

Checklist for Staff Receiving a Whistleblower's Disclosure

Even though Monash has established reporting procedures to receive a Whistleblower's disclosure, which recommend that Whistleblower make a complaint directly to the Whistleblower Protection Coordinator or Protected Disclosure Officers, Whistleblowers do not have to make their disclosure using these procedures. A disclosure can be made to any officer or staff member of Monash University.

If you receive a complaint from anyone (including a member of the public or an anonymous person) about Monash University or an employee of Monash University, it may be a protected disclosure under the Whistleblower's Act. If it is a protected disclosure, then special rules protect the identity of the Whistleblower and apply to the handling of the complaint. Criminal offences and civil penalties apply for breach of the Whistleblower laws. This checklist will help you to determine if the complaint is a protected disclosure.

If you are not sure, err on the side of caution and contact the [Whistleblower Protection Coordinator or a Protected Disclosure Officer](#) for assistance.

1. Is the disclosure made by a person, rather than a company or organisation?

Yes/No/Unsure

The person does not need to be an employee or student of Monash. It can be anyone as long as they are an individual.

2. Has the disclosure been made in writing or verbally or in person?

Yes/No/Unsure

Disclosures can come from many sources, including email, fax, mail, in meetings or anonymously

3. Is the disclosure about Monash University, or a related entity of Monash University, or an employee of Monash?

Yes/No/Unsure

If the disclosure relates to an organisation other than Monash University or one of its related entities, advise the person making the disclosure of the correct person or body to whom the disclosure should be made or advise them to make their complaint directly to the Ombudsman.

If the disclosure is about the conduct of an employee of Monash, it should relate to that person's conduct as an employee acting in their official capacity, not their conduct as a private person.

Yes/No/Unsure

4. Does the disclosure relate to EITHER past current or proposed improper conduct, OR past current or proposed detrimental action?

Improper conduct is conduct that is

- Corrupt or, [Hyperlink to definition of corrupt conduct - see footnote¹]
- A substantial mismanagement of public resources [Hyperlink to definition of substantial mismanagement - see footnote²], or
- A substantial risk to public health and safety or to the environment, [Hyperlink to definition of substantial - see footnote³],

AND

- The conduct must also be serious enough that if proven would constitute a criminal offence or reasonable grounds for a person's dismissal from their employment.

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 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.

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.

5. On the basis of what the person has told you, is it possible that they have reasonable grounds for believing the alleged conduct has occurred?

Yes/No/Unsure

The person must have more than a suspicion and must have some supporting facts and circumstances. To determine if it is reasonable, consider whether a reasonable person, who has the same information as the person making the disclosure, would have formed that belief. The belief should be probable based on the supporting facts and circumstances.

This test has a very low threshold. If it is at all possible that the person making the disclosure has some reasonable grounds for their belief, err on the side of caution and assume that they do have reasonable grounds.

Note that:

- Whistleblower do not have to identify themselves. Complaints can be made on an anonymous basis. Monash has to treat anonymous Whistleblower complaints with the same care as other Whistleblower complaints.
- It does not matter whether the person making the disclosure has referred to the Whistleblower Protection Act or not. The person making the disclosure does not have to use the word “Whistleblower” for the Whistleblower Protection Act and Monash University’s “[Conduct and Compliance Procedure - Whistleblowers](#)” to apply.

If you can confidently answer ‘NO’ to ANY ONE of the above, the disclosure is not a protected disclosure and it can be handled in accordance with Monash University’s other complaints-handling procedures (depending on what policy or procedure applies to the complaint).

If you answer ‘UNSURE’ to ANY ONE of the above, contact the [Protected Disclosure Coordinator or a Protected Disclosure Officer](#) for advice. They are responsible for providing advice, assessing disclosures, coordinating the appropriate response.

If you answer 'YES' to ALL of the above, you have received a protected disclosure that is covered by the Whistleblower Protection Act and Monash University's "[Conduct and Compliance Procedure - Whistleblowers](#)". Special rules now apply to how you handle the complaint, the information you have received and the person who made the disclosure. These special rules are designed to:

- Protect the Whistleblower from reprisals because of the disclosure
- Maintain confidentiality
- Ensure that serious complaints about public bodies and their staff are handled properly, in the knowledge of the Ombudsman

Checklist for Staff Who have Received a Whistleblower's Disclosure - What to do next

If you believe that you have received a complaint which is or could be a complaint covered by the Whistleblower Protection Act, there are very important rules which you must now comply with.

- **Take the complaint seriously.** Criminal offences apply to the mishandling of a complaint. Even if you think it sounds unlikely, if the disclosure relates to improper conduct or detrimental action of a Monash employee and is reasonable, the Whistleblower Protection Act applies.
- **Contact the [Protected Disclosure Coordinator or a Protected Disclosure Officer](#) immediately** - They are trained to assess, respond and investigate the disclosure. You should not try to assess, respond and investigate the disclosure yourself.
- **You must not mention the disclosure to anyone except for the Protected Disclosure Coordinator or a Protected Disclosure Officers. Do not talk to any other staff (except for the PDC or a PDO) about the disclosure.** The Whistleblowers Protection Act makes it a criminal offence to disclose information about the disclosure or the identity of the Whistleblower except in certain circumstances.
 - Do not tell anyone that you have received a complaint, who made the complaint, or what the complaint is about.

- This rule of absolute confidentiality also covers your manager, administrative officers, the person who the complaint is about, anyone else involved in the complaint, and even your family at home. Do not tell anyone anything about the complaint, except for the Protected Disclosure Coordinator or a Protected Disclosure Officers.
 - The fewer people who know about the disclosure, and the fewer people handling it, the better. This enhances confidentiality and reduces likelihood of reprisals being taken against Whistleblowers.
- **Do not send information to other staff or up the chain of command, or forward emails to anyone.** It is best to forward the disclosure immediately to the Protected Disclosure Coordinator who can determine who needs to know about it.
 - **Do not contact the person about whom the disclosure is made, or tell them about the complaint.** The Protected Disclosure Coordinator can handle this.
 - **Take all necessary steps to ensure the identity of the Whistleblower and the identity of the person who is the subject of the disclosure are kept confidential.** Think about:
 - whether anyone else has access to your emails (such as administrative assistants);
 - who can hear you when you make telephone calls;
 - the security of your file or notes about the disclosure;
 - storing all written materials and emails securely, so that they are only accessible by authorised staff;
 - writing a prominent warning on the materials marked ***“Whistleblowers Protection Act - Strictly Confidential”***;
 - printing documents to a secure printer, and avoiding any printer to which any other staff have access;
 - If possible, hand delivering documents to the Protected Disclosure Coordinator or Protected Disclosure Officer, rather than using post or internal mail.

- **If you speak with the Whistleblower, advise them that it is in their own interests to keep disclosures confidential.** Advise them that they can contact the Protected Disclosure Coordinator or the Protected Disclosure Officers should they wish to discuss their disclosure.
- If you are a manager, you are responsible for making sure that the Whistleblower is protected from direct and indirect detrimental action and the culture of the workplace is supportive of protected disclosure being made. The Whistleblower Protection Coordinator and Whistleblower Protection Officers can advise you how to do this.
- **If the disclosure is oral, make notes of what was said, when and by whom.** Keep those notes in a secure place.
- **Do not delay in sending the disclosure to the Protected Disclosure Coordinator or Protected Disclosure Officer.** Even if you are unsure, send it immediately. Monash only has 45 days from receiving the disclosure to reach a decision as to whether the disclosure is a protected disclosure and public interest disclosure which must be referred to the Ombudsman.
- **Be very careful about conducting any enquiries and gathering information, and also in how you treat the Whistleblower.** Any detrimental action taken after a disclosure has been made may appear to be in reprisal for making the disclosure which is a criminal offence.
- **Exercise extreme caution in handling any evidence of a disclosure (such as documents that were sent to you).** A criminal offence may have been committed, and it is important not to compromise the integrity of the evidence.
- If the Whistleblower is involved in misconduct, the protections of the Whistleblower Protection Act does not protect the Whistleblower from any reasonable consequences flowing from that misconduct. It may appear, however, that any disciplinary or other action taken in response to that misconduct is in fact a retaliation for the disclosure being made. **Before taking any action against a Whistleblower, get advice from the Protected Disclosure Coordinator or a Protected Disclosure Officer.** At the very minimum, you will be required to show that:
 - The disciplinary action is not causally connected to the making of the disclosure;

- There are good and sufficient grounds that would fully justify taking the action against a non-Whistleblower in the same circumstances;
and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

This means that you must document the decision and the reasons why the disciplinary or other action was taken, so that it can be explained and proven later if challenged.

Remember - if you are in doubt about any whistleblower matter, contact the [Whistleblower Protection Coordinator or a Protected Disclosure Officer](#) immediately.