



THE UNIVERSITY OF  
**NOTRE DAME**  
A U S T R A L I A

# Policy:

## Whistleblower Protection

Effective: 15 April 2021

Audience: Staff and Associates

Policy Category: Governance

Policy Sub-category: Grievance and Appeals

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Policy Owner: Audit and Risk Committee

Responsible Officer: University Secretary

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## 1 OBJECTS OF THE UNIVERSITY

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- 1.1** The University's Objects as defined in Section 5 of its Act of Parliament are:
- (a) the provision of university education, within a context of Catholic faith and values; and
  - (b) the provision of an excellent standard of -
    - i. teaching, scholarship and research;
    - ii. training for the professions; and
    - iii. pastoral care for its students.
- 1.2** In meeting the Objects, the University is committed to providing members of its community with a safe and supportive environment characterised by a culture of integrity and accountability and in which a person can raise concerns about conduct relating to the University, its operations, officers or staff without fear of reprisal.

## 2 PURPOSE

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- 2.1** To promote good corporate governance by providing a reporting and investigative mechanism that is objective and independent and provides a clear line of responsibility within the University to support and protect a Whistleblower.
- 2.2** To facilitate the Whistleblower protection requirements of the *Corporations Act 2001*.

## 3 SCOPE

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- 3.1** This Policy only applies to Whistleblowers in relation to, and to the extent that they are, making a Protected Disclosure.
- 3.2** This Policy does not apply to a dispute, personal work-related grievance, interpersonal conflict, or concern regarding a University policy decision, procedure or practice.
- 3.3** This Policy does not replace existing University policies and procedures that deal with personal or professional grievances of University Staff Members or students or employment-related grievances under *The University of Notre Dame Australia Staff Enterprise Agreement 2018-2021* (as amended from time to time).
- 3.4** Nothing in this Policy prevents a Whistleblower from seeking independent legal advice or contacting relevant legal or statutory authorities.

## 4 PROTECTIONS AND SUPPORT FOR WHISTLEBLOWERS

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### **4.1 Protection for Disclosure of Reportable Conduct**

4.1.1 To be protected under this Policy the Whistleblower must:

- 4.1.1.1 have a genuine or reasonable belief that the information in the allegation is true or likely to be true; and
- 4.1.1.2 make the disclosure in accordance with this Policy.

### **4.2 No Detriment**

4.2.1 A Whistleblower will be protected from Detrimental Conduct as a result of having made a Protected Disclosure.

### **4.3 Support for Whistleblowers**

4.3.1 The University will make available appropriate welfare support to a Whistleblower, including access to either the Employee Assistance Program, or other counselling service

if the disclosure is made by someone other than a Staff Member.

4.3.2 The protections provided under this clause 4.3 may also extend to other persons if they have been subject to Detrimental Conduct and that conduct is as a result of the Protected Disclosure.

4.3.3 A Whistleblower who discloses their own involvement in misconduct or other wrongdoing as part of having made a Protected Disclosure will remain subject to relevant University disciplinary processes.

#### **4.4 Confidentiality**

4.4.1 Subject to 4.3.2, a Disclosure Officer or Disclosure Body must not disclose:

4.3.1.1 the identity of the Whistleblower; or

4.3.1.2 information that could lead to the identification of the Whistleblower. However, such information (but not the Whistleblower's identity) can be disclosed if it is necessary for an investigation and provided all reasonable steps are taken to prevent the identity being disclosed.

4.4.2 The Disclosure Officer or Disclosure Body will not disclose the Whistleblower's identity unless:

4.4.2.1 the person consents to the disclosure of their identity;

4.4.2.2 disclosure of the information is made to the Australian Securities and Investment Commission, Australian Prudential Regulation Authority and/or the Australian Federal Police; or

4.4.2.3 disclosure of the information is made to a lawyer (internal or external to the University) for the purposes of taking advice about whistleblowing protections.

4.4.3 A Whistleblower may decline from answering questions that they believe may reveal their identity when disclosing Reportable Conduct, or during or on completion of any investigation process.

4.4.4 A Whistleblower making a Protected Disclosure must keep all information relating to any Reportable Conduct confidential at all times, both during and on completion of any investigation process.

## **5 FALSE OR VEXATIOUS DISCLOSURE**

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5.1 A person who knowingly makes a false or vexatious report of Reportable Conduct, or who otherwise fails to act honestly with reasonable belief in respect of the report:

(a) is not afforded any protection under this Policy; and

(b) in the case of a Staff Member, will be subject to disciplinary action.

## **6 TRAINING AND PUBLICATION**

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6.1 The University will provide appropriate training to those Staff Members and directors and officers of the University with responsibilities under this Policy to support its implementation.

6.2 The University will make this Policy available on its external website.

## **7 ROLES AND RESPONSIBILITIES**

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7.1 **Disclosure Officer or Disclosure Body** is responsible for:

(a) receiving a disclosure and identifying that it constitutes a Protected Disclosure under

- this Policy;
- (b) making a comprehensive record of the disclosure in cases where the disclosure is not made in writing, and, where possible, requesting the Whistleblower sign the record of the disclosure;
- (c) referring the person making the disclosure to the appropriate process in cases where the disclosure is not deemed to constitute Reportable Conduct;
- (d) making a written record of whether or not the Whistleblower consents to the disclosure of their identity;
- (e) referring the matter to the Disclosure Coordinator for assessment;
- (f) assisting the Disclosure Coordinator with the assessment, including risk assessment and management of the disclosure under this Policy; and
- (g) maintaining confidentiality of reports and information associated with Protected Disclosures (and in the case of a Disclosure Officer, including ensuring that the information is kept and stored on a secure central folder within the University Secretariat).

**7.2 Disclosure Coordinator** is responsible for:

- (a) taking steps to ensure appropriate action is taken to provide the relevant protections under this Policy;
- (b) conducting a preliminary assessment of a disclosure in accordance with the *Procedure: Whistleblower Protection* and preparing a notice of the disclosure;
- (c) identifying the appropriate manner for investigating a Protected Disclosure, which may include engaging a person or organisation external to the University;
- (d) providing a notice of the disclosure to the University Secretary as soon as practicable;
- (e) assessing whether it is possible and appropriate to keep the Whistleblower's identity confidential;
- (f) maintaining confidentiality of reports and information associated with Protected Disclosures, including ensuring that the information is kept and stored on a secure central folder within the University Secretariat;
- (g) ensuring that any investigation conducted is thorough, appropriate and free from conflicts of interest;
- (h) keeping the Whistleblower updated as appropriate in relation to the processes being followed in relation to their Protected Disclosure, including anticipated timeframes and any delays;
- (i) conducting a risk assessment relating to the risk of reprisal and workplace conflict related to, or likely to arise out of a Protected Disclosure, and develop mitigation strategies to manage identified risks;
- (j) reporting the outcome of any investigation to relevant stakeholders, subject to any confidentiality restrictions (and as appropriate in the circumstances), at the conclusion of the investigation; and
- (k) referring, in consultation with the University Secretary, Protected Disclosures to the Vice Chancellor for reporting to relevant external authorities, including (but not limited to) the Australian Securities and Investment Commission, Australian Prudential Regulation Authority and/or the Australian Federal Police as appropriate.

**7.3 University Secretary** is responsible for:

- (a) receiving a notice of disclosure and providing the notice to the Chair, Audit and Risk Committee in a timely manner;
- (b) reviewing notices received and obtaining legal advice as necessary to ensure that Protected Disclosures are managed appropriately and in compliance with this Policy;
- (c) ensuring, in consultation with relevant Principal Officers, that information about this Policy and the process for making disclosures is made publicly available on the University's website;
- (d) maintaining a register of all notices of Protected Disclosures received and the action taken to resolve them;
- (e) verifying that appropriate remedial action has been taken where wrongdoing is substantiated or systemic problems are identified, and report outcomes to the Audit and Risk Committee;
- (f) maintaining confidentiality of reports and information associated with Protected Disclosures, including ensuring that the information is kept and stored on a secure central folder within the University Secretariat; and
- (g) monitoring and reporting on the effectiveness of this Policy to inform review of the Policy by the Audit and Risk Committee.

**7.4** The **University** is responsible for ensuring any Whistleblower does not suffer Detrimental Conduct as a result of their reporting or participation in relation to the Protected Disclosure. The University will investigate any report of victimisation and if proven, take disciplinary action against any person responsible or involved in the victimisation.

**7.5** **Staff Members** involved in an investigation or Misconduct process are responsible for:

- (a) supporting and protecting those who have made a Protected Disclosure;
- (b) refraining from engaging in Detrimental Conduct; and
- (c) maintaining confidentiality of information.

## 8 RELATED DOCUMENTS

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### **University**

- 8.1** *Staff Code of Conduct*
- 8.2** *Policy: Misconduct*
- 8.3** *Policy: Staff Grievance Resolution*
- 8.4** *Policy: Sexual Assault and Sexual Harassment*
- 8.5** *Policy: Workplace Bullying*
- 8.6** *Procedure: Whistleblower Protection*
- 8.7** *Policy: Code of Conduct: Research*
- 8.8** *The University of Notre Dame Australia Staff Enterprise Agreement 2018-2021*

### **Legislation/National Codes**

- 8.9** *Australian Code for the Responsible Conduct of Research 2018*
- 8.10** *Corporations Act 2001*
- 8.11** *Taxation Administration Act 1953 (Cth)*

## 9 DEFINITIONS

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## 9.1 For the purpose of this Policy, the following definitions apply:

**Associates** means volunteers; visiting members; contractors and consultants performing work for the University, and honorary Adjunct, Clinical Academic and Visiting appointments conferred in accordance with the *Policy: Adjunct, Clinical Academic and Visiting Appointments*.

**Disclosure Officer** means a Principal Officer; member of the Board of Directors; the Director, Audit and Compliance; an external auditor; or such other Officer as the Vice Chancellor nominates, or is deemed to be an eligible recipient under the *Corporations Act 2001*.

**Disclosure Coordinator** means the PVC, People and Culture (or delegate); the PVC, Student Experience (or delegate); or such other Officer as nominated by the Vice Chancellor or University Secretary.

**Disclosure Body** means any third party body or agency that may be engaged by the University from time to time to provide a confidential Whistleblower disclosure service.

**Detrimental Conduct** means any actual or threatened conduct that could cause a detriment to the person disclosing the Reportable Conduct, including:

- (a) termination of employment;
- (b) alteration of an employee's position or duties to her or his disadvantage;
- (c) harassment, bullying or intimidation;
- (d) personal, professional or financial disadvantage;
- (e) unlawful discrimination;
- (f) harm or injury, including psychological harm;
- (g) damage to reputation;
- (h) academic disadvantage; or
- (i) any other conduct that constitutes retaliation.

**Principal Officer** means those officers as defined by Division 5 of the University Statutes.

**Protected Disclosure** means a disclosure of Reportable Conduct that would qualify for protection under the *Corporations Act 2001*.

**Reportable Conduct** means alleged conduct relating to activities or operations of the University that, if substantiated, could constitute misconduct, including, but not limited to:

- (a) Dishonest, corrupt or illegal activities;
- (b) Theft, fraud, money laundering or misappropriation;
- (c) Offering or accepting a bribe or benefit;
- (d) Serious professional misconduct;
- (e) Failure to avoid and/or disclose conflict of interest;
- (f) Substantial mismanagement of resources;
- (g) Victimising someone for reporting reportable conduct or because they participated in an investigation;
- (h) Instruction to cover up or attempt to cover up serious wrongdoing;
- (i) conduct that constitutes an offense against or contravention of the Corporations Act or other specified Financial Services legislation or other Commonwealth legislation that is punishable by imprisonment for 12 months or more; and
- (j) conduct that represents a danger to the public.

**Staff Member** means a person employed as a member of the University's staff.

**Whistleblower** means a person who reports a Protected Disclosure in accordance with this

Policy, and is also a current or former:

- (a) Staff Member;
- (b) Associate;
- (c) director of the University;
- (d) officer of the University;
- (e) supplier (or employee of a supplier); or
- (f) a dependant, spouse or relative of (a) to (e).

<b>Version</b>	<b>Date of approval</b>	<b>Approved by</b>	<b>Amendment</b>
1	30 September 2020	Board of Directors, resolution 92/7 (noting that position titles would be updated as required in line with restructuring).	New Policy.
2	15 April 2021	Board of Directors	Amendments to definitions of Whistleblower; Disclosure Officers; and Disclosure Coordinators; inclusion of Disclosure Body; clearer references to provisions and terminology within the <i>Corporations Act</i> .