

Whistleblower Policy

1. Purpose

Melbourne Business School (**MBS**) is committed to fostering a culture of good corporate governance and ethical behaviour. MBS has a Guiding Principle of acting with integrity and will not tolerate its people engaging in unlawful or unethical conduct.

MBS recognises that any genuine commitment to detecting and preventing illegal and other improper conduct must include a mechanism whereby employees and others can report their concerns freely and without fear of reprisal or intimidation. This Whistleblower Policy (**Policy**) provides such a mechanism and encourages the reporting of such conduct without fear of victimisation or reprisal.

Under this Policy, anyone who is employed by, or contracted to perform work for, MBS, including all employees, directors, contractors, consultants and volunteers, has a responsibility to help detect, prevent and report instances of illegal, unethical, undesirable or otherwise improper conduct.

The purpose of this 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' 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 individuals, 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; and
- assist in ensuring that instances of illegal, unethical or otherwise improper conduct are identified and dealt with appropriately.

2. Application

This Policy applies to MBS. It encompasses:

- directors and officers of MBS;
- all MBS employees (whether ongoing, temporary, full-time, part-time or casual);
- volunteers and interns;
- current and former students;
- any 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;

- any organisations (and their principals and employees) that have a relationship or are associated with MBS as an agent, advisor, customer, supplier or donor; and
- 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 dependant of one of those individuals or of the spouse of such an individual.

3. What should be reported under this Policy?

Matters that should be reported for the purposes of this Policy includes any conduct that an employee reasonably believes involves:

- 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);
- any other conduct which may cause loss to MBS or which is otherwise detrimental to MBS' interests; and / or
- 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.

(disclosable matters)

4. Matters not covered under this Policy

Personal work-related grievance

Not all disclosures are protected under this Policy. A disclosure does not qualify for protection under the Policy to the extent that the information disclosed:

- concerns a personal work-related grievance; and /or
- does not concern a disclosable matter for the purposes of this Policy.

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.

A personal work-related grievance may still qualify for protection if it relates to a disclosable matter and a personal work related grievance (i.e., it is a mixed disclosure).

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; and
- any exercising of rights under the terms of their contract by contractors and suppliers.

5. Who should a report of a disclosable matter under this Policy be made to?

For the protections under this Policy to apply, a report about a disclosable matter must be made directly to an 'eligible recipient'. These people are detailed below.

A report about a disclosable matter 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.

Eligible recipients within MBS

MBS encourages that disclosures be made internally to the persons set out below (referred to as **Whistleblower Governance Officers**) – each of whom has the relevant experience to deal with such matters. Whistleblower Governance Officers can be contacted in the following ways:

- Chief People & Culture Officer: Theoni Parthimos (t.parthimos@mbs.edu)
- Company Secretary and General Counsel (l.deramond@mbs.edu)
- Associate Dean, Faculty: Professor Andrew John (a.john@mbs.edu)

Whilst MBS encourages disclosures to a Whistleblower Governance Officer, if it relates to the Dean or a director of MBS, it should be raised directly with the Chair of the MBS Board or Chair of the Finance, Audit & Risk Committee who can be contacted in the following ways:

- Chair of the MBS Ltd Board: Ross Barker (r.barker@mbs.edu)
- Chair of the Finance, Risk & Audit Committee: Robert Johanson (rjohanson@grantsamuel.com.au)

If a person making a report about a disclosable matter does not feel comfortable raising their disclosure with a Whistleblower Governance Officer, he/she can also raise it with any of the following:

- an officer or senior manager of MBS. For these purposes, a senior manager includes any member of the Senior Leadership Team; or
- the external auditors of MBS, KPMG, Tony Batsakis: tbatsakis@kpmg.com.au.

Disclosures to external regulatory bodies

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

- Australian Securities & Investments Commission;
- Australian Prudential Regulation Authority;
- a Commonwealth authority prescribed in the Corporations Regulations.

Disclosure to a legal practitioner

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

Public interest disclosures

There is an additional category of disclosures called 'public interest disclosures' that qualify for protection. These can be made to journalists and members of Parliament but only 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;
- at least 90 days has passed since the disclosure was made;
- 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;
- after 90 days has 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
 - states that the person intends to make a public interest disclosure; and
- the extent of the information disclosed in the public interest disclosure is no greater than to inform the journalist or member of Parliament of the disclosable matter.

Emergency disclosures

There is also a category of disclosures called 'emergency disclosures' that qualify for protection. These can be made to journalists and members of Parliament, but only if the person complies with the following requirements:

- the person must have first made the disclosure to ASIC, APRA or a prescribed Commonwealth authority;
- 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;
- the person gave notice to the body to which the disclosure was made that states:
 - that they intend to make an emergency disclosure; and
 - includes sufficient information to identify the qualifying disclosure; and
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.

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. For example, they may do so because of concerns about their identity becoming known. If such concerns exist, a person making a disclosure may prefer to adopt a pseudonym for the purposes of their disclosure (not their true name) – or to create an anonymous email address to submit their disclosure. Regardless, anonymous disclosures are still capable of being protected under this Policy.

Disclosing anonymously may hinder MBS' 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.

7. Protections

Important protections relating to confidentiality and detriment apply persons who make disclosures in accordance with the Policy. The protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the *Corporations Act 2001* (Cth).

MBS takes contraventions of these protections very seriously and will take disciplinary action against anyone for doing so. If a person making a disclosure has any particular concerns about 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.

Confidentiality

Strict confidentiality obligations apply in respect of any disclosures under this Policy.

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

If 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.

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 (in relation to tax matters);
- a legal practitioner for the purposes of obtaining legal advice or legal representation about the disclosure; or
- to a body prescribed by the Corporations Regulations.

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

ASIC, APRA or the AFP can disclose the identity of person making a disclosure under this Policy, or information that is likely to lead to the identification of the person making the disclosure, to a Commonwealth, State or Territory authority to help the authority in the performance of its functions or duties.

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 or the disclosure related to information that the person has previously been told privately and in confidence.

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.

No action will be taken against a person for making a disclosure under this Policy

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 that disclosure, and no contractual or other remedy may be enforced or exercised against the person on the basis of making that disclosure.

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

Detriments and threats of detriment prohibited

The protections also 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 detriments 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;
- 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.

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.

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.

Are there any other protections that are available?

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 exercised or propose to exercise any workplace rights.

8. 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; and
- 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 for this), and provide appropriate updates, including about the completion of any investigation. However, 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 has not provided a means of contact.

Where practicable, the person making the disclosure will receive updates about when the investigation has begun, while the investigation is in progress and after the investigation has been finalised. The frequency and timeframe of any updates may vary depending on the nature of the disclosure. MBS will also have regard to confidentiality considerations when providing updates.

Appointment of a Whistleblower Protection Officer

Depending on the circumstances of the disclosure, a person (known as 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).

Documenting and reporting the findings of an investigation

Where appropriate, MBS will report findings of an investigation to the Finance, Audit & Risk 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.

9.Support and fair treatment

MBS is committed to transparency and to building an environment in which people feel free to raise legitimate issues. MBS is also committed to protecting persons making disclosures under this Policy from detriment.

Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against a person making a disclosure under this Policy.

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

10.Vexatious or 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.

11. Other matters

This Policy can be found on the MBS website.

This Policy is not intended to go beyond the legislation. This Policy is not a term of any contract, including any contract of employment and 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.

12. Related policies

- Appropriate Workplace Behaviour
- Complaints Policy
- Grievance Procedure
- Human Resources Privacy Policy

13. Review

Melbourne Business School Commits to Review this Policy in
Review Period

October 2022
Every Two Years

14. General information

Approved by: Deputy Dean

Responsible Policy owner: Company Secretary and General Counsel

Commencement date: 11 December 2019

Approval Date: 28 January 2020

Last Revised Date: 20 October 2020

Updated Governance Officers: effective 1 April 2021

The Whistleblower policy can be found on the School website and Comms Hub

Updated Eligible Recipients – June 2022

15. Key words

Whistleblower

Wrongdoing