

## Checklist for Respondents to Whistleblower Complaints at Monash University

If a complaint or “disclosure” is made against you, the complaint and its management by Monash University will be covered by special rules under the Whistleblower Protection Act.

### ***Is the complaint against me a “protected disclosure” and covered by the Whistleblower Protection Act?***

You should be told by a Whistleblower Protection Officer if the complaint against you is covered by the Whistleblower Protection Act.

The complaint will be covered by the Act and called a “protected disclosure” if it meets all of the following elements:

- 1. The person making the disclosure is a natural person (not a company or an organisation)**
- 2. The complaint has been made against you as a Monash University employee or member of Monash University Council**
- 3. EITHER the disclosure is about alleged past, current or proposed “improper conduct”**  
Improper conduct is conduct that is
  - Corrupt or,<sup>1</sup>
  - A substantial mismanagement of public resources<sup>2</sup>, or
  - A substantial risk to public health and safety or to the environment<sup>3</sup>,

---

<sup>1</sup> Corrupt conduct is defined by section 3 of the Act to mean:

- conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer’s or public body’s functions
- conduct of a public officer that amounts to the performance of their functions dishonestly or with inappropriate partiality
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust
- conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or
- a conspiracy or attempt to engage in any of the above conduct.

#### **Examples of corrupt conduct**

A Monash employee receives a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty, or favours unmeritorious applications for jobs or permits by friends and relatives.

<sup>2</sup> Substantial mismanagement means that it must be of a significant or considerable degree. Mismanagement is to manage badly or wrongly and is different to misuse which is wrong or improper use.

<sup>3</sup> Substantial means that the conduct must put public health, safety or the environment at considerable or great risk.

AND

- The conduct must also be serious enough that, if proven, would constitute a criminal offence or reasonable grounds for dismissal.

**OR the disclosure is about past, current or proposed detrimental action taken against a whistleblower**

Detrimental action is action taken in reprisal for making a disclosure. It includes action causing injury, loss or damage, intimidation or harassment, and discrimination, disadvantage or adverse treatment in relation to your employment, career, profession, trade or business, including the taking of disciplinary action.

**4. The person making the disclosure has reasonable grounds for believing that the alleged conduct has occurred**

The complainant must have more than a suspicion, and must have some supporting facts and circumstances. The belief should be probable based on the supporting facts and circumstances.

If you have answered 'Yes' to ALL of the above questions, then the complaint against you may be a protected disclosure and covered by the Whistleblower Protection Act. This will mean that the person who made the disclosure (or "whistleblower") is protected from reprisals because of making the disclosure. It also means that the disclosure must be handled by Monash in accordance with a special system of assessment, investigation and management.

***How will the disclosure be handled by Monash University?***

If a disclosure is covered by the Whistleblower Protection Act, then Monash University is required by law to handle the disclosure in a particular way. The steps are as follows.

1. The disclosure is made. The disclosure can be made orally (in person or on the telephone), or in writing, and it can be sent by fax, email or post, or delivered by hand. The disclosure may be made on an anonymous basis, and even if the complaint is not anonymous, you will probably not be told who has made a disclosure about conduct that you allegedly engaged in. There are strict rules in the Whistleblower Protection Act which keep the whistleblower's name confidential (see below). The person making the disclosure does not have to be a staff member of Monash University. The whistleblower could be a student, a contractor or any member of the public.
2. The disclosure is referred to the Protected Disclosure Coordinator or a Protected Disclosure Officer at Monash for assessment.

Monash has appointed certain staff as the Protected Disclosure Coordinator and Protected Disclosure Officers. These people are trained to receive, assess and manage the disclosure.
3. Within 45 days of the day the whistleblower made the disclosure, a decision will be made by the Protected Disclosure Coordinator or a Protected Disclosure Officer as to whether the disclosure is
  - € **a protected disclosure** (which means that the whistleblower will be protected from reprisals by the Whistleblowers Protection Act)and if so,

€ if it is a **public interest disclosure** (which means that the disclosure will be referred to the Ombudsman).

4. Monash University then has 14 days to notify the whistleblower of its decision and the grounds on which it was made. If the whistleblower disagrees with the decision, the whistleblower may provide more information to Monash University to support the allegations and Monash University will reassess its decision. Alternatively the whistleblower can appeal to the Ombudsman about the university's decision.
5. If the whistleblower's disclosure is found to be a protected disclosure, the whistleblower will be protected by the Whistleblower Protection Act against reprisals for making the disclosure and confidentiality must be maintained.
6. Within 14 days of making a decision as to whether the protected disclosure is a public interest disclosure, Monash University will notify the whistleblower of that decision (where possible) and refer to disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.
7. Within 14 days of a decision that the protected disclosure is NOT a public interest disclosure, Monash University will notify the whistleblower of that decision (where possible) and advise the whistleblower that he or she can refer the disclosure to the Ombudsman for a review of that decision and that this request must be made within 28 days. Even if the disclosure is not a public interest disclosure, the whistleblower is still protected from reprisals because of the disclosure.
8. If the Protected Disclosure Coordinator concludes that the disclosure amounts to a public interest disclosure, he or she will appoint a welfare manager to the whistleblower. In most circumstances, a welfare manager will only be required where a disclosed matter proceeds to investigation. The welfare manager will monitor the needs of the whistleblower, and provide advice and support.
9. If the disclosure is found to be a public interest disclosure by the Ombudsman, the Ombudsman will determine the appropriate way to investigate. The Ombudsman will tell the whistleblower whether an investigation will take place, and whether Monash University or the Ombudsman will carry out the investigation.
10. If the disclosure is not found to be a public interest disclosure by the Ombudsman, the whistleblower will be given the option of having the complaint dealt with under the *Ombudsman Act 1973*. If the whistleblower wishes to do this, the whistleblower must make this request within 28 days of being given notice.
11. If the Ombudsman refers the disclosure to Monash University to investigate, Monash University can then conduct the investigation or appoint an external investigator to conduct the investigation.

- The principles of natural justice and procedural fairness will be followed in investigations of a public interest disclosure.
  - You are entitled to know the allegations made against you and you must be given the right to respond. (This does not mean that you must be advised of the allegation as soon as the disclosure is received or the investigation has commenced.)
  - The investigator will collate information as quickly as possible.
  - The investigator will contact you during the investigation. You may be asked to respond to any matters, provide additional material you may have and participate in a taped interview. The Ombudsman recommends that interviews in whistleblower matters are tape recorded.
  - If the investigator is contemplating making a report adverse to your interests, you must be given the opportunity to respond to the criticisms and to put forward further material that may influence the outcome of the report and your defence should be fairly set out in the report.
  - The investigator will consider the information collected and draw conclusions impartially and objectively. The investigation will conclude with findings and recommendations, set out in a written report.
12. The Ombudsman will monitor investigations conducted by Monash University. If the Ombudsman is not satisfied with the investigation, it may take over the investigation.
  13. When the investigation is completed, Monash University will report to the Ombudsman its findings as to whether the allegations were substantiated or not. If the allegations were substantiated, it will report its findings and the actions taken to the relevant Minister.
  14. Monash will also formally advise you and the whistleblower of the outcome of the investigation. This does not mean that you or the whistleblower will be provided with the investigation report as in many circumstances it is not appropriate to do so.
  15. If the allegations are substantiated, the Whistleblower Protection Act requires the university to take all reasonable steps to prevent the conduct from continuing or reoccurring, and may take action to remedy any harm or loss arising from the conduct. Action may include disciplinary proceedings.
  16. If the allegations are clearly wrong or unsubstantiated, you will be entitled to the support of Monash University and its senior management.

For more information about making a disclosure, see Monash University's "[Conduct and Compliance Procedure – Whistleblowers](#)" and the Ombudsman's fact sheet called "[Whistleblowers Protection Act 2001 – What happens when the Ombudsman investigates a whistleblower's complaint](#)".

## ***How should I conduct myself, once I know that there has been a disclosure made about my alleged conduct?***

Monash University recommends the following to staff members and members of University Council who are responding to a whistleblower complaint.

Keep the disclosure and the investigation strictly confidential. Do not discuss the matter with your colleagues (except the Protected Disclosure Coordinator or a Protected Disclosure Officer). Only discuss related matters with the Protected Disclosure Coordinator or a Protected Disclosure Officer, officers of the Ombudsman's office, or your lawyer or union representative if you need to obtain advice.

Do not take any detrimental action against the whistleblower (action in reprisal for making the disclosure), or to threaten the whistleblower with detrimental action.

Get your own legal advice if you think you need it. Monash University cannot give you legal advice about protecting your own interests.

### ***Support and General Advice Available to You***

The Conduct and Compliance Procedure – Whistleblowers aims to avoid unnecessary harm to you, particularly as an investigation might exonerate you from any wrongdoing.

The [Employee Assistance Program](#) is available to you for support. You will be given adequate information as to your rights and obligations under the Act (including this form), Monash University's internal reporting system and any other relevant law or code of conduct.

If you need assistance, contact the Protected Disclosure Coordinator. Do not contact Human Resources or your performance supervisor in the first instance, because the complaint must be kept strictly confidential.

### ***Criminal Offences***

#### ***Taking Detrimental Action against the Whistleblower***

It is illegal to take detrimental action against a person for making a protected disclosure.

It does not matter if you genuinely believe that the disclosure is baseless, or you think you can defend it, or you have not officially been told the name of the person who complained, or if you work out who the anonymous whistleblower is. The person who made the disclosure still has the protections under the law.

“Detrimental action” includes:

- action causing injury, loss or damage,
- intimidation or harassment, and

- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

The Ombudsman has given some examples of the sort of detrimental action that must not be taken against a whistleblower:

- The whistleblower is demoted, transferred or isolated in the workplace, or their duties are changed, due to the making of a disclosure.
- A person threatens, abuses or carries out other forms of harassment directly or indirectly against the whistleblower, his or her family or friends.
- The whistleblower or his or her family and associates are discriminated against in subsequent applications for jobs, permits or tenders.

The Whistleblower Protection Act makes it a criminal offence punishable by a fine or two years' imprisonment to take detrimental action against a person for making a protected disclosure.

The Act gives whistleblowers protections and rights such as a right to sue for damages, the power to apply to the Supreme Court for an injunction to stop detrimental action occurring and other protections.

#### *Breach of Confidentiality*

It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.

The maximum penalty is a fine or six months' imprisonment or both.

#### *Obstruction of the Ombudsman*

It is an offence for a person to obstruct the Ombudsman in performing his responsibilities under the Act.

The maximum penalty is a fine or two years' imprisonment or both.

### ***Any questions?***

If you have any questions about the process, contact the [Protected Disclosure Coordinator or a Protected Disclosure Officer](#).