

WHISTLEBLOWER POLICY

SCOPE

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

POLICY STATEMENT

Monash University (the University) does not tolerate fraud, corruption, misconduct, criminal or improper conduct. A person who makes a report of this type of conduct may be considered to have made a whistleblower disclosure and be protected in accordance with the law. The University supports the making of whistleblower disclosures which can be made under Commonwealth or Victorian law.

Under Victorian law, whistleblower disclosures are referred to as public interest disclosures, but for the purposes of this policy, disclosures of information under either the Commonwealth law or the Victorian law are referred to as whistleblower disclosures.

Persons who are considering making a whistleblower disclosure should carefully consider whether their disclosure is being made under Commonwealth law or Victorian law, and ensure that they do so in accordance with the requirements of the applicable law, in order to be protected under the applicable law. This may involve obtaining independent legal advice.

This policy does not replace existing University policies and procedures that deal with personal or professional grievances of University students or staff that do not involve the types of conduct about which whistleblower disclosures can be made or employment-related grievances under the applicable enterprise agreement. Those policies and procedures, and the enterprise agreement, continue to apply to appropriately deal with such matters.

1. Who Can Make a Whistleblower Disclosure?

- 1.1 The scope of who can make a whistleblower disclosure is determined by whether the disclosure is made under the Commonwealth or Victorian law, as set out in the table below.

Commonwealth	Victoria
<p>A whistleblower disclosure can only be made by an eligible whistleblower. Examples include:</p> <p>A person who is, or has been, Monash staff, a person who supplies goods or services to Monash (or an employee of a supplier of Monash); an 'officer' or 'associate' of Monash (for example, a member of the University Council), or the relative or spouse of any of those persons.</p>	<p>Any person.</p>

2. What Can a Whistleblower Disclosure Be About?

- 2.1 To qualify for protection under the Commonwealth law, a disclosure must be about a disclosable matter. A disclosable matter is a disclosure of information if the whistleblower has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances in relation to the University or a related body corporate. The definition of misconduct under the Commonwealth law differs from, but is not mutually exclusive of, misconduct as defined in the University's applicable Enterprise Agreement, or any employment contract, and as defined in the University's regulatory framework.

2.2 Some examples of the types of conduct that could constitute a disclosable matter are:

- fraud, corruption or theft;
- money laundering or misappropriation of funds;
- offering or accepting a bribe; and
- engaging in or threatening detrimental conduct against a person who has made a whistleblower disclosure or is believed to have made, or is planning to make, a disclosure.

2.3 Under the Victorian law, a whistleblower disclosure can be made about any information that shows, or tends to show, or the whistleblower believes on reasonable grounds shows or tends to show, that any person or the University has engaged in, is engaging in or proposes to engage in improper conduct or detrimental action (where the particular disclosure relates to an earlier whistleblower disclosure). Improper conduct includes corrupt conduct.

What can the disclosure be about?

Commonwealth	Victoria
Any information about which the whistleblower has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances, in relation to the University or a related body corporate.	Any information that shows, or tends to show, or the whistleblower believes on reasonable grounds shows or tends to show, that a person or the University has engaged in, is engaging in or proposes to engage in improper conduct or has taken, is taking or proposes to take detrimental action against a person.

3. Who Can a Whistleblower Disclosure Be Made To?

3.1 The process for making a whistleblower disclosure and to whom it can be made, depends on whether the disclosure is made under the Commonwealth law or the Victorian law, as set out in the Whistleblower Procedure.

3.2 A whistleblower disclosure can be made anonymously.

Commonwealth	Victoria
An eligible recipient of the University (including the COO, as the University Whistleblower Co-ordinator) or a related body corporate, the Australian Securities and Investment Commission (ASIC), the Australian Prudential Regulation Authority (APRA) or a legal practitioner (for the purpose of obtaining legal advice on the disclosure).	The Independent Broad-based Anti-corruption Commission (IBAC) or (in the case of disclosures about administrative action taken by the University) the Victorian Ombudsman.

4. Investigating Whistleblower Disclosures

4.1 The University will determine the appropriate course for investigating whistleblower disclosures made to the University under the Commonwealth law. The University may conduct its own investigation into the disclosure or engage an external organisation to do so.

4.2 Disclosures of information under Victorian law will be assessed by IBAC. IBAC may decide to dismiss the matter, refer the matter to another investigating agency or investigate the matter.

5. Protection and Support for Whistleblowers

5.1 The University will provide appropriate support to whistleblowers, in accordance with both the Commonwealth and Victorian law. This includes:

- protecting the confidentiality of a whistleblower's identity and information that is likely to lead to the identification of the whistleblower;
- protecting the whistleblower from victimisation or reprisal action or detrimental action against a person in reprisal for a whistleblower disclosure; and
- providing appropriate welfare support.

5.2 The University has established processes for the protection of people from victimisation, reprisal action and detrimental action taken in reprisal for a whistleblower disclosure and will also ensure the fair treatment of, and provide appropriate support to and protection for, the whistleblower (and other persons involved in the whistleblower disclosure).

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"> - action causing injury, loss or damage; - intimidation or harassment; - discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.
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"> - constitutes an offence against or contravention of prescribed Commonwealth legislation; - constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or - represents a danger to the public or the financial system.
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"> (a) an officer or senior manager of the University or a related body corporate; (b) an auditor, or a member of an audit team conducting an audit, of the University or a related body corporate; (c) an actuary of the University or a related body corporate; (d) a person authorised by the University to receive disclosures that may qualify for protection under the Commonwealth law.
Eligible whistleblower	Under the Commonwealth law, an individual is an eligible whistleblower in relation to the University if the individual is, or has been, any of the following: <ol style="list-style-type: none"> (a) an officer of the University; (b) staff of the University; (c) an individual who supplies services or goods to the University (whether paid or unpaid); (d) an employee of a person that supplies services or goods to the University (whether paid or unpaid); (e) an individual who is an associate of the University; (f) a relative of an individual referred to in any of paragraphs above; (g) a dependant of an individual referred to in any of paragraphs above, or of such an individual's spouse; (h) an individual prescribed by regulations under the Commonwealth law for the purposes of the University.
Improper conduct	In relation to the Victorian law, conduct that is: <ul style="list-style-type: none"> - corrupt conduct (within the meaning given in the <i>Independent Broad-based Anti-corruption Commission Act (Vic) 2011</i>) (IBAC Act); or - 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"> • a criminal offence (under Commonwealth or Victorian law); • serious professional misconduct; • dishonest performance of public functions; • an intentional or reckless breach of public trust; • 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; • a substantial mismanagement of public resources; • a substantial risk to the health or safety of one or more persons; or

	<ul style="list-style-type: none"> a substantial risk to the environment. <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	<p>For the purpose of the policy, and in relation to the Commonwealth law, a related body corporate includes a body corporate that is a subsidiary of the University.</p> <p>A body corporate is a subsidiary of the University if:</p> <ol style="list-style-type: none"> the University: <ul style="list-style-type: none"> controls the composition of the other body's board; or 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 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 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	<p>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.</p> <p>Includes a threat to cause detriment, whether express or implied.</p> <p>Under the Commonwealth law, detriment includes any of the following:</p> <ul style="list-style-type: none"> dismissal 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.
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 Commonwealth or Victorian law.

GOVERNANCE

Supporting procedures	Whistleblowers Procedure
Supporting schedules	
Associated policies	Integrity & Respect Policy Fraud & Corruption Policy Ethics Statement Policy Dispute Settlement and Employment Related Grievances Resolution Procedure
Policy owner	General Counsel

Legislation mandating compliance	<i>Corporations Act 2001 (Cth)</i> <i>Taxation Administration Act 1953 (Cth)</i> <i>Public Interest Disclosures Act 2012 (Vic)</i> <i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i> <i>Ombudsman Act 1973 (Vic)</i>
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