



# Whistleblower Policy and Procedure

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## 1. Purpose

The purpose of this Policy is to:

- set out the principles, guidelines and procedures governing MLC's approach to the protection of whistleblowers and the management of relevant disclosures;
- ensure individuals who disclose wrongdoing can do so safely, securely and with the confidence that they will be protected and supported;
- ensure disclosures are dealt with appropriately and on a timely basis; and,
- Provide transparency around MLC's procedure for receiving, handling, and investigating disclosures.

## 2. Scope

This Policy should be read and understood by, and made available to all directors, officers, employees, contractors, volunteers and service providers of MLC.

The Policy applies to those who are eligible to make disclosures (Eligible Whistleblower) that qualify for protection and those who are eligible to receive disclosures (Eligible Recipients).

This Policy does not apply to students of MLC or their parents and guardians. If you are a student, parent or guardian and have a concern or complaint that you would like to report, please refer to MLC's Complaints, Grievances and Appeals Policy and Procedure (Students/Parents/Guardians).

## 3. Policy Statement

### 3.1. Principles

Methodist Ladies' College Ltd (MLC) is committed to maintaining the highest standard of conduct and ethical behaviour in all areas of operation.

MLC strives for a culture of openness and feedback, in which concerns and complaints are:

- addressed appropriately;
- handled respectfully and fairly; and,
- dealt with in alignment with MLC's core values of respect, responsibility, compassion and courage.

This Policy provides a framework in which individuals can report certain types of misconduct or suspected misconduct (disclosures) and receive protection under the applicable legislation.

Please note that if your concern is a 'Personal Work-Related Grievance' and does not also involve a type of disclosure protected under whistleblower protection legislation, it cannot be dealt with under this Policy. If you have a concern about a Personal Work-Related Grievance, you should raise it with your manager or MLC Human Resources in the first instance. Examples of a 'Personal Work-Related Grievance' are set out in Section 3.5.

### 3.2. Who can make disclosures?

Only Eligible Whistleblowers can make disclosures that qualify for protection under the applicable legislation.

An Eligible Whistleblower may be any current or former:

- director or officer;
- employee, agency staff, or contractor;
- service provider (including a volunteer) or a consultant;
- auditor or actuary; or
- any relative, dependent, or spouse of the above individuals, of MLC or its related body corporates.

### 3.3. To whom disclosures can be made

Disclosures that qualify for protection under the Act may only be made to ‘Eligible Recipients’ defined under the Act, Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA), legal practitioners, or to other prescribed commonwealth authorities.

By law, disclosures can be made to any of those persons or bodies outlined in this Section (3.3). For disclosures made to Eligible Recipients, MLC has streamlined the disclosure process by nominating the Persons Authorised as being the preferred Eligible Recipients under this Policy, as they will have received appropriate training to assist them with any disclosures received.

For the purposes of this Policy, the following are ‘Persons Authorised’ by MLC to receive disclosures:

- Director Human Resources of MLC
- Principal of MLC
- Chair or Deputy Chair of the MLC Board
- Appointed Auditor of MLC

‘*Eligible Recipients*’ may be any one of the following persons or bodies:

- Senior manager (a member of senior leadership at MLC). This will not necessarily include supervisors;
- Director or officer;
- Auditor or actuary; or
- ‘Persons Authorised’ by MLC.

Where a discloser has reasonable grounds to believe that there is a substantial or imminent danger to the health or safety of one or more persons or that the disclosure is in the public interest, they should make an ‘*Emergency Disclosure*’ or ‘*Public Interest Disclosure*’ to ASIC or APRA. Please refer to the ASIC website, [www.asic.gov.au](http://www.asic.gov.au) for more information.

### 3.4. Disclosures that qualify for protection

There are four essential requirements that must be met before a disclosure qualifies for protection under the applicable legislation.

In order to qualify for protection, the disclosure must:

- be made by an ‘Eligible Whistleblower’ listed in Section 3.2; and
- be in relation to a ‘Disclosable Matter’ set out in this section (3.4); and
- be disclosed to a person or body listed in Section 3.3; and
- be in relation to MLC or its related body corporates

(together, Eligible Disclosure)

A 'Disclosable Matter' is where the discloser has reasonable grounds to suspect MLC, its related body corporates, or its employees, directors, officers, of misconduct or an improper state of affairs or circumstances.

Misconduct or an improper state of affairs may include conduct which:

- constitutes an offence against, or a contravention of, a provision of any of this Act, ASIC, banking, financial, insurance, credit or superannuation legislation or instrument; or
- constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- represents a danger to the public or the financial system.

Examples of misconduct or an improper state of affairs or circumstances include:

- dishonest activity (e.g. fraud, money laundering or misappropriation of funds);
- unethical behaviour;
- illegal activity (e.g. theft, drugs, violence or threat of violence);
- a danger to the public (e.g. involving substantial risk to health and safety);
- a danger to a financial system (e.g. bribes, financial irregularities);
- a systemic issue of which MLC or a regulator should be aware; or
- harm or threat of harm to whistleblowers or suspected whistleblowers.

The discloser is not required to prove their concerns in order to qualify for protection. The discloser must only prove they had reasonable grounds to suspect there was misconduct or impropriety.

However, disclosures that are determined to be vexatious or deliberately false will not qualify for protection. A discloser making vexatious and or deliberately false disclosures is unlikely to receive the protections under the applicable legislation and further may be subject to disciplinary action by MLC.

If you wish to report a disclosure in relation to child safety, please also refer to the MLC Child Safe Policy.

### **3.5. Disclosures that do not qualify for protection**

Disclosures that solely relate to 'Personal Work-Related Grievances' will not qualify for protection under law and will not be dealt with under this Policy.

A 'Personal Work-Related Grievance' is where the information:

- concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally; and
- does not have significant implications for MLC, or another Australian public company, that *do not relate to the discloser*; and
- does not pertain to conduct set out in Section 3.6.

Examples of a Personal Work-Related Grievance include but are not limited to:

- an interpersonal conflict between the discloser and another employee;
- a decision relating to the engagement, transfer or promotion of the discloser;
- a decision relating to the terms and conditions of engagement of the discloser; or  
a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser, which does not involve any of the matters defined as misconduct/improper state

of affairs in Section 6 of this Policy. In general terms, this would usually be one of the Disclosable Matters described in Section 6 of this Policy.

As stated above, matters which are solely a Personal Work-Related Grievance do not qualify for protection under whistleblower protection legislation and cannot be dealt with under this Policy. If you have a concern about such matters, i.e., if you have a Personal Work-Related Grievance, you should raise it with your manager or MLC Human Resources in the first instance.

However, where a Personal Work-Related Grievance also involves a Disclosable Matter (a Mixed Report) the disclosure may still qualify for protection under the Act and may be dealt with under this Policy. If you believe that your concern is a Mixed Report, please contact a Person Authorised or those otherwise noted at Section 3.3.

### **3.6. How to make a disclosure**

All MLC employees, directors, officers and service providers are encouraged, and have a responsibility to, report any known or suspected incidences of Disclosable Matters by making a disclosure to the Persons Authorised to receive disclosures.

By law, disclosures can be made to any of those persons or bodies listed in Section 3.3. For disclosures made to Eligible Recipients, MLC has streamlined the disclosure process by nominating the Persons Authorised as being the preferred Eligible Recipients under this Policy, as they will have received appropriate training to assist them with any disclosures received.

MLC recommends you contact the Director of Human Resources at first instance if you consider you have an Eligible Disclosure.

If you are not comfortable or believe there may be a conflict by making a disclosure to the Director of Human Resources, MLC recommends that you make your disclosure to other Persons Authorised at second instance, or other Eligible Recipients or persons or bodies listed at Section 3.3 of this Policy at third instance.

Persons Authorised can be contacted by confidential email at [whistleblower@mlc.vic.edu.au](mailto:whistleblower@mlc.vic.edu.au). This email account can be accessed by any of the Persons Authorised. If you are not comfortable with all of the Persons Authorised viewing your complaint, you may alternatively email a Person Authorised directly at their email address using the subject: "whistleblowing".

To assist a Person Authorised determine whether the disclosure is eligible for protection under the terms of this Policy, please set out your concern(s) in writing stating the information and facts on which you have based your concern.

You should only disclose the names and contact details of other people connected to the disclosure to the extent that it is necessary for the Person Authorised to understand the concern you are raising.

Disclosures can be made inside or outside business hours, will be handled confidentially and on a need to know basis.

You may refuse to answer questions that you believe might reveal your identity. If you wish that your identity be kept anonymously you may report your disclosure anonymously by:

- sending the report in writing via post or sending a confidential email to the Person Authorised ([whistleblower@mlc.vic.edu.au](mailto:whistleblower@mlc.vic.edu.au))
- in an envelope or email marked 'Private and Confidential';
- with the subject of the content letter titled 'Whistleblowing disclosure'; and
- expressly stating that you wish your identity to remain anonymous.

Where a disclosure has been made to an individual associated with MLC who is not an Eligible Recipient (for example a supervisor), that person should refer the discloser to this Policy.

### **3.7. Receiving a disclosure**

When the Persons Authorised receives the disclosure, the first thing they must do is consider whether the disclosure qualifies as a protected disclosure and whether the disclosure is to be managed under the terms of this Policy.

This may well be a complex decision and may be made more complicated by the need for strict confidentiality and further information. It may take time.

The Persons Authorised may communicate with the discloser in order to gather further information about the allegation. In seeking additional information, the Persons Authorised should make it clear to the discloser that they will continue to protect the discloser's identity and that of anyone else potentially implicated in the matter and will only request information as is necessary to guide the setting up of an investigation.

If the disclosure has been made anonymously, communication with the discloser may only be possible if the discloser has provided a designated confidential email address for MLC to contact.

The Persons Authorised may then refer the matter to the Principal or the Chair of the Board or another appropriate person for investigation, taking care to protect confidentiality and to ensure the referral is not to someone who is directly or indirectly involved in the allegation of misconduct or improper activity.

### **3.8. Protections available to whistleblowers**

Where a disclosure meets the requirements of an Eligible Disclosure set out above, it is protected under the terms of the Act.

Protection commences from the time the Eligible Disclosure is made.

The key whistleblower protections are:

- Protection of the whistleblower's identity - it is unlawful for MLC to reveal the identity of the whistleblower (or information that could identify the whistleblower) without the whistleblower's consent or as otherwise permitted by the applicable legislation;
- Protection from victimisation - the whistleblower will be protected from retaliation, harassment, victimisation or the threat of such behaviour (for example, discrimination in how the whistleblower or an associate/family member of the whistleblower is treated by MLC, or reputational damage);
- Protection from detriment - the whistleblower will not be subject to disciplinary action (for example, a warning, termination of contract, change of contract to the detriment of the whistleblower) in response to a whistleblowing action;
- Protection from criminal, civil and administrative liability for making the disclosure;
- Protection from admissibility of certain information against the discloser where the discloser was a party to the conduct;
- Entitlement to seek compensation and other remedies under legislation for loss, damage or injury suffered because of detriment caused because of the disclosure.
- Breach of protections may not only expose the contravener and or MLC to liability but may result in disciplinary action against the contravener, which may include termination of employment, engagement or appointment (as applicable).

### **3.9. Support and welfare of whistleblower**

- MLC will take all reasonable steps to protect the identity of the whistleblower as maintaining confidentiality is crucial in ensuring reprisals are not made against a whistleblower.
- MLC will ensure that only those directly involved in the investigation of the disclosure have access to information concerning the discloser and the disclosable matters.
- MLC may take necessary measures to protect a whistleblower while an investigation is in progress, when a member of staff may be particularly vulnerable. Measures that may be

considered include moving a member of staff out of a particular section while the investigation is ongoing, granting leave, or working from home.

- All MLC staff must take all reasonable steps to attempt to maintain the confidentiality of a person they know or suspect to have made a disclosure.
- All MLC staff must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes or is likely to make a protected disclosure.
- If you have any concerns that you are or may experience detriment or are being victimised for making a disclosure, please contact the Director of Human Resources immediately.
- The Director of Human Resources will ensure the whistleblower is kept informed of action taken in relation to their disclosure, provide regular updates, and notify the whistleblower when the investigation is complete.
- The whistleblower will be provided with access to MLC's employee assistance program (EAP) and may be provided with access to other external assistance, consultants or advisors as may be appropriate. For example, a whistleblower may request MLC meet the reasonable costs of medical treatment, health and wellbeing assistance, and or legal advice. Each request will be dealt with on a case by case basis.
- The whistleblower may have a support person present in any meetings with the investigator or other authorities.

### **3.10. Handling investigations**

After a disclosure is reported to a Person Authorised, the Person Authorised may escalate the concern to another person or body, likely the Board of MLC.

MLC will assess whether a disclosure should be investigated.

If appropriate, MLC will then investigate the reported disclosure as set out below. The type of investigation will be determined by the circumstances of the report at the time. All investigations will be thorough, objective, fair and independent.

The investigation will follow principles of procedural fairness and natural justice, including involving an impartial person or persons as appropriate to the investigation.

MLC may at its absolute sole discretion:

- engage independent whistleblowing service providers;
- appoint a designated whistleblowers protection officer;
- appoint internal or external investigators;
- appoint legal counsel or human resources staff to assist with investigations;
- review and update this Policy, procedures and processes as and when required.

The investigator may undertake some or all of the following tasks:

- seek further information and evidence from a discloser either in writing or in person;
- seek information and evidence from other sources as appropriate, e.g. witness interviews, requesting and or reviewing documentation, and the like;
- seek advice from external professionals;
- refer the matter to regulators or other authorities;
- prepare a report to document their findings.

Findings of the investigation will generally be documented and reported to the MLC Board (if appropriate).

MLC may be required to cease an investigation where the whistleblower refuses or fails to provide information reasonably necessary for MLC to carry out its investigation

MLC retains sole absolute discretion as to whether and when to continue with, terminate or reopen

an investigation.

If a whistleblower is not satisfied with the outcome of an investigation please contact the Director of Human Resources or other Persons Authorised or alternatively, notify their concerns to ASIC or APRA.

### **3.11. Ensuring fair treatment of individuals mentioned in disclosure**

All disclosures will be handled confidentially so as to protect the identity of the discloser and any individuals who are subject to the disclosure.

Each disclosure may be assessed and be subject to a discrete and separate investigation.

The objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported.

A person against whom allegations have been made in a disclosure (a respondent) will be treated with the principles of natural justice and procedural fairness prior to any action being taken against them. Most importantly, a respondent will be given an opportunity to respond and will be notified of the outcome of any investigation.

Individuals who are mentioned in a disclosure (whether as respondent or witness) may also be provided additional support from MLC. For example, a respondent may request MLC meet the reasonable costs of employee assistance program medical treatment, health and wellbeing assistance, and/or legal advice. Each request will be dealt with on a case-by-case basis.

### **3.12. How this policy will be made available to officers and employees**

MLC will ensure that this Policy is communicated to all Board members, staff, service providers and the wider MLC community via its website and as initial employment information, with copies also available from MLC office and via the MLC intranet.

Persons Authorised will be provided training to assist them in their role as Eligible Recipients.

If you have any concerns about how this Policy works, what is covered, or how a disclosure might be handled, please contact the Director of Human Resources.

## **4. Applicable Legislation**

- *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) (the Act); and,
- *Corporations Act 2001* (Cth)

## **5. Other relevant MLC policies**

- Risk Management Policy
- MLC Child Safety and wellbeing Policy
- Complaints, Grievances and Appeals Policy
- Privacy Policy
- Dignity at Work Policy
- MLC Staff Code of Conduct

## 6. Governance

Document Details		
<b>Title:</b>	Whistleblower Policy and Procedure	
<b>Policy Approver:</b>	Director of Corporate Services	
<b>Policy Owner:</b>	Director of Human Resources	
<b>Date Created:</b>	December 2019	
<b>Review Timeline:</b>	Triennial	
<b>Date of Next Review:</b>	December 2025	

  

Version Control		
Version	Date	Description
V1	Dec 2019	Document created
V2	Dec 2022	Reformatted to new policy template

  

Audience		Publication Location	
MLC Staff		MLC Staff Hub > Document Central	
Wider community		External MLC website	