

Monash College Whistleblower FAQs

What is a whistleblower disclosure?

A whistleblower disclosure is a disclosure by a person (the eligible whistleblower) of a certain type of conduct by another person(s). The law prescribes a formal process for making whistleblower disclosures. By following the requirements of the formal process, the whistleblower obtains certain legal protections.

In broad terms, whistleblower disclosures are about serious matters such as fraud, corruption, misconduct, criminal conduct and improper conduct.

Whistleblower disclosures are generally not about personal or professional grievances of College staff. Some examples of personal work-related grievances are:

- an interpersonal conflict between the discloser or another employee;
- a decision about the engagement, terms and conditions of employment, transfer or promotion of the discloser;
- a decision to suspend or terminate the engagement of the discloser, or otherwise discipline the discloser;
- a decision that does not involve a breach of workplace laws.

Disclosure of a personal work-related grievance will be protected by the Act if:

- it is a mixed report, including information about a disclosable matter as well as about a personal work-related grievance;
- the discloser seeks legal advice or representation about the operation of the whistleblower protections under the Act.

Individuals with personal work-related grievances that are not covered by this policy are encouraged to raise their grievances with their manager or People and Culture.

Academic and Non-Academic complaints and appeals 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](#)).

Who is responsible for whistleblower disclosures at the College?

The College has appointed a Whistleblower Protection Officer to be responsible for:

- receiving and handling whistleblower disclosures on behalf the College;
- dealing with queries about whistleblower disclosures in relation to the College;
- ensuring that the College carries out its responsibilities under the Commonwealth a law; and
- ensuring that whistleblower disclosures made to the College are appropriately investigated.

The Monash College Whistleblower Protection Officer is the Director Governance. The Whistleblower Officer may be contacted by email at amanda.semertzian@monashcollege.edu.au.

What policies apply to whistleblower disclosures about the College?

The College has a Whistleblower Policy and a Whistleblower Procedure.

The Whistleblower Policy, Whistleblower Procedure and these FAQs do not detail all the requirements for making whistleblower disclosures under the Act. Persons considering making a whistleblower disclosure should ensure that they do so in accordance with the requirements of the applicable law so as to attract the protections afforded by that law.

Monash University (MU) is a public body under the Independent Broad-based Anti-Corruption Commission Act 2011, and therefore complies with the Whistleblower requirements Victorian Government Public Interest Disclosures Act 2012, as well as Commonwealth law. If the matter disclosed concerns MU reference should be made to the MU Whistleblower Policy and Procedure as Victorian law is not considered in the College's Whistleblower Policy, Whistleblower Procedure and these FAQs.

What laws apply to whistleblower disclosures?

The Commonwealth laws are mainly contained in Part 9.4AAA of the *Corporations Act 2001 (Cth)* (**the Act**).

The Monash College Whistleblower Policy, Whistleblower Procedure and these FAQs provide some information about making whistleblower disclosures, but do not contain all of the detail of the requirements and processes for making disclosures under the Act. Persons considering making a whistleblower disclosure should ensure that they do so in accordance with the applicable law so as to attract the protections afforded by the law.

Who can make a whistleblower disclosure?

The following persons are capable of being 'eligible whistleblowers':

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

An 'eligible whistleblower' also includes an individual who previously held any of the above positions or functions or who is a relative of the individuals set out above or a dependent of one of those individuals or of the spouse of such an individual.

What can a whistleblower disclosure be about?

A 'disclosable matter' qualifies for legal protection under the Act. Disclosures that aren't about a 'disclosable matter' will not be protected under the Act.

What information will be a Disclosable Matter?

A 'disclosable matter' is information that:

- a. concerns misconduct, or an improper state of affairs or circumstances in relation to the

College or a related body corporate (e.g. *Monash University*), or

- b. 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, or
- c. constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- d. represents a danger to the public or the financial system.

'Disclosable matters' do not necessarily involve a contravention of a law. For example, '*misconduct or an improper state of affairs or circumstances*' could involve conduct that, whilst not unlawful, indicates a systemic issue of concern that the relevant regulator should know about to properly perform its functions. It may also relate to business behaviour and practices that may cause consumer harm.

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.

Personal work-related and student grievances are not covered by the Act (see *What is a Whistleblower disclosure?*)

How do I make a whistleblower disclosure and to who?

For the protections under the Whistleblower Protection Scheme to apply, a disclosure must be made directly to an 'eligible recipient'.

Eligible recipients

Monash College encourages that disclosures be made to the College's Whistleblower Protection Officer, Director Governance, who is an 'eligible recipient'. Contact details are:
amanda.semertzian@monashcollege.edu.au.

If an 'eligible whistleblower' does not feel comfortable raising their disclosure with the College's Whistleblower Protection Officer, they could also raise it with any of the following:

- a. An auditor, or member of an audit team conducting an audit of the College or a related body corporate.
- b. A board member or a senior manager (for the College this is the COO).
- c. Australian Securities and Investment Commission (ASIC).
- d. A lawyer (to obtain advice or representation about the disclosure).
- e. Eligible recipients of Monash University, (refer to the [Monash University Whistleblower Policy](#)).

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

How to report

When submitting a Whistleblower Disclosure in writing or by email, please ensure the envelope or subject line is marked with 'Confidential – Whistleblower Disclosure' or advise the Whistleblower Protection Officer/eligible recipient this is the purpose if reporting verbally.

Suggested information to include in your report is:

- The person(s) suspected of any Improper Conduct or involvement in Improper Conduct.
- The nature of the suspected Improper Conduct (e.g. fraud, negligence or other Improper Conduct).
- Any evidence of the suspected Improper Conduct (regardless of format) and the location of any other evidence.
- The dates of the suspected Improper Conduct.
- Details of any witnesses.
- Any concerns of reprisals to you by making this report.
- Any other details you consider relevant.

Can I make an anonymous whistleblower disclosure?

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). If you don't share your identity, Monash College will assess your disclosure in the same way as if you had revealed your identity. However, there may be some practical limitations in conducting the investigation if you don't share your identity.

What legal protections apply if I make a whistleblower disclosure?

An 'eligible whistleblower's' disclosure qualifies for protection from the time it is made to an 'eligible recipient', regardless of whether the 'eligible whistleblower' or the recipient recognises that the disclosure qualifies for protection at that time.

'Eligible whistleblowers' are protected from civil, criminal or administrative liability (including disciplinary action) for making reports of 'disclosable matters'. No contractual right (including under an employment contract) can be exercised against an 'eligible whistleblower' to stop them reporting a 'disclosable matter'.

If you're a Protected Whistleblower and the disclosure is to an 'eligible recipient', the information you disclose also can't be used against you in criminal proceedings or in proceedings for the imposition of a penalty (except if the proceedings are in respect of the falsity of the information).

'Eligible whistleblowers' may also be entitled to seek compensation and other remedies through the courts if Monash College fails to protect the whistleblower from detriment and loss or damage is suffered.

If I make a whistleblower disclosure, how will it be investigated?

Whistleblower disclosures will generally be assessed and (if appropriate) investigated by the eligible person that receives the disclosure.

If a whistleblower disclosure is made to the College, the College will usually be responsible 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 College's behalf.

The College is subject to confidentiality obligations in investigating any whistleblower disclosures made to it. (See *If I make a whistleblower disclosure, will my disclosure be kept confidential?*).

If Monash College determines that the information disclosed doesn't amount to a 'disclosable matter', the 'eligible whistleblower' will be, if practicable, informed of that decision. In some instances, reports may not be able to be responded to, for example, because they are anonymous reports.

If an investigation is conducted, it will:

- follow a fair process;
- be conducted in as timely a manner as the circumstances allow; and
- be independent of the person(s) about whom an allegation has been made.

Provided there are no restrictions or other reasonable bases for doing so, people against whom an allegation has been made will be informed of the allegation and will have an opportunity to respond to any allegation. That is, Monash College will take steps to ensure fair treatment of any person who is the subject of the 'disclosable matter' report as well as the 'eligible whistleblower'.

Investigations will be conducted promptly and fairly with due regard for the nature of the allegation and the rights of the people involved in the investigation. Monash College recognises the importance of balancing the rights of the 'eligible whistleblower' and the rights of people against whom a report is made in ensuring fairness.

If a whistleblower disclosure is made to an external eligible recipient, the College may not be aware that the disclosure is made and may not be involved in any investigation.

Monash College will ensure that, provided the claim was not submitted anonymously, the 'eligible whistleblower' is kept informed of the outcomes of the investigation of their allegations. This will be subject to the considerations of privacy of those against whom allegations are made and considerations of confidentiality affecting Monash College.

If I make a whistleblower disclosure, will my disclosure be kept confidential?

Disclosures from 'eligible whistleblowers' will be treated confidentially and sensitively. Once a report is received, the 'eligible recipient' will make sure immediate steps are taken to protect the identity of the 'eligible whistleblower'. This will include redacting the name and position of the 'eligible whistleblower' from any written record of the report, and making sure appropriate document security is implemented.

It's illegal for a person to identify 'eligible whistleblowers' or disclose information that is likely to lead to their identification. If you are an 'eligible whistleblower', your identity and position (or any other information which would be likely to identify you) will only be shared if:

- you consent to the information being shared;

- the disclosure is to a recipient permitted by law such as the Commissioner of Taxation or Australian Federal Police; or
- the disclosure is otherwise allowed or required by law (for example, disclosure by the eligible recipient to a lawyer of Monash College to receive legal advice relating to the law on whistleblowing).

In addition, for information likely to identify an 'eligible whistleblower', this may be shared if it is reasonably necessary for the purposes of an investigation. In this circumstance all reasonable steps will be taken to reduce the risk that you will be identified.

What will the College do to support me if I make a whistleblower disclosure?

The College will provide appropriate welfare support and assistance to eligible whistleblowers, those co-operating with investigations and those who are the subject of a whistleblower disclosure. This includes protecting eligible whistleblowers from reprisal action and offering broader support to whistleblowers.

If you are an eligible whistleblower and you believe that you have been victimised, you should immediately contact the Whistleblower Protection Officer or an eligible recipient. (*See How do I make a Whistleblower disclosure and to who?*). If the College becomes aware of any concern regarding perceived, threatened or actual reprisal action, irrespective of who the disclosure was made to, the College will seek to provide appropriate protection and support to the whistleblower.

The College recognises that making a whistleblower disclosure can be stressful. College staff are entitled to free and confidential support through the College's Employee Assistance Program (**EAP**).

How will the College support me if a disclosure is made about me?

The College will endeavour to provide appropriate support to persons who are the subject of whistleblower disclosures. The College considers that while a whistleblower disclosure is being investigated, the information about the person who is the subject of the disclosure is only an allegation.

The capacity of the College to support persons who are the subject of a whistleblower disclosure, and the appropriateness of providing that support, will depend on the circumstances, including the manner in which the whistleblower disclosure was made, the College's involvement in investigating the conduct reported and the nature of the conduct reported.

Where the College is conducting a whistleblower investigation and it is lawful and appropriate in the circumstances, the College will inform a person who is the subject of the whistleblower disclosure of any allegations against them and will provide them with an opportunity to respond.

The College recognises that being the subject of a whistleblower disclosure can be stressful. College staff are entitled to free and confidential support through the College's Employee Assistance Program (**EAP**).

What can I do if I make a disclosure and am not satisfied with its progress?

If you have made a whistleblower disclosure and you are not satisfied with the progress of your disclosure, then you may in certain limited circumstances be able to make a further disclosure of the same information to other persons (including to members of Parliament and journalists).

The circumstances in which a further disclosure can be made, and the process for doing so, have detailed requirements. Whistleblowers considering making a further disclosure should ensure that they understand and follow the applicable requirements before making a further disclosure, because:

- failure to strictly comply with the requirements for a further disclosure under the applicable law may result in loss of legal protection;
- there are requirements under the Act to inform the entity to which the original disclosure is made that it is proposed to make a further disclosure; and
- the Act requires a specified period to have elapsed since the original disclosure before a further disclosure can be made.

The College recommends that persons considering making a further disclosure seek legal advice before doing so.

What can I do if reprisal action is taken or threatened against me?

It's illegal for a person to engage in conduct that causes (or threatens) detrimental treatment to an 'eligible whistleblower' in the belief or suspicion that a person has made, may make, proposes to make or could make a report of a 'disclosable matter' and where that belief or suspicion is a reason for the conduct.

Under the Act, detriment includes any of the following:

- a. dismissal of an employee;
- b. injury of an employee in his or her employment;
- c. alteration of an employee's position or duties to his or her disadvantage;
- d. discrimination between an employee and other employees of the same employer;
- e. harassment or intimidation of a person;
- f. harm or injury to a person, including psychological harm;
- g. damage to a person's property;
- h. damage to a person's reputation;
- i. damage to a person's business or financial position; and
- j. any other damage to a person.

Monash College is committed to protecting 'eligible whistleblowers' from detriment and will take practical action, as necessary, to protect 'eligible whistleblowers' from the risk of detriment and intervene if detriment has already occurred.

Disciplinary action may be taken against any person who causes or threatens to cause any detriment against an 'eligible whistleblower'.

If an 'eligible whistleblower' believes that they have been subject to detrimental treatment, they should inform the Whistleblower Protection Officer/eligible recipient immediately.