

WHISTLEBLOWER POLICY



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Approved by Council: 11 Mar 2020

Revised by Council: None

Related Documents

Corporations Act 2001 (Cth)

Taxation Administration Act 1953 (Cth)

Regulation 82: *Code of Conduct*

1. Rationale and Objectives

- 1.1 This Policy aims to encourage disclosures of misconduct or illegal activity within the University of Divinity and to protect whistleblowers from any potential adverse consequence arising from making such disclosures.

2. Scope

- 2.1 This Policy applies to the University of Divinity, and to whistleblowers and eligible recipients as set out in the Policy.
- 2.2 For the avoidance of doubt, individuals' statutory rights are not affected in any way by this Policy.
- 2.3 This Policy is in addition to other University Policies which support people wishing to make an appeal about a decision of the University or to make a complaint or or to raise a matter regarding academic or general misconduct:
- a) Academic Integrity Policy
 - b) Appeals Policy
 - c) Complaints Policy
 - d) Code of Conduct
 - e) Conduct and Misconduct Policy
 - f) Safeguarding Policy.

3. Policy Statement

- 3.1 The University of Divinity is committed to maintaining the highest ethical standards and complying with all applicable laws and regulations in its operations. The University requires all its members and certain other persons as defined in Regulation 82: Code of Conduct to abide by the University's Code of Conduct and its related Policies. The Code of Conduct includes being willing to report misconduct. The University aims to be an institution in which misconduct is challenged and addressed and in which the reporting of misconduct, of an improper state of affairs, or of illegal activity is encouraged and supported.

- 3.2 The University is committed to ensuring that when whistleblowers make disclosures to eligible recipients:
- a) Their identity remains confidential according to their wishes
 - b) They are protected from reprisal, discrimination, harassment or victimisation for making the disclosure
 - c) An independent investigation is conducted
 - d) Issues identified by the investigation are resolved and rectified
 - e) They are informed about the outcomes
 - f) Any retaliation for having made disclosures is treated as serious misconduct.

4. Definitions

- 4.1 **Whistleblower:** A person who reports alleged wrongdoing at the University of Divinity. **Eligible Whistleblower** refers to a whistleblower who makes a disclosure in good faith and without malicious intent. Whistleblowers may include but are not limited to:
- a) a member of the University (including staff, students, employees and officers)
 - b) a contractor or volunteer providing services to the University
 - c) a member, employee, contractor, volunteer or officer of a College of the University.
- 4.2 **Recipient:** A person to whom a whistleblower makes a disclosure. In this Policy, **Eligible Recipient** refers to a recipient who is in a position to ensure the protections of this Policy can be extended to a whistleblower. Eligible recipients include:
- a) the Vice-Chancellor
 - b) the Chancellor or another member of the University Council
 - c) the University's Auditor or a member of the audit team
 - d) a legal practitioner (if seeking legal advice about whistleblower protections)
 - e) the Australian Securities and Investment Commission (ASIC)
 - f) the Australian Prudential Regulation Authority (APRA)
 - g) the Commissioner of Taxation (in relation to the University's tax affairs).
- 4.3 **Wrongdoing:** Includes but is not limited to conduct or a state of affairs that:
- a) breaches legislation, regulations or local government by-laws or is otherwise illegal
 - b) is an offence or contravention of Australia's corporations and financial services legislation, or any other Commonwealth or State offence that carries a penalty of at least twelve months' imprisonment
 - c) is corrupt or is an abuse of public trust or position
 - d) is dishonest, fraudulent, unjust, misleading or negligent

- e) perverts the course of justice
- f) unreasonably endangers health and safety and / or the environment
- g) is serious or substantial waste
- h) is gross mismanagement or repeated breaches of administrative procedures
- i) incurs significant financial or non-financial loss detrimental to the interests of the University of Divinity.

5. Disclosures

- 5.1 A whistleblower may report alleged wrongdoing by making a disclosure to an eligible recipient under this Policy. Usually the disclosure would be made to the Vice-Chancellor or, if the disclosure is about the Vice-Chancellor, to the Chancellor. The names and contact details for eligible recipients are available on the [University website](#) or relevant agency website, or may be obtained in confidence from the University Secretary.
- 5.2 Disclosures may be made anonymously, however the provision of a name and contact details may assist in the investigation of a disclosure. The disclosure does not need to provide absolute proof of the reported matter, however provision of reasons for the concern, full disclosure of the relevant details and any available supporting documentation will assist in any investigation. If a disclosure is made, it is valued by the University even if not confirmed by subsequent investigation.
- 5.3 A form on which to make disclosures to any eligible recipient is available on the [University website](#). Disclosures may also be made in writing and mailed to a recipient at the address below in an envelope marked "Confidential":
- (Name of recipient)
University of Divinity
90 Albion Road
Box Hill VIC 3128.
- 5.4 A disclosure may be made about a person or entity outside of the University but associated with the University, where the disclosure could have legal, reputational or regulatory implications for the University.
- 5.5 This Policy does not replace other reporting structures such as those used for dispute resolution, discrimination, victimisation, matters related to workplace bullying or harassment or academic integrity. Students and staff are encouraged to report these concerns using the University's Appeals Policy, Complaints Policy or Academic Integrity Policy. Further, employees are encouraged to report concerns to their supervisor or their supervisor's manager to seek an immediate response or use the University's Complaints Policy. The Whistleblower Policy may be used where any of the following applies:
- a) the issue relates to a matter set out in section 4.3
 - b) the issue involves experiencing detriment in response to raising the issue or seeking legal advice or representation in response to raising the issue

- c) the issue involves legal implications for the University or suggests systemic misconduct beyond personal circumstances
- d) the normal reporting channel is considered inappropriate in the circumstances
- e) the person disclosing wrongdoing is concerned about possible retaliation.

5.6 Persons who are unsure about whether a matter constitutes a disclosure under the whistleblower protections of this Policy or other legislation are encouraged to seek independent legal advice.

6. Investigations

6.1 The University is committed to taking responsible and proportionate action in response to receipt of a disclosure and to conducting a prompt and sensitive investigation.

6.2 The recipient must acknowledge receipt of the disclosure to the whistleblower within five working days, and ascertain whether or not the whistleblower is willing for their identity to be disclosed. This section only applies where contact details have been provided.

6.3 The recipient of a disclosure would usually direct it to the Vice-Chancellor or the Chancellor for investigation as appropriate.

6.4 The Vice-Chancellor is usually responsible for arranging the conduct of an independent, confidential investigation of a disclosure except where the disclosure concerns the Vice-Chancellor in which case the Chancellor is responsible. The Vice-Chancellor may elect to refer the disclosure to the Chancellor for the conduct of an independent, confidential investigation if considered more appropriate to the nature of the disclosure.

6.4 The Vice-Chancellor or Chancellor may decide not to proceed with an investigation on the basis that the matter does not fall within the provisions of this Policy. A decision as to whether an investigation is required should be made within two weeks of receipt of the disclosure. Where this is not possible, or where the decision is that an investigation is not to take place, the Vice-Chancellor or Chancellor must provide an explanation for the delay to the whistleblower.

6.6 Investigation Process

6.6.1 Principles of procedural fairness apply to all investigations of disclosures. These include:

- a) Lack of bias
- b) Evidence-based decision making, considering only relevant factors
- c) A hearing as appropriate to the circumstances, and
- d) Inquiry into matters in dispute and verification of asserted facts.

6.6.2 The investigator must maintain the confidentiality of the whistleblower as far as possible and in accordance with their wishes. Care must be taken to avoid releasing information that may unintentionally reveal the identity of the whistleblower.

6.6.3 The whistleblower must be reminded of the legislated protections and other protections and support (see below) available through the University under this Policy.

- 6.6.4 Except in the case of anonymous disclosures, the whistleblower may be asked to prepare a verbal or written statement, if they have not already done so.
- 6.6.5 The person/s against whom the disclosure is made must normally be informed at an early stage, provided with supporting evidence, and given an opportunity to respond. This normally follows the verification of claims made in the disclosure, to the extent that it is possible. Depending on the nature and seriousness of the report, the person/s against whom the disclosure is made may be suspended or placed under alternative work arrangements in accordance with Regulation 82: Code of Conduct or their Employment Agreement while the investigation is undertaken.
- 6.6.6 The whistleblower is entitled to be accompanied by a support person of their choice throughout the procedure when making a report.
- 6.6.7 To avoid jeopardising an investigation, the whistleblower is required to keep confidential the fact that they have made a disclosure and its content (subject to any legal requirements).
- 6.6.8 The investigator may seek independent legal advice to inform their handling of the investigation.
- 6.6.9 The investigation must be completed within ten (10) working days from its commencement except in serious or complicated cases where this may not be possible. In such cases, the whistleblower must be informed about the expected time frame.
- 6.6.10 The whistleblower must be informed of the outcome of the investigation within five working days of its completion. The exact nature of any disciplinary action decided against any other person may be withheld from the whistleblower.
- 6.6.11 Records of all disclosures and official written reports on the investigative process and outcomes must be kept and securely maintained by the Vice-Chancellor, with the exception of any disclosures about the Vice-Chancellor which must be securely maintained by the Chancellor. Records may be destroyed after a period of seven years has elapsed from completion of the investigation.
- 6.6.12 On an annual basis summary reports must be presented to the Council on disclosures received by the University and the outcomes of any investigations. This reporting must include information on disclosures received and deemed outside the scope of this Policy.

7. Protections and Supports

- 7.1 The University protects the confidentiality of eligible whistleblowers, subject to compliance with legal reporting requirements, by:
 - a) not disclosing their identity without consent
 - b) disclosing information contained in a disclosure only to the extent that is required for investigation of the disclosure
 - c) undertaking reasonable measures to prevent the identity of a whistleblower being revealed through the investigation process.

- 7.2 The University prohibits the victimisation of a whistleblower, including causing detriment and the issuing of threats against them (whether expressed or implied and whether conditional or unconditional). Detriment includes:
- a) dismissal or role change of an employee
 - b) injury of an employee in their employment
 - c) alteration of an employee's position or duties to their disadvantage
 - d) discrimination between an employee and other employees of the same employer
 - e) harassment, bullying, or intimidation of a person
 - f) harm or injury to a person, including psychological harm
 - g) damage to a person's property
 - h) damage to a person's reputation
 - i) damage to a person's business or financial position
 - j) impairment of a student's academic studies or progress
 - k) any other damage to a person.
- 7.3 Where applicable, the University makes alternative work arrangements available to a whistleblower to support them during an investigation. These may include the option to work from home or alternative supervision arrangements.
- 7.4 The University makes personal counselling services available to whistleblowers.
- 7.5 Unless required by law any disclosure of the whistleblower's identity without their consent is a breach of this Policy and disciplinary action will be taken in response. It may also be an offence subject to penalties under the *Corporations Act*.
- 7.6 Any act of victimisation against a whistleblower is also a breach of this Policy and disciplinary action will be taken in response. This may extend to situations where a person believes or suspects someone has made or could have made a disclosure. A breach of this kind may also be an offence subject to penalties under the *Corporations Act*.
- 7.7 Eligible whistleblowers have access to the protections in Part 9.4AAA of the *Corporations Act* which provide for public interest disclosures and emergency disclosures that meet specific requirements prescribed by that Act. Legislated protections available to whistleblowers include:
- a) the right to have their identity protected
 - b) the right to have information provided as part of the disclosure handled in accordance with the provisions of legislation
 - c) the right to be protected from civil, criminal or administrative liability (including disciplinary action) for making the disclosure; from contractual or other remedy on

the basis of the disclosure; and from the admissibility of the information provided in evidence against the person

- d) the right to be protected from victimisation, including threats and any form of detrimental treatment
- e) the right to compensation and other remedies in accordance with the provisions of legislation (including a right not to be required to pay costs incurred by another person when litigation is commenced), and
- f) the right not to be required to disclose their identity before any court or tribunal.

7.8 The *Taxation Administration Act* also provides protection for disclosures of information about misconduct or an improper state of affairs, in relation to the tax affairs of an entity or an associate of an entity.

7.9 The University must ensure the fair treatment of its members who are mentioned in a disclosure made under this policy by:

- a) maintaining procedural fairness in the investigation of disclosures and following the process of investigation outlined in this policy
- b) protecting members mentioned in disclosures from victimisation, including threats and any form of detrimental treatment, and
- c) offering supports available to whistleblowers under this policy.

7.10 If an investigation reveals that a whistleblower is implicated in the misconduct or inappropriate state of affairs disclosed, disciplinary action may be taken against them. However, their role as a whistleblower must be taken into account in the determination of that action.

7.11 Disciplinary action may be taken against a whistleblower, if it is demonstrated that the disclosure was based on false and unsubstantiated allegations and that it was made maliciously.

7.12 If a whistleblower is not satisfied with the outcome of an investigation, they may consider informing other bodies as appropriate.

8. Date of Next Review

8.1 This Policy must be reviewed no later than 31 December 2023