

# PROCEDURE

## Procedure Title

Whistleblower Procedure

## Parent Policy

Whistleblower Policy

## Preamble

These procedures address Monash College's approach to ensuring that anyone making a whistleblower disclosure in relation to Monash College or a related body corporate, i.e. Monash University, under the *Corporations Act 2001 (Cth)*, (the Act), has a safe, reliable and confidential way of reporting, without fear of reprisal, any information concerning misconduct, or an improper state of affairs or circumstances in relation to Monash College or a related body corporate.

These procedures, set out information which the Act requires Monash College to include in a whistleblower policy. The Whistleblower Procedure and Whistleblower Policy must be read together.

It does not replace other reporting mechanisms referred to in the [Staff Personal and Professional Code of Conduct](#) and associated Policies.

If the matter disclosed concerns Monash University (MU) reference should be made to the MU Whistleblower Policy and Procedure.

## Definitions

### Eligible Whistleblower

In order to recognise and protect you as a whistleblower you need to meet the following "eligibility" criteria as required in the Corporations Act.

You must be an individual who is or has been any of the following:

- an officer or employee of Monash College.
- an individual who supplies services or goods to Monash College (whether paid or unpaid).
- an employee of a person that supplies services or goods to Monash College (whether paid or unpaid).
- an individual who is an associate of Monash College (e.g. *Board Committee member*).
- a relative, dependent or spouse of an individual referred to in any of the points above.

### Disclosable Matter

In relation to a whistleblower disclosure under the Corporations Act, a disclosable matter is information concerning misconduct, or an improper state of affairs or circumstances in relation to the College 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 College, or an officer or staff of the College, 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.

### Eligible Recipient

To be a disclosure that qualifies for protection the disclosure must be made to one of the following:

- An internal or external auditor, or member of an audit team conducting an audit of the College or a related body corporate.
- An officer or senior manager of the College (for the College this would include a board member (see College Website for names) or the COO).
- A person authorised by the College to receive whistleblower disclosures (that is, the Whistleblower Protection Officer);
- Australian Securities and Investment Commission (ASIC).
- A lawyer (to obtain advice or representation about the Corporations Act). Eligible recipients of Monash University as a related body corporate, (refer to the Monash University Whistleblower Policy).

### Detriment

Under the Act, detrimental conduct is defined to include the following:

- 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 Officer

For Monash College the person authorised by the company to receive whistleblower disclosures is the Whistleblower Officer. This is the Company Secretary. [Whistleblower.officer@monashcollege.edu.au](mailto:Whistleblower.officer@monashcollege.edu.au)

## Responsibilities

### Whistleblower

Persons who are considering making a whistleblower disclosure should ensure that they properly understand the consequences of doing so.

### Eligible Recipients

Eligible recipients of the College or a related body corporate must assess and manage any potential whistleblower disclosure made to them in accordance with their obligations under the law, which includes maintaining confidentiality. This may include seeking legal advice on whether the disclosure is a whistleblower disclosure.

### Whistleblower Protection Officer

The College's Whistleblower Protection Officer is the person authorised by the College to receive disclosures that may qualify for protection under the Corporations Act. They also have a central role to ensure that the College carries out its responsibilities under the Corporations Act.


## SECTION 1: Procedures for Eligible Whistleblower

Ref	Steps
1.1	<p><b>Determine if you fit the criteria for an Eligible Whistleblower.</b></p> <p><i>See the Definition Section for criteria.</i></p>
1.2	<p><b>Determine if the matter you are reporting is a Disclosable Matter.</b></p> <p><i>See the Definition Section for criteria.</i></p> <p><b>Examples of the types of conduct that could constitute a disclosable matter are:</b></p> <ul style="list-style-type: none"> <li>• fraud, corruption or theft;</li> <li>• money laundering or misappropriation of funds;</li> <li>• offering or accepting a bribe; and</li> <li>• 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.</li> </ul> <p><b>Is it a personal work-related grievance relating to your current or former employment?</b></p> <p>Some examples of personal work-related grievances are:</p> <ul style="list-style-type: none"> <li>• an interpersonal conflict between the discloser or another employee;</li> <li>• a decision about the engagement, terms and conditions of employment, transfer or promotion of the discloser;</li> <li>• a decision to suspend or terminate the engagement of the discloser, or otherwise discipline the discloser;</li> <li>• a decision that does not involve a breach of workplace laws.</li> </ul> <p>If it is a personal work-related grievance it is not covered under the Act and the Whistleblower Policy and should be discussed with your manager or People and Culture representative.</p> <p><b>Is it a Student grievance?</b></p> <p>Academic and Non-Academic complaints and appeals usually do not qualify for protection under the Act or this policy. Students should raise their complaint directly with the person concerned in the first instance, (refer to Academic and Non-Academic Complaints and Appeals Policy).</p>
1.3	<p><b>How to make a disclosure</b></p> <p>To ensure protection under the Act you must make your disclosure to an Eligible Recipient.</p> <p><i>See the Definition Section for Monash College Eligible Recipients.</i></p> <p>The College encourages eligible whistleblowers to make their disclosure to the Whistleblower Protection Officer. A report can be made orally or in writing (personally</p>

	<p>delivered, mailed or emailed) to the Whistleblower Protection Officer – <a href="mailto:whistleblower.officer@monashcollege.edu.au">whistleblower.officer@monashcollege.edu.au</a>.</p> <p>When submitting a Whistleblower Disclosure in writing and sending by mail or personally delivering, please ensure the envelope is marked with 'Private &amp; Confidential – to be opened by addressee', or advise the Whistleblower Protection Officer/eligible recipient this is the purpose if reporting verbally.</p> <p>Suggested information to include in your report is:</p> <ul style="list-style-type: none"> <li>• The person(s) suspected of any Improper Conduct or involvement in Improper Conduct.</li> <li>• The nature of the suspected Improper Conduct (e.g. fraud, negligence or other Improper Conduct).</li> <li>• Any evidence of the suspected Improper Conduct (regardless of format) and the location of any other evidence.</li> <li>• The dates of the suspected Improper Conduct.</li> <li>• Details of any witnesses.</li> <li>• Any concerns of reprisals to you by making this report.</li> <li>• Any other details you consider relevant.</li> </ul> <p>You can remain anonymous in making your report, over the course of the investigation and after the investigation is finalised. This must be considered when you make that report. (If you wish to remain anonymous a pseudonym name and contact details maybe used).</p>
<b>1.4</b>	<p><b>Communication during investigation</b></p> <p>If you provide contact details you will be contacted to:</p> <ul style="list-style-type: none"> <li>• to get follow up information on the disclosure;</li> <li>• seek consent for your contact details to be provided to an external investigator if one is appointed.</li> <li>• be updated on the initial investigation; and</li> <li>• be updated any subsequent full investigation if it proceeds. For confidentiality reasons detail may be limited.</li> </ul> <p>It is important that the Whistleblower cooperates and assists with the investigation process as much as possible. The ability of an investigator to investigate may be limited or prevented from proceeding if the disclosure has been made anonymously or the Whistleblower refuses to provide information to investigator.</p> <p>If at any time the Whistleblower has concerns as to how the investigation is being conducted or is not satisfied with the outcome, they may express these concerns to the Whistleblower Protection Officer or any other Eligible Recipient (which includes ASIC).</p>
<b>1.5</b>	<p><b>Protection and Support</b></p> <p>The College will take whatever action is possible to make sure that you are not personally disadvantaged for making your report, whether by dismissal, demotion, any form of harassment, discrimination or any form of current or future bias. A disclosure will not</p>

	<p>prohibit Monash College from managing any separate performance issues that may affect the work of a whistleblower.</p> <p>Anyone who does anything, or threatens to do something, to your detriment because you made a whistleblower report, or as a result of an investigation of your report, may commit a criminal offence and the action or threat should be reported to an Eligible Recipient, who will take appropriate action to protect and support you.</p> <p>It may be necessary during the course of an investigation to take reasonable administrative action to protect a whistleblower from detriment, for example changing reporting line if related to a manager.</p> <p>The College 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.</p> <p>Employees involved in the matter requiring additional support may wish to access Monash College's Employee Assistance Program (EAP). The EAP is a service offered by Davidson Trahaire Corpsych (phone 1300 360 364). EAP is free to all Monash College staff and their families and is a 24/7 confidential service.</p> <p>Whistleblowers may seek independent legal advice or contact regulatory bodies, such as ASIC, if it is believed that detriment has occurred.</p>
<b>1.6</b>	<p><b>Breach of Confidentiality</b></p> <p>If a breach of confidentiality occurs, the Whistleblower can lodge a complaint to an Eligible Recipient, the Whistleblower may also lodge a complaint regarding the breach of confidentiality to ASIC, for investigation.</p> <p>The complaint will be investigated as a separate matter, protections will be put in place to protect disclosures during the investigation</p>

## SECTION 2: Procedures for Eligible Recipient

2.1	<p><b>Receipt of a disclosure</b></p> <p><b>General Principles: Protecting Whistleblower</b></p> <p>The person receiving a report from a whistleblower, Whistleblower Protection Officer and any investigator shall ensure that the matter and the identity of the whistleblower (or information that may lead to the identity of the whistleblower) if provided, is protected. All files relating to a report are to be kept secure, and the information received held in confidence and only disclosed to a person not connected with the investigation if:</p> <ul style="list-style-type: none"> <li>• The whistleblower has been consulted and has consented to the disclosure, or</li> <li>• It is required or permissible by law (this includes to ASIC, the Australian Federal Police or a legal practitioner for the purpose of obtaining legal advice regarding the whistleblower disclosure).</li> </ul> <p><b>Actions</b></p> <p>A disclosure received by an Eligible Recipient other than a Whistleblower Protection Officer, will be immediately referred to a Whistleblower Protection Officer after seeking the consent of the Whistleblower, so that the disclosure can be assessed and mechanisms for protecting and safeguarding the Whistleblower can be implemented.</p> <p>If consent is not provided for the disclosure to be referred to the Whistleblower Protection Officer, the Eligible Recipient will undertake the investigation (see below). This will include seeking privileged legal advice, usually from the MU Office of General Counsel and support for an investigation.</p>
2.2	<p><b>Investigation Process</b></p> <p><b>General Principles:</b></p> <p>An investigation of a disclosure by a Whistleblower will consist of the following stages:</p> <div data-bbox="310 1293 1398 1383">  <pre> graph LR     A[STAGE 1: INITIAL ASSESSMENT] --&gt; B[STAGE 2: FORMAL INVESTIGATION]     B --&gt; C[STAGE 3: REPORT ON OUTCOMES] </pre> </div> <p>The stages and timeframes may vary depending on the nature of the disclosure. For example, if the disclosure involves a complex matter or a large number of people, the investigation process may be conducted over a longer period of time.</p> <p>The Whistleblower Protection Officer/Eligible Recipient will communicate with the Whistleblower throughout the investigation process.</p> <p>Assessment of disclosures and, if applicable, investigation of a disclosure will be treated in a thorough, objective, fair and impartial manner by the persons involved in the investigation.</p> <p>In particular, some of the actions taken to ensure this occurs include:</p> <ul style="list-style-type: none"> <li>• as far as practicable, confidential handling of the disclosure and the identity of the Whistleblower and any persons involved in or related to the disclosure;</li> </ul>

- all disclosures made under the Whistleblower Policy will at a minimum be subject to an initial assessment;
- the primary objective of an investigation will be to determine whether there is enough evidence to substantiate or refute the matters reported;
- an employee(s) who is the subject of a disclosure will be informed about the subject matter of the disclosure, treated in accordance with applicable employment laws and principles of natural justice and procedural fairness and advised of the outcome in due course.

The Eligible Recipient of a disclosure should exercise good judgement when seeking legal advice and using external resources for an investigation. If the required resources are outside the Eligible Recipient's financial delegation, approval can be sort from a senior officer whilst protecting the Whistleblower in accordance with the Act.

The investigation procedure is set out in more detail below.

*Note: If the Whistleblower Protection Officer is subject of the disclosure or consent is not provided to inform the Whistleblower Protection Officer, then the investigation will be conducted by another Eligible Recipient, and the same principles apply.*

### **STAGE 1: Initial Assessment**

Upon receipt of a disclosure, the Whistleblower Protection Officer will assess the disclosure to determine:

- whether the disclosure falls within the definition of a Protected Disclosure; and
- if so, whether a formal investigation is required.

(This may include seeking legal advice).

*Note: If the disclosure concerns Monash University the recipient will refer the disclosure to the Monash University Whistleblower Protection Officer after receiving consent from the Whistleblower (refer to the Monash University Whistleblower Policy). If consent is not given independent legal advice should be sort from the Office of General Council at MU.*

As part of the initial assessment, the Whistleblower Protection Officer will assess the risk of detriment to the Whistleblower or any other person in relation to the disclosure. The discloser may be contacted to get follow up information.

The Whistleblower Protection Officer will ensure appropriate measures are in place to protect the Whistleblower during the investigation process, which consider the level of assessed risk.

There are some circumstances in which a Whistleblower disclosure may have to be reported to ASIC or the Australian Federal Police; or to a legal practitioner for the purpose of obtaining legal advice regarding the whistleblower disclosure. In these circumstances, the Whistleblower Protection Officer will advise the Whistleblower of such obligations.

Under the Corporations Act, 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.

### **STAGE 2: Formal Investigation**

If further investigation is appropriate, the Whistleblower Protection Officer will:

- confirm their independence;
- determine the nature and scope of the investigation;
- consider whether any technical, financial or legal advice may be required to support the investigation; and
- assess the appropriate timeframe to conduct the investigation.

The investigation will be conducted independently of the business unit or persons to which the allegations relate. However, if it is appropriate, the subject of the allegations may be contacted to respond to the allegations.

If necessary, the Whistleblower may be contacted to obtain further information regarding the disclosure. A Whistleblower may refuse to answer questions if it is felt this could reveal their identity.

Due to the nature of the types of disclosure covered by the whistleblower provisions of the Corporations Act, the matter may be referred to an external body for investigation (e.g. an auditor to conduct a forensic analysis of financial records). The Whistleblower Protection Officer must seek approval from the whistleblower to provide any external investigator with their name and contact details. This external investigator will only contact the whistleblower if they have provided consent.

It is the Whistleblower Protections Officer's responsibility to ensure that the investigation is conducted in a timely manner.

### **STAGE 3: Report on outcomes**

Once the investigation has been completed, the Whistleblower Protection Officer will ensure a report is provided that:

- includes a summary of the allegations and the evidence.
- the final determination, being that any allegation was:
  - substantiated;
  - partially substantiated;
  - unable to be substantiated; or disproven.

### SECTION 3: Reporting and Communication

*Note: If the Whistleblower Protection Officer is subject of the disclosure or consent is not provided to inform the Whistleblower Protection Officer, then the investigation will be conducted by another Eligible Recipient, and the same principles apply.*

<b>3.1</b>	<p><b>Reporting responsibilities of Eligible Recipient</b></p> <p>The Whistleblower Protections Officer has the responsibility to report the receipt of a disclosure; if on reasonable grounds the degree of confidence is there is no substance to the complaint; or there is substance to the complaint and it will be investigated; and the findings of the investigation report to the Board and CEO, as appropriate to the disclosure:</p> <ul style="list-style-type: none"><li>• The Whistleblower Disclosure is alleged against a staff member, the CEO.</li><li>• Where the Whistleblower Disclosure is alleged against the CEO, the Chair of the Board.</li><li>• Where the Whistleblower Disclosure is alleged against a director, the Chair of the Board, or, where the Chair of the Board is implicated, the Vice Chancellor.</li></ul> <p>The Whistleblower Protections Officer must not disclose the name of the Whistleblower to the above individuals unless permitted by law.</p>
<b>3.2</b>	<p><b>Communication with Whistleblower</b></p> <p>All communications with a Whistleblower should be undertaken by the Whistleblower Protection Officer to ensure that the Whistleblower remains anonymous and to safeguard the independence and integrity of an investigation.</p> <p>The Whistleblower Protection Officer will contact the Whistleblower to acknowledge receipt of the disclosure and to establish a process, including expected timeframes, for reporting to the Whistleblower on the progress of dealing with the disclosure.</p> <p>All relevant information regarding an investigation will be provided to the Whistleblower Protection Officer investigator so that the Whistleblower Protection Officer can keep the Whistleblower apprised of the progress.</p> <p>Where it is determined that there is insufficient information to warrant a formal investigation, the Whistleblower Protection Officer will inform the Whistleblower as soon as practicable.</p> <p>Upon determination of the final outcome of an investigation, the Whistleblower will be contacted by the Whistleblower Protection Officer and provided with appropriate details regarding the outcome.</p>

## SECTION 4: Record Keeping

### 4.1

#### **Record Keeping**

The College will ensure the whistleblowing process is adequately evidenced by appropriate records and those records are securely maintained.

At a minimum, the following types of records shall be maintained:

- the Whistleblower Disclosure;
- the investigation report and related evidence, communications and records
- communications with the Whistleblower and any other stakeholders involved in the process
- internal/external reporting on the whistleblower matter.

Due to the sensitive nature of whistleblower matters, the records above must be kept with restricted access. The storage location of records should be informed by general principles of legal professional privilege, confidentiality and security.

All records relating to the whistleblowing process will be retained for a minimum of 7 years.

The Whistleblower Protection Officer must ensure there is a clear process in place for secure record keeping and that all relevant parties involved in the process are properly informed of this process.

## Records Management

The Whistleblower Policy is a Level 1 Governance Policy. The latest approved version of the Whistleblower Policy will be stored on the Policy Bank on the Monash College intranet and published on its internet site.

The policy owner will maintain a record of issues relevant to the Whistleblower Policy for consideration at the time of review.

## Legislation and Standards

*Part 9.4AAA of the Corporations Act 2001*

<b>Reference Policies and Supporting Documentation</b>	Whistleblower Policy Fraud and Corruption Control Policy Fraud and Corruption Control Procedure <a href="#">Staff Personal and Professional Code of Conduct</a>
<b>Responsibility for Implementation</b>	Chief Executive Officer Monash College Senior Leadership team Director Governance
<b>Status</b>	Revised
<b>Key Stakeholders</b>	Monash College Board of Directors Audit & Risk Committee MCPL Senior Leadership Team.
<b>Approval Body</b>	Monash College Board of Directors Meeting number: 3/2022 Meeting date: 30 June 2022 Agenda item: x.x
<b>Date Effective</b>	19/08/2020
<b>Next Review Date</b>	30/06/2024
<b>Owner Job Title Division</b>	Director, Governance Governance
<b>Procedure Author</b>	A/Company Secretary
<b>Contact</b>	Director, Governance and Company Secretary

## Change History

Version number	Approval date	Approved by	Brief outline of changes
1.0	15 August 2018	Monash College Board of Directors	New
2.0	20 June 2019	Monash College Board of Directors	Changes to legislation
3.0	18 August 2020	Monash College Board of Directors	Changes to Victorian legislation affecting MU.
3.1	30 June 2022	Monash College Board of Directors	Update to the Whistleblower Officer.