

Checklist for Welfare Managers of Whistleblowers at Monash University

Monash University may appoint a 'Welfare Manager' to monitor the needs of a person who has made a complaint covered by the Whistleblowers Protection Act 2001, and to provide advice and support.

This guide explains Monash University's process for handling whistleblower complaints, and the role of the Welfare Manager in that process.

What sorts of complaint are covered by the Whistleblowers Protection Act?

A person may be entitled to special protection under the Whistleblowers Protection Act if that person makes a complaint about Monash University or a Monash entity or an employee or member of University Council.

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.

The complaint will be a protected disclosure if the following elements are satisfied.

- 1. The person making the complaint is a natural person, and *not* making a complaint on behalf of a company or organisation.**
- 2. The complaint is about Monash University or a Monash entity or a Monash employee or member of University Council.**
- 3. EITHER the complaint is about past, current or proposed "improper conduct"**

Improper conduct is conduct that is

- Corrupt¹ or,

¹ 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

- A substantial mismanagement of public resources², or
- A substantial risk to public health and safety or to the environment³,

AND

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

OR the complaint 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 the whistleblower’s employment, career, profession, trade or business, including the taking of disciplinary action.

4. The person making the complaint has reasonable grounds for believing the alleged conduct has occurred.

The whistleblower 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.

For more information about disclosures, see Monash University’s [“Conduct and Compliance Procedure – Whistleblowers”](#) and the [Ombudsman’s guidelines and fact sheets](#).

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.

² 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.

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

Once a person has made a “disclosure” under the Whistleblowers Protection Act, what happens next?

- Once a person has made a complaint it will be referred to the Protected Disclosure Coordinator or a Protected Disclosure Officer at Monash for assessment.

- A decision will be made as to whether the disclosure is
 - a protected disclosure (which means 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 it will be referred to the Ombudsman).

- This decision will be made within 45 days of the day the disclosure was made. Monash then has 14 days to notify the whistleblower of its decision.

- If the whistleblower has not made the disclosure anonymously, the Protected Disclosure Coordinator will let the whistleblower know what the decision is and on what grounds it was made. (If the whistleblower has made the disclosure anonymously, it will probably be impossible for Monash to contact the whistleblower or to appoint a welfare manager.)

- If the whistleblower disagrees with the decision, the whistleblower may provide more information to Monash to support his or her allegations and Monash will reassess its decision. Alternatively the whistleblower can appeal to the Ombudsman about Monash's decision.

- If the whistleblower's disclosure is found to be a protected disclosure, the whistleblower will be protected by the Whistleblowers Protection Act against reprisals for making the disclosure and confidentiality must be maintained.

- It is in the whistleblower's best interests not to talk to other people about the disclosure.

- Within 14 days of making a decision as to whether the whistleblower's protected disclosure is a public interest disclosure, Monash 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.
- Within 14 days of a decision that the whistleblower's protected disclosure is NOT a public interest disclosure, Monash 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.
- 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, provide advice and support (see below).
- Even if the whistleblower's disclosure is not a public interest disclosure, the whistleblower is still protected from reprisals because of the disclosure.
- It is a criminal offence if anyone takes action in reprisal or threatens the whistleblower with reprisal for making the disclosure. It is also a criminal offence to breach confidentiality unless the Whistleblowers Protection Act explicitly allows it.
- It is also a criminal offence to obstruct the Ombudsman or provide false information with the intention that it be acted on as a disclosed matter.
- If the whistleblower's 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 or the Ombudsman will carry out the investigation.
- If the whistleblower's 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.
- If the Ombudsman refers the whistleblower's disclosure to Monash to investigate, Monash can then conduct the investigation or appoint external investigators. The principles of natural justice will be followed in investigations of a public interest disclosure.

- Monash will collate information as quickly as possible, consider the information and draw conclusions impartially and objectively. Procedural fairness will be maintained for all participants. The investigation will conclude with findings and recommendations.
- The investigator will contact the whistleblower during the investigation. The whistleblower may be asked to clarify any matters, provide additional material he or she may have and participate in a taped interview. The investigator will be sensitive to any fear of reprisals that the whistleblower may have.
- The Ombudsman will monitor investigations conducted by Monash. If the Ombudsman is not satisfied with the investigation, it may take over the investigation. If the whistleblower has reasonable grounds to be dissatisfied with the investigation, he or she may request the Ombudsman to conduct the investigation.
- Monash 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.
- Monash will also inform the whistleblower of the findings and any steps taken as a result.

For more information about the handling of disclosures, 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 the whistleblower is protected

When a whistleblower makes a protected disclosure the following protections apply:

- immunity from civil and criminal liability and disciplinary action for making the disclosure*
- immunity from liability for breaching confidentiality provisions
- protection from action in defamation for making the disclosure
- the right to sue for damages or to seek an injunction to stop actions in reprisal
- the Ombudsman and public body can not reveal the identity of the whistleblower or information that would lead to the whistleblower's identification

- it is an offence to reveal information as a result of a protected disclosure except in limited circumstances (punishable by a penalty and/or two years imprisonment)
- it is an offence to take detrimental action against a person in reprisal for a protected disclosure (punishable by a penalty and/or two years imprisonment)

* A person's liability for his/her own conduct is not affected by his/her disclosure of that conduct under the Act.

Welfare support

The protection of whistleblowers against detrimental action is essential for the effective implementation of the Whistleblowers Protection Act 2001. A public body is responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

Monash University may appoint a welfare manager to monitor the needs of the whistleblower and to provide advice and support. If the whistleblower is an employee of Monash University, the whistleblower may also access the Employee Assistance Program.

The Role of the Welfare Manager

The role of the welfare manager is to:

1. examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment
2. advise the whistleblower of the legislative and administrative protections available to him/her
3. listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure

You may be the only person at Monash, apart from the Protected Disclosure Coordinator or a Protected Disclosure Officer, who the whistleblower can talk to. Listen to their concerns and respond appropriately. You may want to keep notes of the discussions you have had.

You are not expected to be an expert on the whistleblower legislation or give any legal advice to the whistleblower. If you are not sure of the answer to a question from the whistleblower, or you need assistance in your role, contact the [Protected Disclosure Coordinator or a Protected Disclosure Officer](#). They may advise you to contact the Ombudsman for advice on particular questions.

Confidentiality

There are strict rules in the Whistleblowers Protection Act 2001 which keep the whistleblower's name, the existence of the disclosure and its investigation strictly confidential.

Do not discuss the matter with any other person, including your colleagues (except for the Protected Disclosure Coordinator or a Protected Disclosure Officer). It does not matter if you believe that the disclosure is baseless, or you think that the whistleblower will successfully defend it, or you think the person you are talking to won't work out who the whistleblower is. The person who made the disclosure still has the protections under the law. Do not discuss the matter with anybody else, even Human Resources or senior Monash administrators.

The Whistleblowers Protection Act 2001 requires that any person who receives information due to the handling or investigation of a protected disclosure not disclose that information except in certain limited circumstances. A breach of the confidentiality protection constitutes a criminal offence punishable by a penalty and/or two years imprisonment.

Disclosures will be assessed and investigated discreetly by Monash University. There is a strong emphasis on maintaining the confidentiality of both the whistleblower and the person who is the subject of the disclosure.

Any questions?

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