

Name of Policy	Protection of Whistleblowers – Victoria Policy (Whistleblowers Protection Act 2001 (Victoria))
Description of Policy	
<input type="checkbox"/> New Policy	<input type="checkbox"/> Revision
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Human Resources Directorate

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1. PURPOSE

Australian Catholic University recognises its responsibilities under the Whistleblowers Protection Act 2001 (Victoria).

- The Vice-Chancellor of Australian Catholic University has established this policy and associated procedures to ensure compliance by all members of the University with all relevant requirements of the Act.
- The University seeks to provide all staff in Victoria with a working environment free of improper or corrupt conduct.
- The University values the appropriate use of mechanisms to disclose and eliminate corrupt or improper conduct.
- The University will seek to protect against detrimental action in reprisal for a protected disclosure.

2. SCOPE

As an interim policy, this policy and procedures has coverage in Victoria only as required under enacted Victorian Legislation. It is set in place pending broader consideration of the matters that would be required to underpin development of a national policy.

All members of the University in Victoria are bound by this interim policy, including employees of the University and members of the governing authority of the University.

3. DEFINITIONS

Definitions arising from the Whistleblowers Protection Act 2001 (Victoria)

"Corrupt conduct" means:

- conduct of a member of the University that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a member of the University in Victoria or the University's functions in Victoria; or
- conduct of a member of the University in Victoria that amounts to the performance of any of his or her functions as a member of the University dishonestly or with inappropriate partiality; or
- conduct of a member of the University, a former member of the University or the University in Victoria that amounts to a breach of public trust; or
- conduct of a member of the University, a former member of the University or the University in Victoria that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or the University or otherwise); or
- a conspiracy or attempt to engage in conduct referred to above.

"Detrimental action" includes:

- action causing injury, loss or damage; and
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

"Disclosed matter" means:

- a matter disclosed in a disclosure determined by the Ombudsman under Part 4 or Part 8 (of the Whistleblowers Protection Act 2001) to be a public interest disclosure.

"Improper conduct" means:

- corrupt conduct; or
- a substantial mismanagement of public resources; or
- conduct involving substantial risk to public health or safety; or
- conduct, involving substantial risk to the environment that would, if proved, constitute a criminal offence; or
- reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of a public Officer who was, or is, engaged in that conduct.

"Member of the University" means: a public Officer (as defined in the Act), including an officer or employee of a university, or a member of the governing authority of a university.

"Ombudsman" means: the person appointed as the Ombudsman under section 3 of the **Ombudsman Act 1973 (Victoria)**.

"Public interest disclosure" means: a disclosure which shows or tends to show that a member of the University or the University has engaged, is engaging or proposes to engage in improper conduct or has taken, is taking or proposes to take detrimental action towards a person.

4. PROCEDURE FOR DISCLOSURES MADE UNDER THE WHISTLEBLOWERS PROTECTION ACT 2001 (VICTORIA)

This interim procedure is established under the interim Australian Catholic University Whistleblowers Protection Policy and should be read in conjunction with the Whistleblowers Protection Act 2001 (Victoria).

Australian Catholic University has established these procedures to facilitate:

1. Receipt of disclosures.
2. Determination of whether a disclosure is a 'public interest disclosure'.
3. Proper and timely referral of public interest disclosures to the Ombudsman.
4. Proper investigation of disclosures within the University.
5. Protection from reprisals.

4.1 Making Disclosures

Any person may make a disclosure of 'corrupt or improper conduct' where the person making the disclosure believes on reasonable grounds that a member of the University or the University has:

- engaged, is engaging or proposes to engage in improper conduct, or
- has taken, is taking or proposes to take reprisals against a person who has made a disclosure.

A disclosure may only be made to:

- The Ombudsman, or
- The Vice-Chancellor, or
- The Deputy Vice-Chancellor (Administration and Resources).

The disclosure may be made anonymously.

Note: Disclosures made to people other than those listed above will not be considered as public interest disclosures for the purposes of this procedure.

4.2. Receipt of Disclosures

Where a disclosure is received by the Vice-Chancellor or Deputy Vice-Chancellor (Administration and Resources), that person shall record the details of the disclosure in writing. The written detail shall include:

- The date and time of the disclosure.
- The name of the person making the disclosure (unless the disclosure is an anonymous disclosure).
- The name(s) of the subject of the disclosure.
- Full details of the disclosure.

The receiver of the disclosure shall explain to the person making the disclosure:

- The stages laid out in this procedure.
- Alternative procedures for dealing with the accusations.
- The right of the person making the disclosure to make the disclosure directly to the Office of the Ombudsman, at any time.
- Confidentiality requirements and protections.
- The record keeping processes associated with whistleblowers protection.
- The commitment of the University to protect whistleblowers from reprisals.

4.3. Determining 'Public Interest'

Within 45 days after receiving the disclosure, the University will consider the disclosure and reach a conclusion as to whether it is a public interest disclosure. In reaching this conclusion the University must consider whether the disclosure, shows or tends to show that the member of the University to whom the disclosure relates:

- has engaged, is engaging or proposes to engage in improper conduct (in his or her capacity as a member of the University); or
- has taken, is taking or proposes to take detrimental action against the person making the disclosure.

4.4. If the University concludes that a disclosure is a public interest disclosure

The University must, within 14 days:

- notify the person who made the disclosure of that conclusion; and
- refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

4.5. If the University concludes that a disclosure is not a public interest disclosure

The University must, within 14 days:

- notify the person who made the disclosure of that conclusion; and
- advise the person that (within 28 days) he or she may request the University to refer the disclosure to the Ombudsman for a determination as to whether it is a public interest disclosure.

Note: The University is not required to notify a person who made an anonymous disclosure.

4.6. Investigation by the Ombudsman or the University

Where a disclosure has been determined by the Ombudsman to be a public interest disclosure it may be either:

- Investigated by the Ombudsman, or
- Referred to the University for internal investigation.

4.6.1 Investigation of Disclosures

Investigation – Internal (University)

The University must investigate every disclosed matter referred to it by the Ombudsman. The Vice-Chancellor (or Chancellor, where appropriate) shall appoint a suitable investigator on behalf of the University.

A public interest disclosure made to the University shall be under the direction of the Vice-Chancellor. If the disclosure involves the Vice-Chancellor, the Chancellor will provide direction.

In conjunction with the Vice-Chancellor, (or Chancellor, where appropriate), the investigator shall determine his or her procedures.

The investigator shall not be bound by the rules of evidence and shall observe the principles of fairness and natural justice.

If the Vice-Chancellor (or Chancellor, where appropriate) believes the internal investigation is being obstructed he or she may refer the investigation to the Ombudsman.

The Vice-Chancellor (or Chancellor, where appropriate) must report the findings of the investigation to:

- the Minister for Post-Secondary Education;
- the Ombudsman; and
- the person who made the disclosure (except in the case of an anonymous disclosure), in a prompt and timely manner.

4.6.2 Investigation – Ombudsman

Among other things the Ombudsman may:

- Second members of the University to assist with an investigation;
- Inform the University in writing of the investigation and conduct the investigation in private;
- Determine whether people may be legally represented;
- Seek information which would otherwise be subject to confidentiality;
- Enter premises of the University and inspect University property;
- Take action against individuals for obstruction (as defined by section 60).
- Report on the investigation to the person who made the disclosure and to the University;
- Make recommendations for action to the University;
- Require a report on the implementation of recommendations for action;
- Report insufficient action on recommendations to Parliament.

The Ombudsman may decide not to investigate a disclosed matter if in his or her opinion the disclosure:

- is trivial; or
- is frivolous or vexatious; or

if the person making the disclosure had had knowledge for more than 12 months of the disclosed matter and failed to give a satisfactory explanation for the delay in making the disclosure.

4.7. Outcomes of Investigations

Where a disclosure has been found to have substance the University will take all reasonable steps to ensure that the conduct which is the subject of the disclosure does not continue or occur in future and to remedy any harm or loss arising from the conduct.

Where a disclosure is found to lack substance the member of the University making the disclosure may be given a lawful direction in relation to future conduct.

5. PROTECTION FROM REPRISALS

Neither a member of the University nor the University shall take detrimental action against a person making a disclosure.

Note: The Whistleblowers Protection Act 2001 establishes that it is an offence to knowingly make a false disclosure.

6. REPORTING REQUIREMENTS

On behalf of the University the Vice-Chancellor shall include report on disclosures and investigations in the Annual Report. The details for this report are set out in Section 104 of the Whistleblowers Protection Act 2001.

7. FURTHER ASSISTANCE

Any staff member in Victoria who requires assistance in understanding of the operation in Victoria of the Whistleblowers Protection policy and procedures should contact the Deputy Vice-Chancellor (Administration and Resources).