

Whistleblower Policy

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Scope

This Policy applies to all Staff and Clients, Agency wide.

Purpose

Whistleblowers play an important role in identifying and calling out misconduct and harm to consumers and the community. To encourage Whistleblowers to come forward with their concerns, and to protect them when they do, the *Corporations Act 2001* and the *Public Interest Disclosure Act 2022* give certain people legal rights and protections.

The Whistleblower Policy covers the following key areas:

- What is a Whistleblower or Public Interest disclosure;
- The protections available to a Whistleblower;
- How to make a Whistleblower disclosure or Public Interest Disclosure;
- Who to make a Whistleblower disclosure to;
- How Marist180 will investigate Whistleblower disclosures;
- How Marist180 will ensure fair treatment of Staff who are mentioned in Whistleblower disclosures; and
- How this Policy will be made available to Staff and Clients.

Policy

Marist180 is committed to the highest standard of conduct and ethical behaviour, promoting and supporting a culture of transparent and accountable behaviours, corporate compliance and good governance. Marist180 encourages the reporting of any instances of Reportable Conduct and provides protections and measures so that those people who make a Protected Disclosure may do so confidentially and without fear of intimidation, disadvantage or reprisal.

Marist180 Legislative Responsibilities

Marist180 have legislative responsibilities as an organisation under both the Corporations Act 2001 and as a government contractor per the Public Interest Disclosure Act 2022. At no time however do these provisions replace the obligations Marist180 Staff have for reporting child protection related disclosures.

Whistleblower Disclosures

Under the *Corporations Act 2001*, eligible individuals have a right to make a disclosure about misconduct, an improper state of affairs or the breach of certain laws committed by Marist180 or its employees and officers. These disclosures can be made to various persons and bodies including ASIC, APRA and certain Marist180 employees.

Public Interest Disclosures

Under the *Public Interest Disclosure Act 2022*, public officials can make disclosures about serious wrongdoing committed by any other public official (Marist180 Staff are considered 'public officials'). Public interest disclosures (PID) can be reported to a variety of External Agencies.

Mandatory Reporting

Importantly, a whistleblower or PID disclosure made under the provisions of this policy, does not replace the obligation of Mandatory reporting where a Reportable Allegation, Reportable Convictions or the risk of serious harm against a child is identified. Please refer to the *Reportable Allegations Procedure*.

What Constitutes a Disclosure?

When making a disclosure, it can only relate to certain disclosable matters.

You **must** have reasonable grounds to suspect that the information you are disclosing about Marist180 concerns:

- Misconduct; or
- An improper state of affairs or circumstances.

This information can be about Marist180, or an officer or employee of the company or organisation, engaging in conduct that:

- Breaches the *Corporations Act*;
- Breaches other financial sector laws enforced by ASIC or APRA;
- Breaches an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months; or
- Represents a danger to the public or the financial system.

It is important to note that disclosures that are not about disclosable matters do not qualify for protection under the *Corporations Act*.

Determining whether you are a Whistleblower

This Policy does not apply to a disclosure of information by an individual to the extent that the information concerns a personal work-related grievance of that person and does not concern alleged unlawful victimisation for making a Whistleblower Disclosure. *Please refer to the Staff Grievance Procedure.*

If you are a current or former officer, employee, or contractor of Marist180 who has an employment dispute or work-related grievance with Marist180, you may wish to report misconduct by Marist180 about that work-related dispute. However, the Whistleblower

protections do not cover a report of misconduct solely about your personal work-related grievance.

Generally, a personal work-related grievance will include:

- An interpersonal conflict with another employee;
- A decision about your employment, transfer, or promotion;
- A decision about the terms and conditions of your employment; and/or
- A decision to suspend or terminate your employment or otherwise discipline you.

Whistleblower Protection Eligibility

In order to obtain Whistleblower Protection, you **must** be a current or former:

- Employee of the company or organisation your Whistleblower disclosure is about, or a related company or organisation;
- Officer (usually that means a director or company secretary) of the company or organisation your Whistleblower disclosure is about, or a related company or organisation;
- Contractor, or an employee of a contractor, who has supplied goods or services to the company or organisation your Whistleblower disclosure is about, or a related company or organisation. This can be either paid or unpaid, and can include volunteers;
- Associate of the company or organisation, usually a person with whom the company or organisation acts in concert;
- Trustee, custodian or investment manager of a superannuation entity, or an officer, employee, or a goods or service provider to a trustee, custodian, investment manager; or
- Spouse, relative or dependant of one of the people referred to above.

While you must hold or have held one of these roles to access the protections, you do not have to identify yourself or your role, and you can raise your concerns anonymously.

Protections Available to the Whistleblower and Privacy of Information

Under the *Corporations Act 2001*, Whistleblowers are offered certain protections against ramifications for providing information regarding any illegal wrongdoings by a regulated entity. Marist180 is a regulated entity under the *Corporations Act*.

Marist180 has an obligation to protect the confidentiality of a Whistleblower's identity. Marist180 will protect the identity of a Whistleblower and seek to ensure their welfare is not compromised. Marist180 may however, disclose the identity of a Whistleblower to:

- ASIC, APRA, ATO, or a member of the Australian Federal Police;
- a legal practitioner (for the purposes of obtaining legal advice or legal representation about the Whistleblower provisions in the Corporates Act 2001); or
- with the consent of the Whistleblower.

Marist180 can disclose the information contained in a Whistleblower Disclosure, if:

- The information does not include the Whistleblower's identity; and
- It is reasonably necessary for investigation, the issue raised in the disclosure.

Marist180 will store any records relating to a report of a Whistleblower Disclosure securely and to restrict access to authorised people only who are involved in the investigation, including Senior Managers or Directors who need to know to take appropriate action, or for corporate governance purposes.

A Whistleblower is protected from any of the following in relation to their disclosure:

- Civil Liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- Criminal Liability (e.g. attempted prosecution of the Whistleblower for unlawfully releasing information, or other use of the disclosure against the Whistleblower in a prosecution (other than for making a false disclosure)); and
- Administrative Liability (e.g. disciplinary action for making a disclosure).

Unauthorised disclosure of information that could prejudice confidentiality and the identity of a Whistleblower, will be regarded as serious misconduct and may result in disciplinary action. Furthermore, it is illegal for a person to identify a Whistleblower or disclose information that is likely to lead to the identification of the Whistleblower outside of the above mentioned exceptions (i.e. disclosure to ASIC or the ATO).

Victimisation

The *Corporations Act 2001* makes it illegal (through a criminal offence and civil penalty) for someone to cause or threaten detriment to you because they believe or suspect that you have made, may have made, or could make a Whistleblower disclosure. Marist180 will not tolerate any retaliatory action or threats of retaliatory action against a Whistleblower, or against anyone related or in association with the Whistleblower.

The criminal offence and civil penalty apply even if you have not made a Whistleblower report, but the offender causes or threatens detriment to you because they believe or suspect you have or might make a report.

Staff may be causing you detriment if they:

- Dismiss you from your employment;
- Injure you in your employment;
- Alter your position or duties to your disadvantage;
- Discriminate between you and other employees of the same employer;
- Harass or intimidate you;
- Harm or injure you, including causing you psychological harm;
- Damage your property;
- Damage your reputation;
- Damage your business or financial position; and/or
- Cause you any other damage.

The offence and penalty require that the detriment be the result of an actual or suspected Whistleblower disclosure. In many cases, particularly in the context of private employment, there may be investigation about whether the conduct involved was victimisation as a result of the Whistleblower disclosure or for some other reason.

Marist180 will investigate allegations that a person caused or threatened detriment to a Whistleblower (or someone intending to become a Whistleblower), which would require

the cooperation of the alleged victim to investigate the claim. Any action Marist180 takes may result in a penalty to the perpetrator but not necessarily any compensation to the victim.

How to Make a Disclosure

Staff, or any person outlined in the [Whistleblower Eligibility](#), can make disclosures. In order to make a Whistleblower Disclosure, Staff are encouraged to email their disclosure through to one of the persons outlined below (see *To Whom Can Whistleblower Disclosures Be Made*).

Anonymous reports of Whistleblower Disclosures are also accepted under this Policy. Whistleblower Disclosures which are made anonymously will still be afforded the same protections outlined in this Policy, however anonymous reports often have limitations that may inhibit a proper and appropriate inquiry or investigation.

An anonymous discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations, and may remain anonymous over the course of the investigation and after the investigation is finalised. A discloser who wishes to remain anonymous should maintain ongoing two-way communication with Marist180 to enable follow up questions and feedback.

To make an anonymous Whistleblower Disclosure, individuals are encouraged to create an email account and use a pseudonym in order to contact the appropriate recipient, and to have two-way communications with the Agency;

To Whom Can Whistleblower Disclosures Be Made?

Whistleblower Protection Officer

To qualify for protection under the legislation, the disclosure must be made to an eligible recipient. Marist180 encourages all Whistleblowers to address their disclosure to the attention of the **Marist180 Whistleblower Protection Officer**.

Other Eligible Recipients

In exceptional circumstances, an individual may seek to make a disclosure to someone other than the Marist180 Whistleblower Protection Officer. Unless there is the risk of a conflict of interest, all disclosures to other eligible recipients will be referred to the Marist180 Whistleblower Protection Officer. The following are a list of eligible recipients of a Whistleblower Disclosure:

- ASIC;
- APRA;
- An officer of Marist180;
- An auditor, or member of an audit team conducting an audit within Marist180;
- An actuary of Marist180;
- A person authorised by Marist180 to receive protected Whistleblower disclosures.
- A member of the Marist180 Senior Leadership Team (see definitions);
- A lawyer, for the purpose of legal representation or legal representation regarding the Whistleblower protections; and
- To a parliamentarian or a journalist (but only where it is a “public interest” or emergency disclosure) and complies with the requirements set out in 1317AAD of the *Corporations Act*. These requirements include but are not limited to the need

to make an initial disclosure to ASIC or APRA or another Commonwealth body prescribed by the regulations and can only be made 90 days after the initial disclosure.

If Whistleblower disclosures are made to an external body, investigations will be conducted as per that body's procedures.

If a Whistleblower of a charity wants protection or is concerned about possible harm as a result of making a disclosure, they must raise their concerns with an eligible recipient. It is important to remember that the ACNC is not an eligible recipient.

A Whistleblower of a charity who wants to access the protections or fears harm can report to both an eligible recipient and the ACNC, though they are only covered by the protections from when they report to an eligible recipient.

Generally, if someone makes a disclosure about a charity to ASIC, ASIC will recommend the Whistleblower also contact the ACNC. ASIC may also release information to the ACNC itself. ASIC will generally obtain the consent of the Whistleblower to do this.

How will Marist180 Investigate Disclosures

Marist180's Company Secretary, CEO, Board, Marist180 appointed auditors, and Senior Leadership Team have obligations under the *Corporations Act 2001* if they receive a report from a Whistleblower. Unless these people handle the Whistleblower report correctly, they may breach the *Corporations Act 2001* obligations. Investigations will be conducted in a fair, objective and independent manner while preserving the confidentiality of the investigation. Throughout the course of the investigation, Whistleblowers will be updated on the progress without compromising the anonymity or confidentiality of the Whistleblower.

All investigations will be conducted within a reasonable timeframe following the initial disclosure. Where possible an estimated timeframe will be provided. The complexity of the Whistleblower Disclosure may warrant longer timeframes associated with the investigation and the Whistleblower will be updated on any changes to the initial estimate.

Confidentiality throughout the Investigation

When a Whistleblower Disclosure is received, all documents and other material related to the disclosure will be forwarded only to persons directly involved in handling and investigating the disclosure and be maintained in a confidential file. If appropriate, all personal information or reference to the Whistleblower's identity will be redacted by the recipient of the Whistleblower Disclosure.

If the Whistleblower Disclosure is received by a member of the Senior Leadership Team or other eligible recipient, a pseudonym must be adopted when escalating the matter to the Senior Manager, Governance in order to avoid breach of the Whistleblower's identity throughout the investigation process. Furthermore, care must be taken to ensure only information that is reasonably necessary for the purposes of investigating the matter is included as part of the investigation.

Step 1 – Assessment of Potential Whistleblower Disclosures

The Senior Manager, Governance will determine if the claim is a Whistleblower Disclosure. They will deem the claim to be a Whistleblower Disclosure if they are satisfied that the claim made suggests that Marist180 as an Agency, Staff, or Clients supported by

Marist180 have engaged in improper conduct. Matters involving potential criminal offending may be referred immediately to the police.

If the disclosure is deemed to be a Whistleblower Disclosure, the Senior Manager, Governance, will assess the risk of detriment against the Whistleblower and consider appropriate actions to protect the Whistleblower from detriment both throughout and following the investigation. Examples includes allowing the Whistleblower to work from another location, modification to a Whistleblower's workplace or reassignment of other Staff involved in the disclosable matter.

Step 2 – Treatment of Non-Whistleblower Claims

Where a disclosure is assessed not to be a Whistleblower disclosure, the Senior Manager, Governance will decide how the matter should be responded to in consultation with the Chair of the Board or the Chief Executive Officer as appropriate. Even if a disclosure is not a Whistleblower disclosure, there may be other Marist180 policies and procedures that apply and the person who made the disclosure will be advised of the correct reporting avenue.

Step 3 – Commission of Whistleblower Investigation

The Senior Manager, Governance will refer a Whistleblower disclosure to the Chair of the Board or the Chief Executive Officer to commission an investigation (by an independent external organisation with relevant expertise in this area) with the following activities in scope:

- Review all claims made, in conjunction with any evidence provided by the Whistleblower;
- Investigate and locate any evidence that may substantiate or refute the claims of the Whistleblower (this may include interviewing other parties);
- The person/s against which the allegation has been made will have the opportunity to respond and explain their behaviour and to provide any material in support of their response and explanation;
- A conclusion shall not be reached, and a recommendation will not be made until reasonable and appropriate enquires have been made and submitted material considered; and
- The Senior Manager, Governance may also refer the matter for investigation to an external body or the police if criminal conduct appears to have occurred, and the CEO (and Chair of the Board if appropriate) will be advised of any such referral.

Step 4 – Final report

At the conclusion of an investigation a report will be prepared by the independent external organisation for review by the CEO and Board, as appropriate. The report will outline the following:

- Details of the Whistleblower disclosure where possible while maintaining their confidentiality;
- Information and evidence collected during the investigation that either supports or refutes the allegation of improper conduct; and
- Conclusions reached by the investigating organisation and the reasoning behind each conclusion.

Step 5 – Outcome Meeting

An investigation outcome meeting will be convened by the Senior Manager, Governance, to be attended by relevant members of the Senior Leadership Team to review recommendations and actions to be taken.

Step 6 – Board Reporting

The level of reporting to the Board regarding Whistleblower disclosures will be determined by the seriousness of any allegations made in relation to improper conduct. At a minimum, the Senior Manager, Governance will prepare a general report on Whistleblower disclosures to the CEO and Board on an annual basis.

Step 7 - Documentation

The Senior Manager, Governance will maintain a register of Whistleblower disclosures, a copy of all reports from the independent external investigating organisation, and actions taken in response to the report.

Compensation and Other Remedies

Whistleblowers may seek compensation or other remedies through the Courts:

- They suffer loss, damage or injury because of a disclosure; and
- Marist180 failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Whistleblowers are encouraged to obtain their own legal advice with regard to compensation and other remedies to ensure correct advice if given.

Public Interest Disclosures

In addition to the protections for Whistleblowers outlined above, the *Public Interest Disclosure Act 2022* (NSW) (the 'PID Act') provides an alternative range of protections to public officials making Public Interest Disclosures about certain kinds of serious wrongdoing to an External Agency.

As service providers delivering services on behalf of the DCJ, Marist180 and its Staff, volunteers, contractors and consultants are considered public officials and thus brought under the protection of the PID Act.

What is a Public Interest Disclosure?

A Public Interest Disclosure may be given as a voluntary disclosure, a witness Public Interest Disclosure or a mandatory Public Interest Disclosure.

Voluntary Public Interest Disclosure

A voluntary Public Interest Disclosure is a disclosure made honestly and on reasonable grounds that shows or tends to show serious wrongdoing. A disclosure is not a voluntary public interest disclosure if it concerns only a grievance about a matter relating to employment or former employment of a Staff member.

A voluntary Public Interest Disclosure must be made to one of the recipients detailed below. See: *Who can I make a public interest disclosure to?*

Unless otherwise stated, a voluntary Public Interest Disclosure may be made orally or in writing and may be made anonymously.

Witness Public Interest Disclosure

A witness Public Interest Disclosure means a disclosure of information in an investigation of serious wrongdoing at the request or requirement of a person or an External Agency investigating the serious wrongdoing.

Mandatory Public Interest Disclosure

A mandatory Public Interest Disclosure is a disclosure about serious wrongdoing made while meeting the ordinary requirements of a Staff member's role or other legal obligation.

Who can I make a public interest disclosure to?

There are multiple recipients that a public officer can make a Public Interest Disclosure to. These are:

1. The head of an External Agency
2. Another disclosure officer for an External Agency pursuant to the *s18 PID Act*
3. A public official associated with the DCJ who is responsible for managing a Marist180 contract.
4. A Minister (if the disclosure is made in writing)
5. A member of Parliament or a journalist but only subject to the requirements in *s28 PID Act*. These requirements include but are not limited to having made a previous disclosure to an External Agency and waiting for the conclusion of any investigation.

Protections

Marist180 and Staff must not take any detrimental action against another person for making a Public Interest Disclosure. This applies even if Marist180 or Staff only believe or suspect that a public interest disclosure may have been made or is proposed to be made.

Mandatory Notification

As a requirement of contracting with the DCJ, Marist180 must notify the DCJ of serious wrongdoing committed, or alleged to be committed, by an individual providing services under our contract with the DCJ. Marist 180 is also required to notify the DCJ of a voluntary public interest disclosure of which it becomes aware.

No mandatory notification is to be made to the DCJ without the express written approval of the CEO.

If a Staff member becomes aware of any serious wrongdoing or public interest disclosure, that Staff member must immediately notify the CEO and the Senior Manager, Governance and Risk.

Accessibility of this Policy

This Policy will be made available to all Staff on Sharepoint and distributed / communicated via established channels. This Policy will also be made available to external people via the Marist180 website. Training will be provided to those with responsibilities provided for in the Policy.

Legislation

Australian Securities and Investment Commission Act 2001 (Cth)

Feedback – Relates to opinions, comments and expressions of interest that can be positive or negative regarding programs, services and/or Staff.

Natural Justice – Principles, procedures, or treatment felt instinctively to be morally right and fair.

People Manager – Anyone who manages Staff. This includes Program Managers, House Managers and Area Managers.

Procedural Fairness – Procedural Fairness is a legal principle that ensures fair decision making. It has developed over time as a result of decisions by the Courts in administrative law cases. Some decision-making processes, such as Code of Conduct decisions, have codified procedural fairness obligations, meaning that the legislation expressly provides for procedural fairness.

Public Interest Disclosure – a disclosure of serious wrongdoing that complies with the requirements of this policy.

Reasonable Grounds – Means that a reasonable person in your position would also suspect the information indicates misconduct or a breach of the law.

Reportable Allegation - means an allegation that the employee has engaged in conduct that may be reportable conduct, whether or not the conduct is alleged to have occurred in the course of the employee’s employment with the Schedule 1 entity.

Reportable Conduct –The Children’s Guardian Act 2019 defines reportable conduct as:

- A sexual offence;
- Sexual misconduct;
- Ill-treatment of a child;
- Neglect of a child;
- An assault against a child;
- An offence under section 43b or 316a of the Crimes Act 1900; and
- Behaviour that causes significant emotional or psychological harm to a child.

Reportable Conviction – means a conviction, including a finding of guilt without the court proceeding to a conviction, in NSW or elsewhere, or an offence involving Reportable Conduct whether or not the conduct occurred in the course of person’s employment with Marist180.

Senior Leadership Team – for purposes of who an authorised person is to receive protected disclosures, the SLT is the CEO, Director, or Senior Manager with Directorate responsibility.

Staff – Includes employees [whether permanent, temporary or casual], carers, volunteers, contractors, agency Staff, consultants, agents, students undertaking work or professional experience.

Serious wrongdoing – has the meaning provided in the *Public Interest Disclosure Act 2022 (NSW)* s 13 and Sch 2 and includes corrupt conduct, a government information contravention, a local government pecuniary interest contravention, serious maladministration, a privacy contravention, or a serious and substantial waste of public money.

Whistleblower – A person relaying credible information on alleged/potential illegal practices, or violations of adopted policies at Marist180 either to Staff or external Agencies.

Whistleblower Disclosure – A disclosure of misconduct or an improper state of affairs or circumstances in relation to Marist180 or the contravention of certain laws by employees of officers of Marist180 made in accordance with this policy.

Whistleblower Protection Officer – The Whistleblower Protection Officer is the person responsible for acting on Whistleblower Disclosures and is typically the Senior Manager, Governance.