

# Whistleblower Policy

## 1. Objective

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Melbourne Business School (**MBS**) is committed to fostering a culture of strong corporate governance and ethical behaviour, building an environment in which people feel free to raise legitimate issues. MBS is also committed to protecting persons making disclosures under this policy and other employees affected by the disclosure.

Our seven MBS Guiding Principles support a shared set of expected behaviours that support our culture in the organisation. They include acting with integrity, being honest, trustworthy and fair, and not tolerating unlawful or unethical conduct.

A Whistleblower is someone with inside knowledge of the organisation who reports misconduct or dishonest or illegal activity that may have occurred within the organisation. Whistleblower protections are the protections provided to Whistleblowers to enable them to come forward to report misconduct without fear of retribution or personal detriment. MBS recognises that a genuine commitment to detecting and preventing illegal and other improper conduct must include a mechanism whereby employees and others can report their concerns without fear of reprisal or intimidation.

The purpose of this Whistleblower policy (**Policy**) is to:

- encourage those covered by this Policy to report matters that may:
  - cause MBS financial or non-financial loss
  - constitute a serious breach of MBS's policies or amount to unlawful or unethical conduct
  - cause damage to MBS in any other way
- demonstrate MBS's commitment to a fair and ethical workplace
- outline the procedures by which a matter may be disclosed and by which a reported matter will be investigated
- protect parties, including their anonymity, who, in good faith, report conduct which they reasonably believe to be illegal, unethical or otherwise improper, on a confidential basis, without fear of reprisal by any person internal or external to MBS

- assist in ensuring that instances of illegal, unethical or otherwise improper conduct are identified and dealt with appropriately.

## 2. Scope

Applies To									
Faculty	x	Staff	x	Student employees	x	Students	x	Visitors	
Associates	x	Adjuncts	x	Volunteers	x	Contractors	x	Board	x

Matters that should be reported for the purposes of this Policy includes any Reportable Conduct that an Eligible Person reasonably believes has occurred or is occurring.

In addition to this Policy, MBS's usual Employee Assistance Program (**EAP**) services will be available to all employees making disclosures and other employees affected by the disclosure, should they require that support.

### 2.1. Reportable Conduct

'**Reportable Conduct**' is any conduct which an Eligible Person has reasonable grounds to suspect constitutes misconduct, or an improper state of affairs or circumstances, in relation to MBS.

Reportable Conduct includes, but is not limited to:

- dishonest or unethical behaviour;
- fraudulent activity;
- unlawful, corrupt, or irregular activities or practices or use of MBS's funds;
- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence and criminal damage against property;
- failure to comply with, or breach of, legal or regulatory requirements;
- behaviour that is oppressive, discriminatory or grossly negligent;
- any unsafe work practice;
- a substantial risk to public health, public safety or the environment;
- conduct or proposed conduct suspected to be in breach of the *Competition and Consumer Act 2010* (Cth), *Corporations Act 2001* (Cth) or the *Australian Securities and Investments Commission Act 2001* (Cth);

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- any other conduct which may cause loss to MBS or which is otherwise detrimental to MBS's interests;
  - detrimental conduct (even if only threatened or implied) against a person who has made a report under this Policy or is believed or suspected to have made, or be planning to make, a report under this Policy.

Reportable Conduct excludes personal work-related grievances, as described in 2.3.

## 2.2. Eligible Persons

A person is an '**Eligible Person**' and can therefore make a disclosure under this policy if they are, or have been, any of the following:

- an officer, director or employee of MBS;
- an individual associated with MBS (including volunteers, agents and interns);
- a student of MBS;
- a person who works for MBS under a contract, including a consultant, contractor, subcontractor, employee of a contractor or subcontractor or employee of a labour hire company who has been assigned to work at MBS;
- an organisation (and their principals and employees) with a relationship or association with MBS as an agent, advisor, customer, supplier or donor;
- an individual, or the employee of an individual who supplies goods or services to MBS (whether paid or unpaid);
- an individual who is a relative, dependant or spouse of the individuals set out above.

## 2.3. Matters not covered under this Policy

### ***Personal work-related grievance***

A personal work-related grievance is typically a report of behaviour that has implications for an individual personally and does not have significant or broader implications for MBS. Section 1317AADA (2) of the *Corporations Act 2001* (Cth) provides further guidance as to the definition of a personal work-related grievance.

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A disclosure does not qualify for protection under this Policy to the extent that the information disclosed concerns a personal work-related grievance. A personal work-related grievance may still qualify for protection if it relates to Reportable Conduct and a personal work-related grievance (i.e., it is a mixed disclosure).

Examples of personal work-related grievances include:

- interpersonal conflicts between employees
- decisions relating to the engagement, transfer or promotion of employees
- decisions relating to the terms and conditions of an employee
- decisions to suspend or terminate the employment of an employee, or otherwise to discipline an employee.

Personal work-related grievances should be dealt with in accordance with relevant HR policies.

### ***Other complaint mechanisms***

This Policy does not replace other reporting frameworks, such as those for dispute resolution, discrimination, victimisation or matters relating to workplace bullying or harassment. This Policy is separate and distinct from:

- grievance procedures for employees, which is the means by which employees may raise any matters they may have in relation to their work or their work environment, other persons, or decisions affecting their employment
- standard complaint mechanisms for clients or volunteers
- any exercising of rights under the terms of their contract by contractors and suppliers.

## **3. Disclosure**

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For the protections under this Policy to apply, a report about Reportable Conduct must be made directly to an '**Eligible Recipient**', as detailed in 3.1 to 3.5. This can be done by:

- submitting a Disclosure Form online: <https://mbs.edu/about-us/whistleblower-policy/online-report>;
- delivering a communication to the School's reception, addressed to the eligible recipient;

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- telephoning the School (+61 3 9349 8400) and requesting to speak with an eligible recipient; or
  - for disclosures made by employees, directly emailing eligible recipients through their MBS email address.

A report about Reportable Conduct qualifies for protection under this Policy from the time it is made to an Eligible Recipient, regardless of whether the person making the report or the Eligible Recipient recognises that the disclosure qualifies for protection at that time.

Disclosures made by email may be accessible to people who have access to the mailbox of the intended recipient of the email. A person making a disclosure by email, consents to their email potentially being accessed in this way, noting that any employee, officer or contractor who becomes aware of a disclosure must comply with all aspects of this policy including the confidentiality requirements.

Disclosures made using the online disclosure form may be accessed by an authorised member of the School's IT department who has been briefed on all aspects of this policy including the confidentiality requirements.

### **3.1. Eligible Recipients within MBS**

MBS encourages that disclosures primarily be made to **Whistleblower Governance Officers**, as outlined below:

- Dean
- Deputy Dean, Academic
- Chief People and Culture Officer
- Chief Financial Officer
- Chief Operating Officer
- Commercial Manager

While MBS encourages disclosures to a Whistleblower Governance Officer, if it relates to the Dean or a Director of MBS, a disclosure should be raised directly with the Chair of the MBS Board, the Chair of the Finance, Risk & Audit Committee (FRAC) or the Chair of the Remuneration & Nominations Committee.

If a person making a report about a disclosable matter does not feel comfortable raising their disclosure with a Whistleblower Governance Officer, the Chair of the MBS Board, the Chair of FRAC or the Chair of the Remuneration & Nominations Committee, they can also raise it with any of the following:

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- An officer or senior manager of MBS, this includes directors and members of the Senior Leadership Team.
  - The external auditors of MBS, being the Victorian Auditor-General's Office (VAGO)

### 3.2. Disclosures to external regulatory bodies

While MBS encourages disclosures to be made internally, a person making a disclosure under this Policy may choose to make a disclosure outside of MBS with any of the following bodies, as relevant:

- Australian Securities & Investments Commission (ASIC)
- Australian Prudential Regulation Authority (APRA)
- A Commonwealth authority prescribed in the Corporations Regulations.

### 3.3. Disclosure to a legal practitioner

A report of Reportable Conduct will also be protected if it is to a qualified legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the Whistleblower provisions in the *Corporations Act 2001* (Cth).

### 3.4. Public Interest Disclosures

'**Public Interest Disclosures**' also qualify for protection. These will only be protected if the person making the disclosure complies with the following requirements:

- the person must have first made the disclosure to ASIC, APRA or a prescribed Commonwealth authority; and
- at least 90 days has passed since the disclosure was made; and
- the person does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the disclosure relates; and
- the person has reasonable grounds to believe that making a further disclosure of the information would be in the public interest; and
- after 90 days have passed, the person must give the body to which the disclosure was made a written notification that:
  - includes sufficient information to identify the disclosure; and

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- states that the person intends to make a public interest disclosure; and
  - the public interest disclosure is made to:
    - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
    - a journalist; and
  - the extent of the information disclosed in the public interest disclosure is no greater than to inform the recipient of the reportable conduct.

### 3.5. Emergency Disclosures

'Emergency Disclosures' also qualify for protection. These will only be protected if the person complies with the following requirements:

- the person must have first made the disclosure to ASIC, APRA or a prescribed Commonwealth authority; and
- the person has reasonable grounds to believe that information concerns a substantial and imminent danger to the health or safety of one or more persons or the natural environment; and
- the person gave notice to the body to which the previous disclosure was made that:
  - states that they intend to make an emergency disclosure
  - includes sufficient information to identify the qualifying disclosure; and
- the public interest disclosure is made to:
  - a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or
  - a journalist; and
- the extent of the information disclosed in the emergency disclosure is no greater than to inform the recipient of substantial and imminent danger.

### 3.6. Anonymous disclosures

A person can choose to make a disclosure anonymously and to remain anonymous over the course of the investigation and after the investigation is finalised – they may also decide not to answer questions that they feel could reveal their identity at any time, including during follow-up conversations. Regardless, anonymous disclosures are still capable of being protected under this Policy.

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Disclosing anonymously may hinder MBS's ability to fully investigate a reported matter. For this reason, anonymous persons making disclosures are encouraged to maintain ongoing two-way communication (such as via an anonymous email address) to allow follow-up questions or provide feedback.

## 4. Protections

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Important protections relating to confidentiality and detriment apply to persons who make disclosures in accordance with the Policy. The protections apply to all disclosures validly made under Part 3.

MBS takes contraventions of these protections very seriously and may take disciplinary action up to and including dismissal against anyone for doing so. If a person making a disclosure has any particular concerns regarding this, they can raise them with a Whistleblower Governance Officer or other eligible recipient at MBS.

Civil and criminal sanctions also apply for breaches of these protections.

It is important to note that a Whistleblower may lose these protections if:

- they do not have reasonable grounds for making a disclosure, or;
- they disclose information to someone who is not an Eligible Recipient.

### 4.1. Confidentiality

Unless the person making the disclosure consents, it is against the law for another person to disclose that person's identity or any information that may lead to their identification (subject to the exceptions set out below).

If a person making a disclosure does not consent to their identity being disclosed, it will still be lawful to disclose their identity to:

- ASIC, APRA, the AFP or the Commissioner of Taxation
- a legal practitioner for the purposes of obtaining legal advice or legal representation about the disclosure
- a body prescribed by the Corporations Regulations.

It is lawful to disclose information without the person's consent if this is reasonably necessary for the purpose of investigating the disclosure, provided the information does not include the person's identity

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and the party takes all reasonable steps to reduce the risk that the person will be identified as a result of the disclosure.

### ***Breach***

If there is a breach of confidentiality, an affected person can lodge a complaint with a Whistleblower Governance Officer, other Eligible Recipient or a regulator such as ASIC or APRA for investigation.

### ***Practical considerations***

If a disclosure qualifies for protection under this Policy, it is likely that the person making the disclosure will be asked to provide consent to the disclosure of their identity or information that is likely to lead to their identification. This is to facilitate any investigation and/or resolution of the matter. If consent is withheld, it may not be possible to adequately investigate and respond (if at all) to the disclosure.

In practice, it is important to recognise that a person's identity may still be determined if:

- the person has previously mentioned to other people that they are considering making a disclosure,
- the person is one of a very small number of people with access to the information
- the disclosure related to information that the person has previously been told privately and in confidence.

## **4.2. Protection from liability**

A person making a disclosure under this Policy is protected from any civil liability, criminal liability and/or administrative liability (including disciplinary action) for making their disclosure, and no contractual or other remedy may be enforced or exercised against the person on the basis of making that disclosure. Further, a contract to which the person is party may not be terminated on the basis that the disclosure constitutes a breach of contract.

However, the protections do not grant immunity for any misconduct a person has engaged in that is revealed in their disclosure.

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### 4.3. Detriment and threats of detriment are prohibited

The protections make it unlawful for a person to engage in conduct against another person that causes or will cause a detriment:

- in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a disclosure, and;
- if the belief or suspicion held by that person is the reason or part of the reason for their conduct.

Threats of detriment will also be unlawful if the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out.

Threats may be express or implied, conditional or unconditional. A person making a disclosure under this Policy (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

The meaning of 'detriment' is very broad and includes:

- dismissal or termination of services or supply;
- demotion;
- forced change of role or responsibilities;
- discrimination, victimisation or harassment;
- harm or injury to a person, including psychological harm;
- damage to a person's property, reputation or financial position;
- current or future bias;
- threats of any of the above.

It may be necessary during the course of an investigation to take reasonable administrative action to protect a person making a disclosure from detriment (e.g., changing the person's reporting line if the disclosure relates to a manager). Such conduct will not be detrimental conduct. A disclosure will also not prohibit MBS from managing (in the ordinary way) any separate performance issues that may affect the work of a person who has made a disclosure under this Policy.

A person making a disclosure under this Policy may be subject to disciplinary action if, in the course of investigating their disclosure, MBS determines that the person was complicit or has otherwise acted in an improper way.

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## **Breach**

Any person who carries out or threatens reprisals will be subject to disciplinary action (including potential termination of employment) and in some circumstances, may also be subject to criminal liability.

If a person making a disclosure under this Policy believes they have suffered detriment, they can lodge a complaint with a Whistleblower Governance Officer or a regulator such as ASIC or APRA.

### **4.4. Court orders**

Courts are given broad scope to make orders remedying a detriment or threatened detriment. These include injunctions, compensation orders (including against individual employees and their employer), reinstatement, exemplary damages and the making of apologies. Civil and criminal sanctions can also apply to breaches of this Policy. MBS encourages persons making disclosures under this Policy to seek independent legal advice in regard to seeking compensation or other remedies.

### **4.5. Protections against adverse action**

Disclosures may also amount to the exercise of a workplace right by an employee or contractor. MBS and its employees are prohibited under the *Fair Work Act 2009* (Cth) from taking adverse action against employees or contractors because they have exercised, or propose to exercise a workplace right.

### **4.6. Vexatious and false disclosures**

A person making a disclosure under this Policy will only be protected if they have objectively reasonable grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of the Policy.

The protections under this Policy will not extend to vexatious or deliberately false complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for MBS to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

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## 5. Investigations

### 5.1. Investigation procedure

MBS will acknowledge receipt of a disclosure within a reasonable period, assuming the person making the disclosure can be contacted (including through anonymous channels). MBS will assess disclosures to determine whether:

- they fall within the scope of this Policy, and;
- an investigation is required – and if so, how that investigation should be carried out.

Whistleblower Governance Officers and other eligible recipients within MBS have unfettered access to independent advisors as required for the purpose of effectively carrying out their duties under this Policy.

Generally, if an investigation is required, MBS will determine:

- the nature and scope of the investigation;
- who should lead the investigation – including whether an external investigation is appropriate
- the nature of any technical, financial or legal advice that may be required to support the investigation;
- the anticipated timeframe for the investigation. Each investigation will be different, which will impact the applicable timeframe. However, MBS's intent is to complete an investigation as soon as practicable.

Where practicable, MBS will keep the person making the disclosure informed of the steps taken or to be taken (or if no action is to be taken, the reason why), and provide appropriate updates, including regarding the commencement and completion of an investigation. The extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors MBS considers relevant in the particular situation.

MBS may not be able to undertake an investigation, or provide information about the process, etc., if it is not able to contact the person making the disclosure, for example, if a disclosure is made anonymously and the person has not provided a means of contact.

MBS may, in certain limited cases, refer the matter for investigation to a more appropriate body such as the Australian Federal Police or the Australian Tax Office.

While a disclosure of Reportable Conduct may vary, all investigations will:

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- follow a fair and objective process;
  - determine whether there is enough evidence to substantiate the matters reported;
  - be independent of the person(s) concerned with the allegations.

## **5.2. Appointment of a Whistleblower Protection Officer**

Depending on the circumstances of the disclosure, a Whistleblower Protection Officer may be appointed by a Whistleblower Governance Officer or other eligible recipient at MBS as a further point of contact and comfort for persons making disclosures under this Policy.

The Whistleblower Protection Officer will be a senior employee at MBS.

When appointed, the Whistleblower Protection Officer will be responsible for keeping the person who has made a disclosure informed of the progress and outcomes of the investigation (if possible, and subject to applicable confidentiality requirements).

## **5.3. Documenting and reporting the findings of an investigation**

Where appropriate, MBS will report findings of an investigation to the Finance, Risk & Audit Committee of the MBSL Board. The method for documenting and reporting the findings of an investigation will depend on the nature of the disclosure – but may include a summary report of the findings. Any reporting of findings will have regard to applicable confidentiality requirements.

## **6. Other Matters**

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This Policy can be found on the MBS website.

This Policy does not impose any contractual duties, implied or otherwise, on MBS. This Policy may be varied by MBS from time to time, including as part of any review.

## **7. References (Related Policies, Legislation and Documents)**

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- Appropriate Workplace Behaviour Policy
  - Grievance Procedure
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- Privacy Policy
- Corporations Act 2001 (Cth)
- Competition and Consumer Act 2010 (Cth)
- Australian Securities and Investments Commission Act 2001 (Cth)

## 8. General Information

Responsible Policy owner  
Next Review (Every 3 Years)

Commercial Manager  
15/05/2027

Version History				
Version	Approved By	Approval Date	Effective Date	Sections Modified
1	Deputy Dean	11/12/2019	28/01/2020	New Policy
2			20/10/2020	
3			01/04/2021	Updated Governance Officers
4	Dean	18/03/2024	01/01/2024	Updated in line with the University of Melbourne's Whistleblower Policy.
5	Dean	15/05/2024	15/05/2024	Revisions to the disclosure process.
Category				
<input type="checkbox"/> Employment <input type="checkbox"/> Engagement <input type="checkbox"/> Facilities, IT and Finance <input checked="" type="checkbox"/> Governance, Management and Health & Safety <input type="checkbox"/> Research and Research Training <input type="checkbox"/> Student/Learner Management and Support <input type="checkbox"/> Teaching and Learning <input type="checkbox"/> Executive Education				