

# WHISTLEBLOWER PROCEDURE

## SCOPE

This procedure applies to anyone making a whistleblower disclosure in relation to Monash University, including in relation to a related body corporate.

## PROCEDURE STATEMENT

This procedure explains how to make a whistleblower disclosure, how a whistleblower disclosure will be treated and the protections afforded to whistleblowers.

Persons who are considering making a whistleblower disclosure should ensure that they properly understand the potential consequences of doing so. Further information on making a disclosure is available at the University's whistleblower website.

### 1. Making a Whistleblower Disclosure

#### Who Can Make a Disclosure of Information?

- 1.1 The categories of people who can make a whistleblower disclosure differ under the Commonwealth and Victorian law, as set out in the Whistleblower Policy.

#### What Can a Whistleblower Disclosure Be About?

- 1.2 The scope of who and/or what a whistleblower disclosure can be about depends on whether the disclosure is made under the Commonwealth law or the Victorian law, as set out in the Whistleblower Policy.

#### Who Can a Whistleblower Disclosure Be Made To?

- 1.3 The process for making a whistleblower disclosure, and the people who can receive a whistleblower disclosure, will depend on whether the disclosure is made under the Commonwealth Law or under the Victorian Law.
- 1.4 To qualify for protection under the Commonwealth Law, a whistleblower disclosure about the University or a related body corporate must be made to:
- an eligible recipient of the University or a related body corporate;
  - the Australian Securities and Investment Commission (ASIC);
  - the Australian Prudential Regulation Authority (APRA); or
  - the person's lawyer.
- 1.5 Whistleblower disclosures about the University made under the Victorian law cannot be made to the University and must instead be made to the Independent Broad-based Anti-corruption Commission (IBAC) or (in the case of disclosures about administrative action taken by the University) the Victorian Ombudsman (VO). A person contemplating making a disclosure under the Victorian law should refer to IBAC or the VO for more information.
- 1.6 Whistleblower disclosures made to the University will be considered to be made under the Commonwealth law unless the matter to which the disclosure relates can only be dealt with under Victorian law or the person making the disclosure clearly states that they intend to make the disclosure under the Victorian law. In those situations, the University may direct the person to IBAC or the VO.

## How Can the Disclosure Be Made?

Commonwealth	Victoria
Through the University's online Whistleblower Disclosure Form online, by email to <a href="mailto:whistleblower@monash.edu">whistleblower@monash.edu</a> , or directly to an eligible recipient, ASIC or APRA. May be made anonymously.	Verbally or in writing to IBAC or the VO. May be made anonymously.

- 1.7 The University's Chief Operating Officer, as the nominated Monash Whistleblower Co-ordinator, is the person authorised by the University to receive whistleblower disclosures under Commonwealth law. The University has established an on-line form (available at [www.monash.edu/whistleblower](http://www.monash.edu/whistleblower)) and email account ([whistleblower@monash.edu](mailto:whistleblower@monash.edu)) for people to use to make whistleblower disclosures (including anonymous disclosures) directly to the Monash Whistleblower Co-ordinator.
- 1.8 The University suggests that, where the Commonwealth law applies, whistleblowers make their disclosure to the University in the first instance via the on-line form or email account. The University will then be in a position to readily assess the disclosure and, where appropriate, commence an investigation, implement measures to ensure confidentiality, and provide appropriate support and protection for the whistleblower (and any other persons who may be involved in the disclosure).
- 1.9 A whistleblower may also make a disclosure under the Commonwealth law directly to another eligible recipient of the University or a related body corporate; or in certain limited cases, to ASIC or APRA.
- 1.10 Whistleblowers can make the disclosure of information anonymously, or provide their name and contact details when reporting.
- 1.11 Persons should carefully consider who they make their disclosure to, as some persons (for example, some supervisors) may not be eligible to receive the disclosure and therefore the disclosure may not qualify for protection under the Commonwealth law.
- 1.12 If the University receives a disclosure which does not qualify for protection under the Commonwealth law, the University may suggest to the person making the disclosure that they can make a whistleblower disclosure to another relevant agency (for example, under Victorian law), or suggest other avenues for redress.

## 2. Investigating a Whistleblower Disclosure

- 2.1 If a whistleblower disclosure is made to the University under the Commonwealth law, then the University will usually have primary responsibility for investigating the matter and will determine the appropriate course for doing so, which may include engaging an external person or organisation to conduct the investigation on the University's behalf. The University will ensure that investigations are conducted thoroughly, appropriately and free from conflicts of interest.
- 2.2 In certain limited cases, the University may refer the matter to a more appropriate Commonwealth agency (for example, the Australian Tax Office or the Australian Federal Police) for investigation.
- 2.3 If a whistleblower disclosure is made under the Victorian law to IBAC or the VO, the University may not be aware that the disclosure has been made and may not be involved in any investigation.

## 3. Protection and Support for Whistleblowers

- 3.1 Both Commonwealth and Victorian law provide protections and support for whistleblowers. The University will provide appropriate support to persons who make a whistleblower disclosure about or involving the University, and to other persons involved in the whistleblower disclosure process, and will in all respects comply with its legal obligations.
- 3.2 The University will ensure that information regarding a whistleblower disclosure is handled and stored confidentially.

### Legal Immunities and Protections

- 3.3 Both Commonwealth and Victorian law provide legal protections and immunities for whistleblower disclosures. This includes immunity from civil, criminal and administrative liability that arises from making the whistleblower disclosure. Civil remedies are also available for a person subject to victimisation or reprisal action or detrimental action taken or threatened in reprisal for a whistleblower disclosure.

### Confidentiality

- 3.4 Both Commonwealth and Victorian law prohibit disclosure of the identity of a whistleblower, or information likely to lead to the identification of a whistleblower (subject to specific limited exceptions, including disclosure to a legal practitioner for the purpose of obtaining legal advice in relation to the disclosure).
- 3.5 Both Commonwealth and Victorian law permit disclosures of the subject matter of the whistleblower disclosure in some circumstances.

- 3.6 Under the Commonwealth law, disclosure of the subject matter of the whistleblower disclosure is permitted where it is reasonably necessary for the purpose of investigating the whistleblower disclosure and reasonable steps are taken to reduce the risk that the whistleblower will be identified.
- 3.7 Under the Victorian law, disclosure of the subject matter of the whistleblower disclosure is permitted to the extent necessary for the purpose of taking lawful action in relation to the whistleblower disclosure, including a disciplinary process.

### Protection From Detriment

Commonwealth	Victoria
If a whistleblower disclosure qualifies for protection under the Commonwealth law, the whistleblower will be protected from victimisation or reprisal action.	If a whistleblower disclosure qualifies for protection under the Victorian law, the whistleblower (or any other person) will be protected from detrimental action taken or threatened in reprisal for a whistleblower disclosure.

- 3.8 If the University becomes aware of any perceived, threatened or actual victimisation or reprisal action or detrimental action (in relation to disclosures under the Commonwealth law or Victorian law, and irrespective of who the whistleblower disclosure was made to), the University will seek to provide appropriate protection and support to the whistleblower.
- 3.9 Under the Victorian law, where a whistleblower disclosure is made by University staff and that person believes on reasonable grounds that detrimental action will be, is being or has been taken against them, they may request a transfer of employment.
- 3.10 The University recommends that whistleblowers raise any concerns regarding perceived, threatened or actual reprisal action with the Monash Whistleblower Co-ordinator ([whistleblower@monash.edu](mailto:whistleblower@monash.edu)) so that appropriate protection and support can be arranged. The Monash Whistleblower Co-ordinator will record details of the incident and may suggest that the person make a whistleblower disclosure to IBAC or refer the matter to Victoria Police or IBAC.

### Welfare Support

- 3.11 The University will seek to provide appropriate welfare support and assistance to whistleblowers, those co-operating with investigations and those who are the subject of a whistleblower disclosure. In certain circumstances, this may include the appointment of a welfare manager.
- 3.12 A whistleblower, or any person subject to, or involved in a whistleblower disclosure, may wish to access the University's [Employee Assistance Program](#).

### Further Disclosures

- 3.13 If a whistleblower disclosure has been made and the whistleblower is not satisfied with the progress of the disclosure, in certain limited circumstances the whistleblower may be able to make a further disclosure of the same information to another person (including members of Parliament and journalists).
- 3.14 The process and criteria for making a further disclosure differs under the Commonwealth and Victorian law.

## 4. Responsibilities

- 4.1 The Monash Whistleblower Co-ordinator is the person authorised by the University to receive disclosures that may qualify for protection under the Commonwealth law. They also have a central role to ensure that the University carries out its responsibilities under the Victorian law and the IBAC Guidelines and to liaise with IBAC and/or the VO.
- 4.2 Persons who are considering making a whistleblower disclosure should ensure that they properly understand the consequences of doing so.
- 4.3 Eligible recipients within the University must assess and manage any potential whistleblower disclosure made to them in accordance with their obligations under the law, which includes maintaining confidentiality.
- 4.4 The University will make the whistleblower policy and procedure, and further information about making a whistleblower disclosure, available on the University's policy website, and at [www.monash.edu/whistleblower](http://www.monash.edu/whistleblower).

## 5. Breach of Procedure

- 5.1 The University treats any breach of its policies or procedures seriously. The University encourages the reporting of concerns regarding non-compliance and will manage any non-compliance in accordance with the applicable enterprise agreement and any employment contract terms or student agreements. This may include taking disciplinary action, including termination of employment, or exclusion from studies.

## DEFINITIONS

Commonwealth law	The Commonwealth legislation that provides for whistleblower disclosures to report certain types of conduct in relation to the University or a related body corporate is mainly contained in Part 9.4AAA of the <i>Corporations Act 2001</i> (Cth). Part IVD of the <i>Taxation Administration Act 1953</i> (Cth) contains similar, but not identical, provisions regarding whistleblower disclosures in relation to the tax affairs of the University or an associate of the University, which can also be made to the Australian Taxation Office.
Detrimental action	In the Victorian law, includes: <ul style="list-style-type: none"> <li>– action causing injury, loss or damage;</li> <li>– intimidation or harassment;</li> <li>– discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.</li> </ul>
Disclosable matter	In relation to a whistleblower disclosure under the Commonwealth law, information concerning misconduct, or an improper state of affairs or circumstances in relation to the University or a related body corporate. This includes the disclosure of information if the discloser had reasonable grounds to suspect that the information indicates that the University, a related body corporate, or an officer or staff of either the University or a related body corporate, has engaged in conduct that: <ul style="list-style-type: none"> <li>– constitutes an offence against or contravention of prescribed Commonwealth legislation;</li> <li>– constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or</li> <li>– represents a danger to the public or the financial system.</li> </ul>
Eligible recipient	Under the Commonwealth law, each of the following is an eligible recipient in relation to the University: <ol style="list-style-type: none"> <li>(a) an officer or senior manager of the body corporate or a related body corporate;</li> <li>(b) an auditor, or a member of an audit team conducting an audit, of the University or a related body corporate;</li> <li>(c) an actuary of the University or a related body corporate;</li> <li>(d) a person authorised by the University to receive disclosures that may qualify for protection under the Commonwealth law.</li> </ol>
IBAC Guidelines	Guidelines issued by IBAC from time to time regarding the Victorian law.
Improper Conduct	In relation to the Victorian law, conduct that is: <ul style="list-style-type: none"> <li>- corrupt conduct (within the meaning given in the <i>Independent Broad-based Anti-corruption Commission Act (Vic) 2011</i>) (IBAC Act); or</li> <li>- conduct of a public officer or public body (within the meaning given in the IBAC Act) engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes: <ul style="list-style-type: none"> <li>• a criminal offence (under Commonwealth or Victorian law);</li> <li>• serious professional misconduct;</li> <li>• dishonest performance of public functions;</li> <li>• an intentional or reckless breach of public trust;</li> <li>• an intentional or reckless misuse of information or material acquired in the course of the performance of the public officer or public body’s functions;</li> <li>• a substantial mismanagement of public resources;</li> <li>• a substantial risk to the health or safety of one or more persons; or</li> <li>• a substantial risk to the environment.</li> </ul> </li> </ul> <p>It includes conduct of any person that adversely affects the honest performance of functions by a public officer or public body of their functions, is intended to adversely affect the effective performance or exercise of functions by a public officer or public body of their functions and results in the person obtaining certain types of benefits.</p> <p>It includes conduct that constitutes a conspiracy or attempt to engage in any of the above conduct.</p> <p>It does not include conduct that is trivial.</p>

Misconduct	In relation to the Commonwealth law, includes fraud, negligence, default, breach of trust and breach of duty.
Related body corporate	For the purpose of this policy, and in relation to the Commonwealth law, a related body corporate includes a body corporate that is a subsidiary of the University. A body corporate is a subsidiary of the University if: a) the University: <ul style="list-style-type: none"> <li>- controls the composition of the other body's board; or</li> <li>- is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that can be cast at a general meeting of the body; or</li> <li>- holds more than one-half of the issued share capital of the body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or</li> </ul> b) the body is a subsidiary of a subsidiary of the University.
Victorian law	The Victorian legislation that provides for whistleblower disclosures (called public interest disclosures) to report certain conduct about or involving the University is mainly contained in the <i>Public Interest Disclosures Act 2012 (Vic)</i> .
Victimisation or reprisal action	In relation to the Commonwealth law, conduct towards a whistleblower that causes detriment, where a reason for the conduct is the belief or suspicion that a whistleblower proposed to make, or made, the disclosure. Includes a threat to cause detriment, whether express or implied. Under the Commonwealth law, detriment includes any of the following: <ul style="list-style-type: none"> <li>- dismissal of an employee;</li> <li>- injury of an employee in his or her employment;</li> <li>- alteration of an employee's position or duties to his or her disadvantage;</li> <li>- discrimination between an employee and other employees of the same employer;</li> <li>- harassment or intimidation of a person;</li> <li>- harm or injury to a person, including psychological harm;</li> <li>- damage to a person's property;</li> <li>- damage to a person's reputation;</li> <li>- damage to a person's business or financial position;</li> <li>- any other damage to a person.</li> </ul>
Whistleblower	Any person who makes a whistleblower disclosure in relation to the University in accordance with the Commonwealth law or the Victorian law. A whistleblower may be anonymous.
Whistleblower disclosure	A disclosure made in accordance with the formal processes and requirements contained in the applicable Commonwealth or Victorian law.

## GOVERNANCE

Parent policy	<a href="#">Whistleblower Policy</a>
Supporting schedules	N/A
Associated procedures	<a href="#">Dispute Settlement and Employment Related Grievances Resolution Procedure</a>
Related legislation	<a href="#">Corporations Act 2001 (Cth)</a> <a href="#">Taxation Administration Act 1953 (Cth)</a> <a href="#">Public Interest Disclosures Act 2012 (Vic)</a> <a href="#">Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)</a> <a href="#">Ombudsman Act 1973 (Vic)</a>
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