever practicable, we will take steps to avoid the need to identify the nature of the source of the concern to maintain the confidentiality of the maker of the protected disclosure.

In circumstances where it is necessary or appropriate to refer to a protected disclosure being received, we will make appropriate redactions, use gender neutral terms and avoid the inclusion of contextual information which could identify the maker of the disclosure.

Where appropriate, we will consider the risks to:

- The person who made the protected disclosure
- The person who is subject of the protected disclosure
- Investigators
- Witnesses.

Where appropriate, we will:

- Consult with these individuals any concerns they may have
- Identify and implement strategies to reduce the risk of detrimental action
- Provide a secure and confidential way for them to communicate with [Service]
- Offer access to a support person or other available supports.

Dealing with allegations of detrimental action

If The Lennox Head Community Preschool becomes aware of an allegation that a detrimental action has occurred or may occur, we will take all reasonable steps to address the action and protect those affected.

This may include

- Taking immediate action to stop or prevent the detrimental action
- Implementing measures to protect the person or persons affected

- Taking appropriate disciplinary action against anyone that has taken detrimental action
- Referring any evidence of detrimental action to the NSW Early Learning Commission.

Dealing with wrongdoing

If, after an investigation, it is found that there was wrongdoing or other misconduct has occurred, The Approved Provider and Nominated Supervisor will take the most appropriate action to address the wrongdoing or misconduct. Relevant Policies and Procedures will be followed which can be found in the Code of Conduct.

Roles and Responsibilities

The Approved Provider/Nominated Supervisor will:

- Ensure that obligations under the National Law and National Regulations are met, with child safety and wellbeing prioritised at all times
- Foster a workplace culture where reporting is encouraged and integrity is promoted within the service.
- Ensure there are systems in place for receiving disclosures
- Ensure managers understand their responsibilities in relation to protected disclosures
- Ensure protected disclosures are handled in accordance with the National Law and this policy.
- Ensure educators, staff, students and volunteers are aware of and comply with this policy and know how to access it.
- Ensure regular training and awareness sessions are provided about the importance of persons making protected disclosures and the protections available to persons making protected disclosures.
- Ensure risk assessments are conducted as soon as a report is received to identify and manage any potential harm.

Co-Directors will:

- Ensure obligations under the National Law and National Regulations are met with child safety and wellbeing are prioritised at all times
- Foster a workplace culture where reporting is encouraged and integrity is promoted within the service.
- understand and comply with their responsibilities in relation to protected disclosures under the National Law
- Ensure protected disclosures are handled in accordance with the National Law and this policy.
- Ensure that educators, staff, students and volunteers are aware of and comply with this policy and know how to access it.

Educators/Volunteers/Students will:

- Immediately report all incidents, allegations and complaints relating to child safety and any breaches or suspected breaches of the National Law.
- Cooperate with any assessment or investigation of a protected disclosure
- Maintain confidentiality in relation to protected disclosures and investigations
- Support colleagues who make protected disclosures
- Complete required training and awareness sessions on the importance of making protected disclosures and the protections available to persons making protected disclosures.

Parents/Carers will:

- Be informed of their right to make a protected disclosure
- have access to information on how to make a protected disclosure
- be protected when making a protected disclosure
- have confidence that disclosures will be taken seriously and investigated appropriately.

Accessibility of this Policy

This policy is always available and accessible, and you can access it via our website. A copy of the policy is also sent to all staff upon commencement.

A hard copy of the policy can be requested from The Nominated Supervisor or Co-Directors.

The Approved Provider will provide appropriate training and awareness sessions to all managers and staff to ensure they understand their roles and responsibilities relating to protected disclosures.

Training and awareness sessions will be provided every 12-24 months (as per the National Law), and whenever significant changes are made to the law relating to protected disclosures.

Training and awareness sessions can be provided/delivered by the service or by a third party.

Contact Details

Service Name –

Lennox Head Community Preschool

0266877105

mail@lennoxheadcommunitypreschool.com.au

Approved Provider

Lennox Head Community Preschool Management Committee

Email c/o mail@lennoxheadcommunitypreschool.com.au

If you would like to contact the Management Directly, please see one of the Management representatives available within each Room.

NSW Early Learning Commission

1800619113 Freecall Monday to Friday, 9am-5pm

Email: information@earlylearningcommission.nsw.gov.au

National Laws and Regulations

Law – 300E(1)(a) 300E(2)

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