PCNSW Whistleblower Policy

29 April 2021

1. Definitions

ACNC means the Australian Charities and Not-for-profits Commission.

Compliance Officer means the person responsible for investigation of a report made under this Policy.

Concerned Person means a person with information about potential wrongdoing relating to PCNSW.

Detrimental Conduct means any actual or threatened conduct that could cause a detriment to the Whistleblower as a result of the Whistleblower making a disclosure**.**

Disclosure means to report an incident of Wrongdoing.

Implicated Person means any person against whom a report is made.

Nexia means Nexia Australia, Level 16, 1 Market Street, Sydney NSW 2000, which is an independent body external to PCNSW and is an eligible recipient of Whistleblower information in accordance with ACNC legislation (see https://www.acnc.gov.au/tools/factsheets/whistleblower-protections).

Notifiable Circumstance means any fact, circumstance, allegation, notification, knowledge of, verbal advice of, direct or indirect connection to, or attempt of abuse (including child abuse and sexual misconduct), and all reportable conduct as defined in the Children's Guardian Act 2019 (NSW).

PCNSW means the Presbyterian Church of Australia in the State of New South Wales.

PCNSW Entities means the congregations, institutions and ministries of the Church, including committees, schools, colleges, pre-schools, early childhood centres, aged and community care services, hospitals or other social services.

PCNSW People/Person means any employee or other person working closely with any PCNSW Entity activity, as outlined in Section 4.

Policy means this Whistleblower Policy.

Responsible Person means the person to whom a Concerned Person should make a Disclosure, as outlined in Section 7.

The Trustees means the Trustees of the Presbyterian Church (NSW) Property Trust.

Whistleblower means a Concerned Person who has made a disclosure of wrongdoing in the manner described by this Policy.

Whistleblower Officer means the person nominated by the appropriate PCNSW Entity to safeguard the interests of a Whistleblower.

Wrongdoing means any misconduct or improper state of affairs or circumstances in relation to any PCNSW activity, as outlined in Section 5.

2. Background and Purpose

PCNSW People will often be the best source of information when things are not quite right. This Policy is an important element in detecting corrupt, illegal or other undesirable conduct in PCNSW.

The purpose of this Policy is to:

(a) explain how to speak up by reporting concerns about wrongdoing;
(b) outline what protections a Whistleblower will receive; and
(c) outline PCNSW processes for dealing with reports of wrongdoing.

Creating a supportive environment where PCNSW People feel safe to speak up underpins PCNSW culture. When PCNSW People do not speak up, this undermines the culture and exposes our people and the people in our care to unacceptable risks.

PCNSW through the General Assembly and the Trustees encourages speaking up about concerns of wrongdoing in PCNSW. The Trustees are committed to the highest standards of conduct and ethical behaviour in all PCNSW activities, and to promoting and supporting a culture of honest, transparent and ethical behaviour, and strong corporate governance.

There are various measures in place to ensure no one is discouraged from speaking up or are disadvantaged or victimised for doing so, including *Breaking The Silence*, which outlines the PCNSW's commitment to dealing with abuse within the church, including child abuse and sexual misconduct. While this Policy is designed to be quite separate from *Breaking The Silence*, the values and principles outlined in *Breaking The Silence* are embedded in this Policy.

Under the Corporations Act, charities that are public companies or large proprietary companies are required to have a whistleblower policy. While PCNSW is not registered under the Corporations Act, the Trustees have resolved to adopt a Whistleblower Policy to apply to PCNSW Entities**.**

3. Scope

This Policy applies to all PCNSW Entities.

This Policy applies in addition to any other Whistleblower Policy or processes adopted by the different institutions within PCNSW.

In the event of an inconsistency between this policy and any other Whistleblower policy or process across PCNSW Entities, this Policy prevails.

While not required by the legislation, given the nature of activities undertaken within PCNSW, the Trustees have resolved to recommend to the General Assembly that volunteers be included under this Policy.

4. Who may make a report

Anyone with information about potential wrongdoing relating to PCNSW is encouraged to report their concerns under this Policy.

This includes individuals who are or have been in relation to the PCNSW Entities:

(a) an employee, officer or contractor;

(b) a Minister, Home Missionary, Pastoral Assistant, Youth Worker, Youth Leader or SRE Teacher (whether paid or unpaid);

(c) an Elder, member of Committee of Management, or member of any Assembly Committee, Board or Council;

(d) a supplier of services or goods to any institution, ministry or other activity undertaken by PCNSW (whether paid or unpaid); and

(e) a relative, dependant or spouse of any of the above individuals.

5. What to report under this Policy

Any concerns of wrongdoing should be reported.

Examples of wrongdoing may include, but is not limited to:

(a) breach of laws or regulations;

(b) criminal activity including theft;

(c) serious breach of any of PCNSW's Codes of Conduct or Policies;

(d) offering or accepting a bribe;

(e) dishonest or unethical behaviour;

(f) conflicts of interest;

(g) financial fraud or mismanagement;

(h) falsifying financial or corporate reporting;

(i) unauthorised use of PCNSW's confidential information;

(j) improper use of Personal Information as described in any PCNSW Privacy Statement;

(k) improper use of PCNSW's physical or intellectual property;

(l) serious or substantial waste of the Church's money or property;

(m) serious or substantial risk of breaches of Duty of Care or financial or reputation loss;

(n) conduct endangering health and safety or causing damage to the environment;

(o) behaviour that is oppressive, discriminatory or grossly negligent;

(p) a work-related grievance which has wider implications for PNCSW; and

(q) deliberate concealment of any of the above.

There is an expectation that a Concerned Person has reasonable grounds to suspect the information they are disclosing is true, but there will be no penalty if the information turns out to be incorrect. The Concerned Person is expected to provide the information upon which their suspicion is based, but are not required to have all the details or have conducted their own investigation.

6. What <u>not</u> to report under <u>this</u> Policy

If a wrongdoing relates to behaviour as outlined in the *Breaking the Silence* Code of Conduct, including child abuse, sexual misconduct, or any other Notifiable Circumstance, this Policy does not apply, and you must report the wrongdoing to the Conduct Protocol Unit (CPU) immediately.

Wrongdoing does not generally include personal-work related grievances, which relate to an employee's current or former employment and tend to have implications for them personally.

Examples include:

(a) an interpersonal conflict between the employee and another employee;

(b) a concern about the behaviour of an employee;

(c) a decision relating to an employee's engagement, transfer or promotion;

(d) an employee's terms and conditions of employment;

(e) matters relating to an employee's performance or discipline - related decisions; or

(f) a decision relating to the termination of employment.

Personal work-related grievances which cannot be resolved through speaking with peers or the PCNSW Person's manager (or equivalent) should be raised with the formal grievance resolution within the relevant PCNSW Entity.

7. Making a Disclosure

(a) Responsibility to report

The Trustees encourage speaking up about concerns of wrongdoing in PCNSW. It is expected that a Concerned Person will make a disclosure to a Responsible Person through the applicable internal reporting channel or alternative reporting channel, as outlined below.

(b) Internal reporting

A Concerned Person is encouraged in the first instance to report their concern:

i. in respect of a congregation, to their Minister or Session Clerk;

ii. in respect of a school, college, pre-school or early childhood centre, aged or community care service, hospital or other social services activity and any other activity involving employees or others working closely with that activity including volunteers, their immediate direct line manager, executive manager, relevant Whistleblower Officer (if appointed), School or College Principal, Chief Executive Officer or Committee/Board/ Council Chair.

Disclosures may be made in person, or by phone, email, or post.

If the Concerned Person is not comfortable approaching any of the above persons; or the concern relates to one of those persons; or they have previously reported the concern and no action has been taken, then alternative reporting is available.

(c) Alternative reporting

Where reporting is not appropriate through the usual direct line channels, a Concerned Person may report their concerns to the PCNSW General Manager, or a Trustee of the Presbyterian Church (NSW) Property Trust, or to NEXIA (an external independent party).

A Concerned Person can contact the PCNSW General Manager on (02) 9690 9333 or Mr Lester Wills at NEXIA on (02) 9251 4600 to obtain additional information before making a disclosure.

(d) Anonymous reporting

A Concerned Person not wanting to reveal their identity can make an anonymous disclosure. However, providing the Whistleblower's name when reporting wrongdoing will make it easier for PCNSW to investigate the concern raised. For example, the context in which wrongdoing was observed is likely to be useful information.

Where no name is provided, PCNSW will assess the disclosure in the same way as if identity had been revealed, and any investigation will be conducted as best as possible in the circumstances. However, an investigation might not be possible unless sufficient information is provided. A PCNSW Person disclosing wrongdoing will be protected by PCNSW including maintaining confidentiality of the report and the identity of the Whistleblower, where possible (refer Section 9), and the investigation will be conducted in accordance with the principles of fairness and natural justice.

8. Responsibility for Policy compliance and review

On behalf of the Trustees, the PCNSW General Manager, through the General Office, is responsible for:

(a) the overall administration of this Policy;

(b) monitoring the implementation of this Policy and will review on an ongoing basis the Policy's suitability and effectiveness;

(c) seeking to protect the Whistleblower from Detrimental Conduct;

(d) assisting the Whistleblower in maintaining wellbeing;

(e) maintaining Whistleblower confidentiality, where relevant, including as required by law;

(f) supporting any Implicated Person;

(g) providing information and support, including education, to congregations, committees, institutions and activities on this Policy and its applications; and

(h) reviewing and considering any complaints of Detrimental Conduct or any concern that disclosure has not been dealt with in accordance with this Policy.

9. Protecting a Whistleblower's identity

When reporting wrongdoing, the Whistleblower's identity and any information that PCNSW has as a result of the report that is likely to lead to identification, will only be disclosed if:

(a) the Whistleblower gives consent for PCNSW to disclose that information;

(b) the relevant Responsible Person or PCNSW General Manager considers such disclosure should be made to:

   i. Australian Securities & Investments Commission (ASIC), ACNC, NSW Police or Australian Federal Police or (for tax-related reports) the Commissioner of Taxation;

   ii. a Commonwealth authority or a State or Territory authority for the purpose of assisting the authority perform its functions or duties;

   iii. a lawyer for legal advice or representation in relation to whistleblower laws; or

(c) in the case of information likely to identify the person reporting, it is reasonably necessary to disclose the information for the purposes of an investigation, and all reasonable steps are taken to prevent someone from discovering the Whistleblower's identity.

10. Detrimental Conduct prohibited

PCNSW and the Trustees strictly prohibit all forms of Detrimental Conduct against Whistleblowers, including:

(a) termination of employment;

(b) harassment, bullying or intimidation;

(c) personal or financial disadvantage;

(d) unlawful discrimination;

(e) harm or injury, including psychological harm;

(f) damage to reputation; or

(g) any other conduct that constitutes retaliation.

PCNSW and the Trustees will take all reasonable steps to protect the Whistleblower from Detrimental Conduct and will take action it considers appropriate where such conduct is identified.

PCNSW and the Trustees also strictly prohibit all forms of Detrimental Conduct against people who are involved in an investigation of a disclosure in response to their involvement in that investigation.

11. Specific protections and remedies

The Australian law provides protections if a "protected disclosure" is made, including that:

(a) the Whistleblower is not subject to any civil, criminal or administrative liability for making the disclosure (other than for making a false disclosure);

(b) no contractual or other remedy may be enforced or exercised against the Whistleblower on the basis of the disclosure; and

(c) in some limited circumstances (e.g. if the disclosure has been made to a regulator such as ASIC), the information provided may not be admissible in evidence against a Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Except as provided in paragraph (c) above, the protections under Australian law do not grant immunity for any misconduct a Whistleblower has engaged in that is revealed in their disclosure.

Compensation and other remedies may also be available through the courts for loss, damage or injury suffered because of a disclosure or if PCNSW failed to take reasonable precautions and exercise due diligence to prevent Detrimental Conduct.

12. Investigations

Whistleblower disclosures made under this Policy will be documented and assessed promptly.

All reports will be assessed and, based on the nature and circumstances of the disclosure, a decision made as to whether an investigation is required. For example, reports of potential wrongdoing of a minor nature that can be resolved informally will typically not require the same level of response as disclosures involving a large-scale and complex investigation.

Any investigation will be conducted in a timely, fair and objective manner, and independent from any persons to whom the report relates. Investigations will generally be overseen by the Compliance Officer. Other people, including employees or external advisers, may also be asked to assist or run the investigation.

Where possible, the Whistleblower will be informed how PCNSW is responding to their report, including whether an investigation will be conducted.

Unless there are confidentiality or other reasons not to do so, an Implicated Person will be informed of the matters raised in the report at an appropriate time, and will be given a chance to respond to any allegations made against them. They will also be advised of the outcome of any investigation.

13. Support for an Implicated Person

PCNSW will take all reasonable steps to treat fairly an Implicated Person and recognises they must also be supported during the investigation. The Implicated Person will be assumed innocent and no action will be taken against anyone implicated until an investigation has determined whether any allegations against them are substantiated.

Employees may be temporarily stood down on full pay at the discretion of the relevant Whistleblower Officer, School or College Principal, CEO or PCNSW General Manager whilst an investigation is in process. If the investigation determines that the allegations are not substantiated, the Implicated Person will be reinstated to full duties.

Any disclosure relating to an Implicated Person must be confidential, even if the Whistleblower has consented to the disclosure of their identify. Information will only be disclosed to persons who have a need to know for the proper performance of the investigation.

Support available for an Implicated Person under this Policy includes:

- access to an approved Employee Assistance Program (EAP);
- support from an independent Minister, senior leader, committee chair, counsellor or other person approved by the relevant Whistleblower Officer, School or College Principal, CEO or PCNSW General Manager.

14. Breaches of this Policy

All PCNSW People are required to comply with this Policy as well as with Whistleblower Laws (i.e. protections contained in Part 9.4AAA of the *Corporations Act 2001*).

Non-compliance with this Policy or Whistleblower Laws may result in disciplinary action including termination of employment or termination of a contractor's services or, in respect of Ministers of the Church, referral under the Code of Discipline.

15. Variations

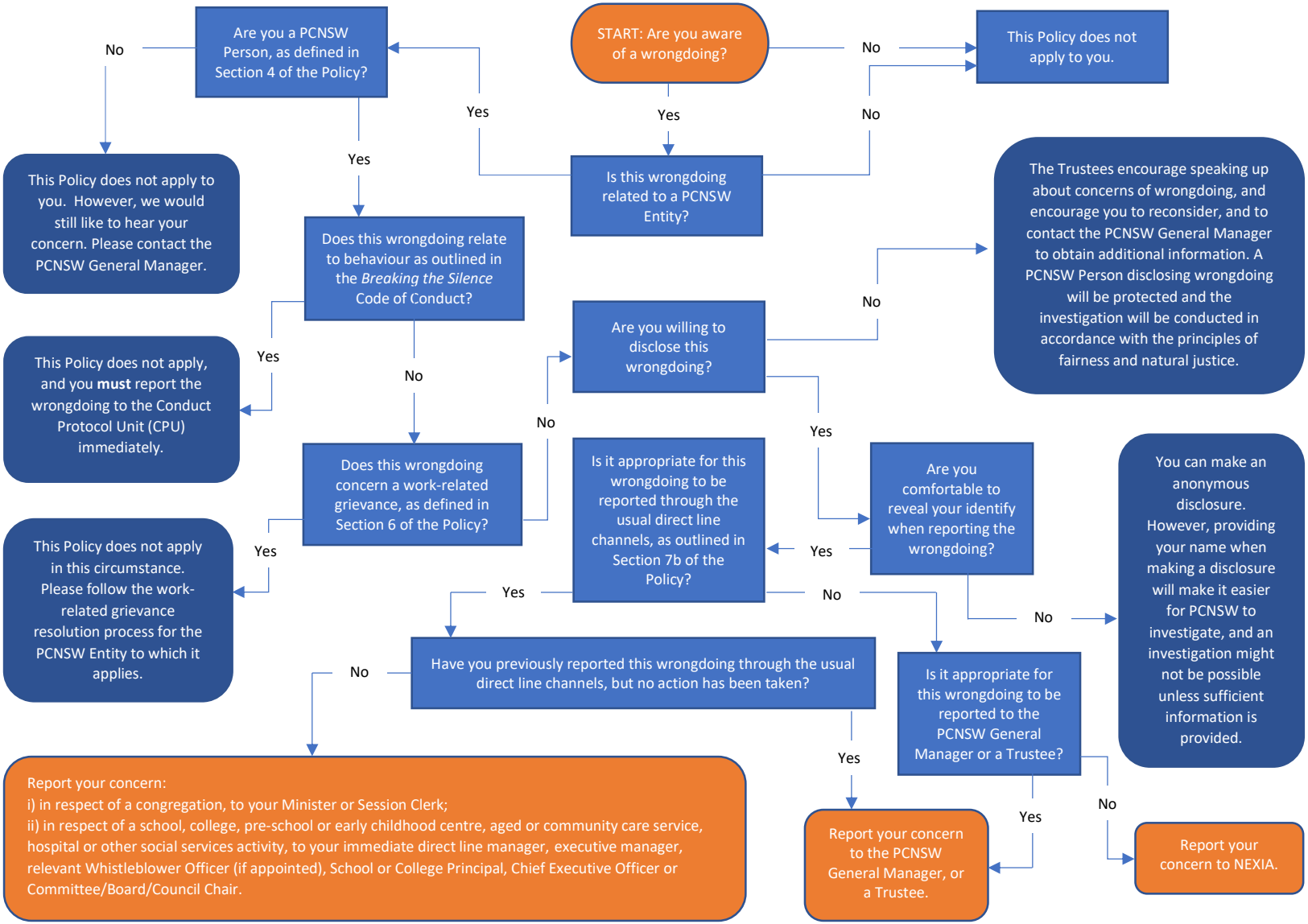
This Policy may be varied, amended, replaced or terminated from time to time and at any time at the absolute discretion of the Trustees, with the Trustees reporting any variations to the next NSW General Assembly.

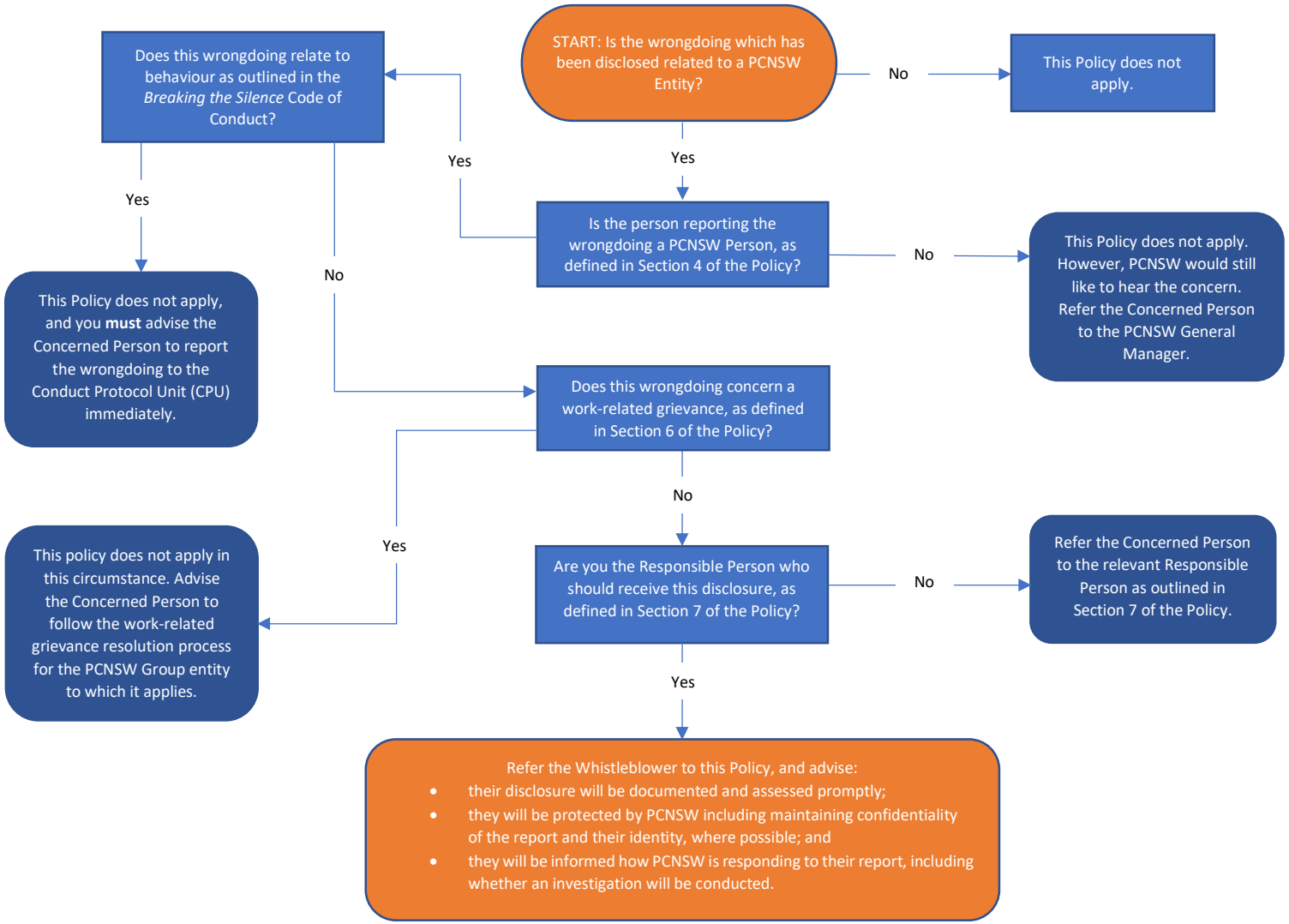
Appendix A: PCNSW Flowchart for Whistleblowers

Appendix B: PCNSW Flowchart for a Person who receives a Disclosure

APPENDIX A: PCNSW Flow Chart for People *Disclosing* a Wrongdoing

Refer to the PCNSW Whistleblower Policy ("the Policy") for further information



APPENDIX B: PCNSW Flow Chart for a Person Who Receives a Disclosure

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