

Whistleblower Protection Policy (MPF1346)

1. Objectives

The objectives of this policy are to explain and/or provide guidance as to:

- (a) the University's commitment to protecting whistleblowers who make lawful whistleblower disclosures;
- (b) how, when, and to what extent a whistleblower disclosure may qualify for protection under applicable State or Federal legislation, including:
 - (i) what may be the subject matter of the whistleblower disclosure;
 - (ii) how and to whom the whistleblower disclosure may or must be made; and
 - (iii) what protections and confidentiality obligations apply, including how and to what extent the identity of the person making the whistleblower disclosure will be protected; and
- (c) how the University deals with whistleblower disclosures made in relation to the University or a related body corporate of the University, including:
 - (i) who can provide information or assistance in relation to, and receive, any whistleblower disclosure;
 - (ii) how the University will investigate any whistleblower disclosure; and
 - (iii) what the University will do to support and protect any person who has made such a whistleblower disclosure.

2. Scope

2.1. This policy applies to anyone who has concerns regarding improper conduct connected with the University and wishes to make a whistleblower disclosure regarding those concerns.

2.2. The whistleblower disclosure will only be protected under the applicable Victorian law or the Commonwealth law to the extent it is made in accordance with that law, which will depend on the identity of the person making the whistleblower disclosure, its subject matter and to whom it is made.

2.3. Whether or not the Victorian law or the Commonwealth law applies, a person making a whistleblower disclosure will be dealt with by the University in accordance with this policy.

3. Authority

3.1. This policy is made under the [University of Melbourne Act 2009 \(Vic\)](#) and the [Vice-Chancellor Regulation](#) and supports compliance with the:

- (a) *Public Interest Disclosures Act 2012* (Vic);
- (b) *Independent Broad-based Anti-corruption Commission Act 2011* (Vic);
- (c) *Ombudsman Act 1973* (Vic);
- (d) *Corporations Act 2001* (Cth); and
- (e) *Taxation Administration Act 1953* (Cth).

3.2. This policy does not form part of the terms and conditions of employment of any officer or employee of the University (or any related body corporate of the University), and the University reserves the right to depart from it as necessary or appropriate and, in any case, in accordance with applicable law.

4. Policy

4.1. The University:

- (a) is committed to promoting and supporting a culture of corporate compliance, honest and ethical behaviour, and good corporate governance and expects transparency and accountability in its administrative and management practices;
- (b) does not tolerate fraud, corruption, misconduct, criminal or improper conduct;
- (c) encourages persons to disclose genuine concerns regarding University conduct that constitutes fraud, corruption, misconduct, criminal or improper conduct; and
- (d) supports and protects, in accordance with the law, persons who make whistleblower disclosures.

4.2. To gain legal protection, whistleblowers must:

- (a) inform themselves (which may include seeking independent legal advice) as to whether to make their whistleblower disclosure under Commonwealth law or Victorian law; and
- (b) make the whistleblower disclosure in accordance with the requirements of the applicable law.

4.3. The University respects and will not impede the lawful right of a person to make a whistleblower disclosure anonymously.

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

4.5. In accordance with the law, the University must provide whistleblowers appropriate support including:

(a) protecting the confidentiality of a whistleblower's identity and information that is likely to lead to the identification of the whistleblower (unless the whistleblower makes it known that they choose not to remain anonymous);

(b) protecting the whistleblower from victimisation or reprisal action or detrimental action against a person in reprisal for a whistleblower disclosure; and

(c) providing appropriate welfare support.

4.6. Where a whistleblower disclosure is made to the University under Commonwealth law and the University has primary responsibility for investigating the matter, the University must, in determining the appropriate investigation process, ensure that investigations are conducted thoroughly, appropriately and free from conflicts of interest even if the investigation is conducted by a person or organisation external to the University.

5. Procedural principles

5.1. Who may make a whistleblower disclosure?

(a) Under the Victorian law any person can make a whistleblower disclosure.

(b) Under the Commonwealth law a whistleblower disclosure can only be made by an eligible whistleblower.

5.2. What types of wrongdoing can a whistleblower disclosure be about?

(a) For a person to qualify for protection under the Commonwealth law, the whistleblower disclosure must be made by and to the correct person and be about misconduct or disclosable matters. The definition of misconduct under the Commonwealth law differs from, but is not mutually exclusive of, misconduct under the University's applicable Enterprise Agreement or any relevant employment or other contract with the University and so those instruments may still apply.

(b) Reports of personal work-related grievances are not eligible for whistleblower disclosures and such disclosures should be made to the [Inappropriate Workplace Behaviour line](#) (internal University link).

(c) Under the Victorian law the wrongdoing must be improper conduct.

5.3. To whom can the whistleblower disclosure be made?

(a) Under Commonwealth law and to ensure protection under such law, whistleblower disclosures must be made to eligible recipients or via the University's secure [Whistleblower Portal](#).

(b) Under Victorian law, improper conduct should only be reported to IBAC or the Victorian Ombudsman in relation to eligible disclosures about administrative action taken by the University.

How is a whistleblower disclosure made?

Whistleblower disclosures can be made as follows:

5.4. Under the Commonwealth law, through the University's secure online [Whistleblower Portal](#) or to ASIC or APRA.

5.5. Under the Victorian law verbally or in writing to IBAC or the Victorian Ombudsman.

5.6. Whistleblower disclosures may be made verbally or in writing and can be made anonymously, or whistleblowers may provide their name and contact details when reporting. A whistleblower disclosure should be made on reasonable grounds to avoid false reporting.

5.7. Persons should carefully consider to whom they make their whistleblower disclosure, as disclosing to a non-eligible person may disqualify them from certain whistleblower protections. Accordingly, the University recommends that, where the Commonwealth law applies, whistleblowers make their whistleblower disclosures to the University via the secure online [Whistleblower Portal](#).

5.8. Nothing in this policy prevents whistleblower disclosures being made:

(a) verbally;

(b) anonymously or the discloser making their identity known;

(c) under the Commonwealth law to:

(i) another eligible recipient of the University or a related body corporate of the University;

(ii) the Australian Securities and Investment Commission (ASIC);

(iii) the Australian Prudential Regulation Authority (APRA); or

(iv) the person's lawyer.

5.9. Whistleblower disclosures or concerns about a whistleblower disclosure may be made, under the Commonwealth law, directly to any eligible recipient of the University or a related body corporate, who, along with the authorised eligible recipients, must:

(a) assist the discloser or potential discloser with any concerns, and how those concerns might best be addressed including by way of a whistleblower disclosure;

(b) keep all discussions strictly confidential;

(c) if necessary, conduct all discussions anonymously;

(d) if appropriate, and if possible, with discloser's consent, refer a matter to the Whistleblower Disclosure Coordinator; and

(e) ensure the provision of reasonable appropriate support and protection for the whistleblower (and any other persons who may be involved in the whistleblower disclosure).

5.10. The Whistleblower Disclosure Coordinator is the person authorised by the University to receive whistleblower disclosures that may qualify for protection under the Commonwealth law. They also have a key role to ensure the University carries out its responsibilities under the Victorian law and IBAC guidelines. For whistleblower disclosures made or referred to them, the Whistleblower Disclosure Coordinator will determine, in consultation with legal advice if required, whether the whistleblower disclosure ought to be accepted and dealt with under this policy.

5.11. The Whistleblower Disclosure Coordinator may refuse to accept a whistleblower disclosure where, amongst other things:

(a) the alleged conduct is not a disclosable matter to be dealt with by the University under relevant laws;

(b) the whistleblower disclosure is obviously not made in good faith or is frivolous, vexatious or malicious;

(c) the whistleblower disclosure is made anonymously and there is insufficient information to allow the whistleblower disclosure to be properly investigated; and/or

(d) the subject matter of the whistleblower disclosure has previously been properly dealt with and/or resolved under this policy or otherwise.

5.12. Following consideration of a whistleblower disclosure, the Whistleblower Disclosure Coordinator, may:

(a) suggest to the person making the whistleblower disclosure, that they can make a whistleblower disclosure to another relevant agency including IBAC, or suggest other avenues, including the Australian Tax Office or the Australian Federal Police, for redress; or

(b) where appropriate, inform the relevant eligible recipient to make the suggestion in (a) to the person making the whistleblower disclosure; or

(c) initiate the commencement of an investigation for whistleblower disclosures made to the University under the Commonwealth law.

5.13. Upon acceptance of a whistleblower disclosure for investigation under the Commonwealth law, the relevant eligible recipient must acknowledge, where possible, the whistleblower disclosure within a reasonable period after the whistleblower disclosure is received.

Investigation

5.14. The Whistleblower Disclosure Coordinator will determine the appropriate manner for investigating a whistleblower disclosure made to the University under the Commonwealth law which may include engaging a person or organisation external to the University. The University may, in certain limited cases, refer the whistleblower

disclosure for investigation to a more appropriate body such as the Australian Federal Police or Australian Tax Office.

5.15. The Whistleblower Disclosure Coordinator will ensure that any investigation, conducted by, or for, the University:

(a) is thorough, appropriate and free from conflicts of interest;

(b) does not reveal the identity of a whistleblower, or information likely to lead to the identification of a whistleblower except as allowed under law or for the obtaining of legal advice in relation to the whistleblower disclosure.

5.16. Whistleblower disclosure under Victorian law will be assessed by IBAC or the Victorian Ombudsman as relevant. IBAC may decide to dismiss or refer the matter to another agency to investigate and the University may not be aware that the whistleblower disclosure has been made and may not be involved in any investigation.

5.17. Subject to any confidentiality restrictions (and as appropriate in the circumstances), at the conclusion of the investigation, the Whistleblower Disclosure Coordinator will report the outcome of any investigation to relevant stakeholders, including persons involved in making the whistleblower disclosure and any person subject to an investigation of the conduct alleged in the whistleblower disclosure.

Additional protections and support

5.18. The University will take necessary action to ensure that persons who make whistleblower disclosures are protected from any perceived, threatened or actual victimisation or reprisal action or detrimental action and comply in all respects with its legal obligations with respect to those persons making whistleblower disclosures.

5.19. The University will provide appropriate welfare support (including, where applicable, the [Employee Assistance Program](#)) to whistleblowers.

5.20. Under the Victorian law, where a whistleblower disclosure is made by a University staff member and that person believes on reasonable grounds that detrimental action will be, or is being taken against them, they may request a transfer of employment.

Limits on confidentiality and immunity

5.21. Under the Victorian law the University may disclose the subject matter of any whistleblower disclosure it is made aware of, to the extent necessary, for the purpose of taking lawful action in relation to the whistleblower disclosure, including a disciplinary process.

5.22. 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.

5.23. Statutory protections generally do not grant immunity for any misconduct that may have been engaged in by a person making a whistleblower disclosure. The

Whistleblower Disclosure Coordinator may initiate appropriate management action, including disciplinary action, in relation to an employee but only if the fact that the person has made the whistleblower disclosure is not a substantial reason for the taking of the management action in question, and the action is legitimate and appropriate on other grounds.

Further disclosures

5.24. If a whistleblower disclosure has been made and the whistleblower is dissatisfied with the outcome, process or progress, in certain limited circumstances (that differ between the Commonwealth law and the Victorian law) the whistleblower may make a further whistleblower disclosure regarding the same initial whistleblower disclosure to other persons, including members of parliament and journalists. The University recommends the whistleblower obtain legal advice in these circumstances as there may be consequences on the whistleblower for false or incorrect reporting.

6. Roles and responsibilities

<i>Role/Decision/Action</i>	<i>Responsibility</i>	<i>Conditions and limitations</i>
<ul style="list-style-type: none"> • Establish processes • Nominate authorised eligible recipients • Establish web information on complaint whistleblower disclosures and University support offered to whistleblowers • Provide legal advice to eligible recipients regarding whistleblower disclosures 	General Counsel or delegate	In accordance with this policy
<ul style="list-style-type: none"> • Receive and triage concerns about whistleblower disclosures • Receive and triage whistleblower disclosures 	<i>eligible recipients</i>	In accordance with this policy
<ul style="list-style-type: none"> • Receive whistleblower disclosures and referrals from eligible recipients • Determine manner and outcomes of investigations 	Whistleblower Disclosure Coordinator	In accordance with this policy

<ul style="list-style-type: none"> • Consider and take next steps following an investigation • Report outcomes of investigations • Ensure disclosers are protected 		
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7. Definitions

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

associate includes:

(a) in relation to a whistleblower disclosure involving the tax affairs of the University or a related body corporate of the University, those persons who meet the definition of 'associate' in section 318 of the *Income Tax Assessment Act 1997* (Cth). Please note, this definition involves technical considerations, so it should be assumed at first instance that an 'associate' includes any person (or any relative, spouse or dependent of such a person) or organisation that is somehow legally connected or related to the University, and further advice in this regard should be sought from Legal Services; and

(b) in relation to any other whistleblower disclosure involving the University or a related body corporate of the University, any other related body corporate or a director or secretary of same.

Commonwealth law means the Commonwealth legislation that provides for whistleblower disclosures to report certain types of conduct in relation to the University or a related body corporate and is mainly contained in Part 9.4AAA of the *Corporations Act 2001* (Cth). The *Taxation Administration Act 1953* (Cth) contains provisions regarding whistleblower disclosures in relation to the tax affairs that can also be made to the Australian Taxation Office.

disclosable matter means, 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:

- 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.

Personal work-related grievances are **not** disclosable matters under the Commonwealth law.

detriment, under Commonwealth law, includes:

- 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.

eligible whistleblower means in relation to the University, a person who is, or who has been:

- (a) an officer or former officer or staff member or former staff member of the University or a related body corporate of the University;
- (b) an individual who supplies goods or services to the University or a related body corporate of the University (whether paid or unpaid), or an employee of same;
- (c) an individual who is an associate of the University or a related body corporate of the University;
- (d) a relative, spouse or dependent, of any individual referred to above.

eligible recipient means under the Commonwealth law in relation to the University:

- (a) an officer or senior manager of the University or the related body corporate including the Whistleblower Disclosure Coordinator;
- (b) an auditor, or member of an audit team conducting an audit of the University or the related body corporate;
- (c) an actuary of the University or the related body corporate;
- (d) legal practitioners;

(e) a person authorised by the University or the related body corporate to receive whistleblower disclosures that may qualify for protection.

IBAC means the Independent Broad-based Anti-corruption Commission.

improper conduct in relation to the Victorian law means conduct that:

(a) adversely affects the honest performance by a public officer or public body of his or her, or its, functions;

(b) constitutes or involves the dishonest performance of a public body or public officer's functions as a public officer or public body;

(c) constitutes, or involves, knowingly or recklessly breaching public trust;

(d) involves the misuse of information or material acquired in the course of the performance of public duties, whether or not this is done for the benefit of the public body or officer, or for any other purpose;

(e) constitutes a conspiracy or an attempt to engage in any of the above conduct; or

(f) conduct of a public officer or public body that involves substantial:

(i) mismanagement of public resources;

(ii) risk to public health or safety; or

(iii) risk to the environment

where such conduct, if proven, would be either 'corrupt conduct' as defined under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) which includes conduct listed in (a) to (e) above, where such conduct would constitute an indictable offence or a common law offence (perverting, or attempting to pervert, the course of justice, bribery of a public official); a criminal offence; or reasonable grounds for dismissing or dispensing with, or otherwise terminating the services of the officer who was, or is, engaged in that conduct.

misconduct, in relation to the Commonwealth law, includes fraud, negligence, default, breach of trust and breach of duty. This differs from the meaning of misconduct in the University of Melbourne Enterprise Agreement 2018.

personal work-related grievance means information which concerns a personal work-related grievance of the discloser to the extent that:

(a) the information concerns a grievance about any matter in relation to the discloser's employment, or former employment, with the University or any related body corporate of the University, having (or tending to have) implications for the discloser personally; and

(b) the information does not:

(i) have significant implications, for the University or the related body corporate, that do not relate to the discloser; and

(ii) involve alleged Victimisation; or

(iii) concern conduct, or alleged conduct, which may:

(A) constitute an offence against a Defined Commonwealth Law;

(B) be a contravention of Commonwealth legislation that is punishable by imprisonment for a period of 12 months or more; and/or

(C) represent a danger to the public or the financial system.

prescribed Commonwealth legislation means:

(a) the *Corporations Act 2001* (Cth);

(b) the *Australian Securities and Investments Commission Act 2001* (Cth);

(c) the *Banking Act 1959* (Cth);

(d) the *Financial Sector (Collection of Data) Act 2001* (Cth);

(e) the *Insurance Act 1973* (Cth);

(f) the *Life Insurance Act 1995* (Cth);

(g) the *National Consumer Credit Protection Act 2009* (Cth);

(h) the *Superannuation Industry (Supervision) Act 1993* (Cth); and

(i) an instrument made under any of the above Acts.

officer includes a person who, in relation to the University or a related body corporate of the University:

(a) is a director or secretary;

(b) makes, or participates in making, decisions that affect the whole, or a substantial part of, the business of the organisation;

(c) has the capacity to affect significantly the financial standing of the organisation;

(d) provides instructions or wishes in accordance with which any director is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors); and

(e) receiver, administrator, liquidator or trustee or a person in another like role.

related body corporate means, in relation to the Commonwealth law, a body corporate that is a [University subsidiary](#)

senior manager includes a person, other than a director, who, in relation to the University or a related body corporate of the University:

(a) makes, or participates in making, decisions that affect the whole, or a substantial part of, the business of the organisation; and

(b) has the capacity to affect significantly the financial standing of the organisation.

victimisation or reprisal action, in relation to Commonwealth law, means 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 whistleblower disclosure. It includes a threat to cause detriment, whether express or implied.

Victorian law means the Victorian legislation that provides for whistleblower disclosures (called public interest disclosures) to report certain conduct about or involving the University, mainly contained in the *Public Interest Disclosures Act 2012* (Vic).

whistleblower disclosure means a disclosure made in accordance with the formal processes and requirements contained in the applicable Commonwealth or Victorian law.

Whistleblower Disclosure Coordinator is the General Counsel or delegate.

POLICY APPROVER

Vice-President (Administration & Finance) and Chief Operating Officer

POLICY STEWARD

General Counsel and Executive Director, Legal and Risk

REVIEW

This policy is to be reviewed by 31 July 2020.

VERSION HISTORY

Version	Approved by	Approval Date	Effective Date	Sections modified
1	Vice-President (Administration & Finance) and Chief Operating Officer	23 December 2019	1 January 2020	New policy
2	General Counsel & Executive Director, Legal & Risk	6 December 2021	15 December 2021	Updated and added links to Whistleblower Portal.

