



AUSTRALIAN PRO BONO CENTRE

Whistleblower Protection Policy

1. Goals of the Whistleblower Protection Policy of the Australian Pro Bono Centre (Centre)

The Centre is committed to maintaining a culture of compliance, honesty and ethical behaviour. The purpose of this policy is to provide an avenue for people to raise concerns about misconduct within the Centre's organisation without fear of being penalised or otherwise disadvantaged.

The Centre encourages all of its people to challenge any behaviour which they have reasonable grounds to believe breaches the law or is inconsistent with the Centre's policies or procedures. The Centre recognises that some people may be hesitant to report Misconduct unless they can be confident that they will be properly protected.

2. Scope

This policy supports and encourages an open compliance culture by clearly identifying:

- who is protected under the policy (section 3.1)
- the process for reporting actual or suspected Misconduct (defined below), including options to do so anonymously or confidentially (sections 4 - 5)
- the process for investigation, including managing and responding to allegations (section 6)
- protections for disclosers, including confidentiality measures and prohibition of any retaliation against anyone who makes a disclosure on reasonable grounds (section 7).

The protections afforded by this policy apply to all disclosures of Misconduct including where the allegation is ultimately unfounded, provided the discloser has reasonable grounds to suspect the disclosed information indicates such conduct.

This policy will be made available to every existing employee, contractor, intern and volunteer of the Centre. It will also be made available online on the Centre's website. The policy will be provided to each new employee, contractor, intern and volunteer when they commence with the Centre.

For the avoidance of doubt, the references to 'senior management' in this policy refer to the Centre's CEO and Head of Policy and Strategy, but exclude anyone against whom allegations have been made in a disclosure. If a disclosure makes allegations against both the CEO and the Head of Policy and Strategy, the references to 'senior management' in this policy instead are to be taken to mean a quorum of the Board.

3. Guiding Principles

3.1 Who is protected under this policy?

This policy applies to all individuals who are eligible whistleblowers under s 1317AAA of the *Corporations Act 2001*, including:

- an officer
- an employee



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- an individual with a contract to supply goods or services (whether paid or unpaid)
- an employee of a supplier of a contract of goods or services (whether paid or unpaid)
- an individual who is an associate of the Centre
- a relative or dependant of an individual referred to above, or a dependant of such an individual's spouse
- someone who has been one of the above
- any other individual prescribed by regulation for the purposes of s 1317AAA(i) of the *Corporations Act 2001*.

This policy applies irrespective of whether an eligible whistleblower is currently (or previously) employed on a full-time, part-time, fixed term, casual or temporary basis.

3.2 What conduct may be reported under this policy?

If an eligible whistleblower makes a disclosure under this policy, they will be entitled to the protections under this policy (see section 7) provided they have reasonable grounds to suspect the disclosed information reveals Misconduct.

For the purposes of this policy, “**Misconduct**” is any conduct of the Centre or a person (whether a director, employee, consultant, officer or other) connected with the Centre which the discloser has reasonable grounds to suspect is:

- illegal, including a failure to comply with tax laws or any law of the Commonwealth which is punishable by a period of imprisonment of 12 months or more
- dishonest
- fraudulent
- unethical
- corrupt
- misconduct in relation to tax affairs
- a serious or repeated breach of the Centre's policies
- an improper state of affairs
- an unsafe work practice which could be dangerous to the health or safety of any person
- any other serious or improper conduct, or
- any other conduct which has caused or may cause financial or non-financial loss to the Centre or damage to the Centre's reputation.

The discloser must have reasonable grounds for believing that Misconduct has occurred before invoking the procedures outlined in this policy. In most cases, the discloser should report on their own observations – what they have seen and heard.



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4. Who should a discloser report to?

The Centre has appointed a Whistleblower Contact Officer (**WCO**) who is authorised to receive and action disclosures made under this policy. The WCO is:

Daniel Creasey, Head of Pro Bono & Community Impact at King & Wood Mallesons

Phone: 03 9643 5339

Email: dan.creasey@au.kwm.com

Address: Level 50, Bourke Place, 600 Bourke Street, Melbourne VIC 3000

The WCO's principal role is to receive disclosures, assess whether the disclosed conduct may constitute Misconduct which properly falls within this policy, to refer disclosures properly made under this policy to the Whistleblower Protection Policy Investigator (**WPP Investigator**) for investigation – see sections 5 and 6 for further details. The WCO is also responsible for keeping the discloser up-to-date with the status of the investigation (see section 8).

5. Reporting Process

5.1 Preliminary discussion with the WCO

If the discloser would like to talk about their intention to make a disclosure before submitting a formal report, they should contact the WCO for a preliminary discussion. The WCO will discuss the discloser's concerns and advise whether, in their view, the relevant conduct may fall within this policy.

A discloser can make a formal report without having a preliminary discussion with the WCO.

5.2 Process for making a formal report

If the discloser wants to make a formal report under this policy (and therefore invoke the protections offered by this policy), the discloser must complete the form at **Annexure A** to this policy. The form requests certain minimum information from the discloser which will assist the Centre to investigate the disclosure. The WCO can help a discloser to complete the form. For more guidance about the information the discloser should provide in the form, see section 5.3 below.

Once the form is complete, the discloser should submit the form to the WCO by one of the following methods:

- in person
- via email (at the email address specified in section 4 above)
- by mail (at the address specified in section 4 above).

Within three business days of receiving the disclosure, the WCO must contact the discloser in writing to:

- acknowledge receipt of the disclosure, and



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- in circumstances where the discloser did not have a preliminary discussion with the WCO, to arrange an initial confidential interview to discuss the disclosure.

The purpose of the interview is to assess whether, in their view, the relevant conduct may fall within this policy and, if so, to ensure that the discloser has provided sufficient information in the disclosure so the WPP Investigator can carry out an effective investigation. All discussions with the WCO, whether informal or formal, do not start or form part of the investigative process.

Once the WCO has received the disclosure and conducted the preliminary interview (if necessary), the WCO must refer the disclosure to the WPP Investigator for investigation within five working days.

5.3 Information a discloser should provide in the disclosure

The discloser does not need to prove the truth of an allegation; however, they must demonstrate that there are reasonable grounds to believe Misconduct has occurred. To assist with the investigation, the discloser should provide as much information as possible about the Misconduct, including:

- the Misconduct that the discloser believes has occurred
- who the discloser believes is involved in the Misconduct
- when the discloser believes it occurred
- whether the discloser believes any other person knows about the Misconduct
- any evidence of the Misconduct (such as documents or witnesses), and
- whether the discloser is aware of any previous complaints or reports that have been made about the Misconduct, and if so, to whom.

The more information a discloser is able to provide, the more effective the investigation is likely to be. However, an eligible whistleblower should not delay making a disclosure if they have first-hand knowledge of any Misconduct.

5.4 Confidentiality

When making a disclosure, a discloser is entitled to keep their identity confidential. This involves the discloser revealing their identity to the WCO, but not to the WPP Investigator or any other person.

If a discloser wants to keep their identity confidential, they must indicate this on the form at **Annexure A**. In these circumstances, the discloser should also ensure they deliver the disclosure to the WCO in a way that they believe will best preserve their confidentiality – for example, by delivering it in person, by encrypted email, or mail (in a sealed envelope addressed to the WCO and marked ‘Private and Confidential’). Disclosers must not send a disclosure by fax, as the confidentiality of the discloser cannot be guaranteed.

If a discloser indicates on the form that they want their identity to remain confidential, the WCO must only send an extract of the disclosure (which omits the discloser’s name, identifying details and



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signature) to the WPP Investigator. The WCO must not otherwise reveal the discloser's identity to any other person for the duration of the investigation or after the conclusion of the investigation.

Please note: The Centre's view is that it will be able to conduct investigations more effectively if the discloser is prepared to be identified. The Centre will provide the protections mentioned in this policy (at section 7) to the discloser, to ensure that the discloser is not disadvantaged by reason of making a disclosure under this policy.

5.5 Anonymity

When making a disclosure, a discloser is also entitled to keep their identity anonymous. This is where the discloser makes a report without revealing their identity to anyone – even a WCO. When making an anonymous disclosure, the discloser should follow the same reporting process outlined above, but should not include their name or any identifying details on the form at **Annexure A**.

Please note: The Centre encourages disclosers to identify themselves so that the Centre can be sure the discloser will obtain the protections of this policy. Anonymous disclosures can significantly limit the Centre's ability to investigate the allegations. If an anonymous disclosure leaves out key facts or information and the Centre has no way of contacting the discloser, this may make it much more difficult for the Centre to properly investigate the matter.

The Centre encourages anonymous disclosers to establish an email account using a pseudonym and provide that email address to the WCO. This will allow the discloser to:

- be contacted by the WCO and/or the WPP Investigator on an anonymous basis to clarify any matters in the disclosure
- be provided with updates as to the status of the investigation, and
- to be informed of the outcome of the investigation.

If the WCO receives an anonymous disclosure, they must refer the disclosure to the WPP Investigator for investigation within 5 working days.

Once the WPP Investigator has reviewed an anonymous disclosure, the WPP Investigator may decide not to investigate the disclosure or to stop investigating a disclosure, if they:

- form the view that that insufficient facts have been provided to justify an investigation, and they are unable to obtain additional necessary information from the anonymous discloser, or
- form the view that running an investigation would be ineffective or impractical in circumstances where they are unable to contact the anonymous discloser to clarify matters, or
- are not satisfied that the discloser had reasonable grounds for making the disclosure.

If the WPP investigator decides not to investigate an anonymous disclosure or to stop investigating an anonymous disclosure, they must inform the discloser of this decision in writing.



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6. Investigation process

6.1 Investigation of the disclosure

The WPP Investigator is to be:

- the Chair of the Centre's Board, or
- in the event that the Chair is the subject of the disclosure, another member of the Centre's Board.

Once the WPP Investigator has received the disclosure from the WCO, they must:

- Review the disclosure, and use their professional judgement to determine the appropriate course of action for the disclosure's investigation and resolution. In making this decision, the WPP Investigator will inform and consult with the Centre's senior management. By way of example, the investigation can include:
 - conducting interviews with relevant witnesses
 - reviewing documents and evidence (including the evidence provided by the discloser)
 - taking other steps to locate evidence that reveals whether or not the Misconduct occurred.
- Thoroughly investigate each disclosure as a matter of priority to determine its accuracy and the extent of the Misconduct (if any), with the goal of coming to a conclusion as to whether the discloser's claims can be substantiated.

The Centre must provide the WPP Investigator with appropriate resources so that the WPP Investigator can undertake a proper investigation of the disclosure.

The following guidelines apply for the investigation of disclosures made under this policy:

- the WPP Investigator must carry out the investigation as soon as reasonably practicable
- the WPP Investigator must carry out the investigation independently of the discloser and any person who is the subject of an allegation in the disclosure
- after the WPP Investigator has reviewed the disclosure, the WPP Investigator may decide not to investigate the disclosure or to stop investigating a disclosure, if:
 - they are not satisfied that the discloser had reasonable grounds for making the disclosure
 - in their view, the disclosure is frivolous or vexatious
 - the information disclosed is the same, or substantially the same, as information that has already been investigated under this policy (or is currently being investigated under this policy)
 - the discloser has advised the WPP Investigator that they do not wish the investigation of the disclosure to be pursued, and the WPP Investigator is reasonably satisfied there are no matters raised in the disclosure that warrant investigation
 - in their view, it is impractical for the disclosure to be investigated because:
 - the discloser refuses or fails or is unable to give, for the purposes of the investigation, such information or assistance as the WPP Investigator asks the discloser to give



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- of the age of the information in the disclosure
- if the WPP investigator decides not to investigate the disclosure or to stop investigating a disclosure, they must inform the discloser of this decision in writing
- the WPP Investigator must take all reasonable steps to ensure that the investigation is fair and unbiased – this means that the rules of “natural justice” will apply and any person who is the subject of an allegation in the disclosure (or who may be affected by a negative finding in the investigation report) must:
 - be advised of the allegation(s) against them, and be provided with a copy of the evidence supporting those allegations
 - be provided with the right to respond to the allegation(s) – either in writing or by way of an interview, or both (as deemed appropriate by the WPP Investigator)
- once the investigation has concluded, the WPP Investigator must prepare a report which:
 - summarises the steps taken to investigate the disclosure
 - sets out the evidence collected and relied upon
 - reaches conclusions as to whether the alleged Misconduct occurred, and to what extent
 - sets out recommendations as to action(s) that should be taken to:
 - remedy any Misconduct
 - ensure the Misconduct (if any) does not recur.

The WPP Investigator may at any time during the investigation of the disclosure refer the investigation to an internal or external third party to conduct the investigation instead. In these circumstances, the third party must comply with all of the obligations of the WPP Investigator under this policy.

6.2 Process once the investigation is complete

Subject to the protections afforded by this policy and relevant laws, the WPP Investigator must, within five business days of completing the report:

- provide a copy of the investigation report to the Centre’s senior management
- provide any persons against whom allegations were made in the disclosure with a summary of the investigation report’s findings in relation to their conduct.

Upon receiving the investigation report, senior management must consider the recommendations in the report and action the recommendations (if any) it considers appropriate.

The WPP Investigator must, subject to considerations of privacy and confidentiality, inform the WCO of the outcome of the investigation and, if applicable, the action taken to remedy the Misconduct. The WCO must then inform the discloser of the outcome of the investigation. The discloser is not entitled to receive a copy of the WPP Investigator’s report. However, the WPP Investigator may decide to provide a copy of the report to the discloser if they think it is appropriate.

If the report relates to particularly serious Misconduct, and particularly if the investigation reveals that a criminal offence or a contravention of legislation may have occurred:



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- senior management must provide a copy of the investigation report to (or otherwise raise the matter with) the Centre's Board
- senior management must consider whether the Centre is required to report the Misconduct to the appropriate authority (such as the police, the relevant professional regulatory authority or the relevant occupational health and safety authority) – and if it is so required, report the Misconduct accordingly.

7. Protections provided under this policy

7.1 A discloser will not be disadvantaged for disclosures made on reasonable grounds

If a discloser has reasonable grounds for making a report under this policy, they must not be personally disadvantaged as a consequence of having made the disclosure. This means that the Centre (and in particular, the WCO and WPP Investigator) will use its best endeavours to ensure that the discloser will be protected from any conduct that causes them detriment by reason of having made the disclosure, including:

- dismissal from employment
- injury in their employment
- alteration of the discloser's position or duties to their disadvantage
- discrimination between the discloser and other employees of the Centre
- harassment or intimidation
- harm or injury to the discloser, including psychological harm
- damage to the discloser's property
- damage to the discloser's reputation
- damage to the discloser's business or financial position
- any other damage to the discloser.

These protections apply even if the WPP Investigator ultimately finds the discloser's claims of Misconduct in the disclosure to be unsubstantiated.

All contractors, employees, volunteers and officers of the Centre must honour the protections afforded to disclosers under this policy. A person will be subject to disciplinary measures (which can include demotion or termination of employment) if they:

- deliberately attempt to take, or deliberately do take any of the detrimental actions set out above against the discloser because the discloser made a disclosure
- otherwise hinder, obstruct or refuse to cooperate with the investigation of the disclosure.

A discloser should note the following when making a disclosure:

- A discloser who does not have reasonable grounds to make a disclosure (including circumstances where the disclosure is vexatious, mischievous or frivolous) will not receive the protections of this policy.
- If following the investigation of a disclosure, the WPP Investigator determines that a discloser did not have reasonable grounds to make the disclosure, the WPP Investigator must mention



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this in the investigation report. Senior management must consider this finding, and decide whether to take further action. The making of a disclosure without reasonable grounds may lead to disciplinary measures including termination of employment and, in particularly serious situations, legal action. While the Centre recognises that disclosers should be protected, it cannot allow the whistleblower protection program to be misused to the detriment of others.

- The making of a disclosure under this policy does not shield a discloser from the consequences flowing from any involvement in the Misconduct. A discloser's responsibility for their own conduct is not affected by the disclosure of the conduct under this policy. However, in some circumstances making the disclosure may be a mitigating factor when senior management are considering disciplinary or other action.

7.2 Confidentiality

The Centre recognises that one of the main ways it can ensure that a discloser is not disadvantaged is to protect the identity of the discloser. The Centre therefore will take the following steps to protect the discloser's identity:

- As discussed in section 5.4 above, if a discloser has reasonable grounds to make a disclosure under this policy, and wants their identity to be kept confidential, the WCO and any person undertaking the investigation into the disclosure will take all reasonable steps to keep the discloser's identity confidential.
- In addition, whether or not the discloser has requested that their identity be kept confidential, the WCO and any person undertaking the investigation will not reveal the fact of the disclosure or the discloser's identity to any person who does not need to know about the disclosure.

While the Centre is committed to protecting the discloser's identity, there may be occasions where this is not possible. In some cases, the Centre may be required or compelled by law to disclose the discloser's identity, such as where the investigation leads to criminal charges or a court action. Furthermore, there may be occasions where the nature of the allegations made is such that the discloser's identity can be deduced from the information made available or the nature of the investigation undertaken.

The Centre must keep the disclosure and all documents associated with the investigation securely.

8. Providing updates to the discloser

Throughout the investigation, the WCO must provide the discloser with regular updates as to the status of the investigation. It is, however, impracticable to specify exact timeframes for the investigation and resolution of disclosures, due to the varied nature and complexity of the issues that may be raised.



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9. Concerns re protection under this policy

If after having made a disclosure under this policy, a discloser does not believe they are properly obtaining the protections provided by this policy, they can raise their concerns with the WCO, a member of senior management, or a member of the Board. The Centre will take immediate action to ensure the discloser is protected in accordance with the whistleblower protection program outlined in this policy.

10. Reviewing this policy

Date policy first approved by the Board	18 November 2019
Most recent review of the policy	N/A
Due date of next review (must be at least once every 2 years)	November 2021



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Annexure A

Private & Confidential Whistleblower Report Form

If you wish to report any Misconduct under the Whistleblower Protection Policy, you should complete this form and give it to the Whistleblower Contact Officer (**WCO**). By doing this, you invoke the whistleblower reporting mechanism and you will be entitled to the protections contained in the Whistleblower Protection Policy, provided the disclosure is made on reasonable grounds.

SECTION A – REPORTER DETAILS

Do you want your identity to be kept confidential?

yes no

If you want your identity to be kept confidential, the WCO will not reveal your identity to the WPP Investigator or any other person. If you wish to be completely anonymous – even to the WCO – please do not insert your contact details here.

Name	
Position	
Email address	
Phone number	

SECTION B – DETAILS OF MISCONDUCT

What Misconduct do you believe has occurred?

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Who do you believe is involved in the Misconduct?

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When do you believe the Misconduct occurred?

Do you believe anyone else knows about the Misconduct? If so, who?

Do you have any evidence to support your claim, such as documents or witnesses? Please provide details below, and attach a copy of any relevant documents.

Are you aware of any previous complaints that have been made about the Misconduct? Please provide details (such as the date of the complaint(s) and to whom the complaint(s) were made).

SECTION C – DISCLOSER’S SIGNATURE

Discloser’s signature	
Date	



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SECTION D – OFFICE USE ONLY

Name of WCO	
Email address	
Telephone number	
Date disclosure received	