



Whistleblower Policy

Macular Disease Foundation Australia

ABN 52 096 255 177

Version Number	Approval Date	Approved by	Amendment
1.0	12 December 2019	Board	Incorporate changes arising from the Treasury Laws Amendment (enhancing whistle-blowers protections) Act 2019
1.1	22 July 2020	Board	Easier to read format and inclusion of process maps.

Introduction

Macular Disease Foundation Australia (“MDFA”) prioritises ethical behaviour, transparency, integrity and accountability in all its activities.

Whistleblowing plays an important role in preventing misconduct and this is especially important for MDFA who receives funding from government grants, donations from the public, financial support from corporations and philanthropists to provide education, support, advocacy and research for the macular disease community in Australia.

MDFA prides itself on having an organisational culture that supports and encourages people to raise concerns about misconduct and that in doing so they will be protected. The MDFA Board, CEO & Executive are committed to maintaining a workplace free of misconduct and is supportive of whistleblowing.

This policy has been prepared to ensure MDFA complies with its obligations in relation to whistleblowers as set out in the Corporations Act.

It should be noted that this policy does not cover “Grievances” which is a separate issue. Grievances relate to MDFA’s work environment. Examples of grievances include complaints around:

- Lack of staff development or training
- hours of work
- salary levels
- leave not being approved
- safety in the workplace
- perceived unfair supervision
- inappropriate behaviour by another staff member
- perceived unfair performance appraisal.

Grievances are covered in the MDFA Employee Handbook.

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1. Scope of this Policy.

This policy applies to all Board & Committee members, employees, volunteers, consultants and contractors of MDFA and related entities and it will be made available to all such persons.

The purpose of this policy is to provide information in relation to:

- Who can be eligible for whistleblower protection when they make a disclosure
- The types of disclosures that qualify for whistleblower protection
- Whom a whistleblower's disclosure can be made to, and how to make a disclosure
- The legal protections available for whistleblowers
- How MDFA will support whistleblowers and protect them from detriment
- How MDFA will investigate disclosures that qualify for whistleblower protection
- How MDFA will ensure fair treatment of employees who are mentioned in disclosures that qualify for whistleblower protection, and employees to whom such disclosures relate.

2. Circumstances where Whistleblower protection applies.

For whistleblower protections to apply, each of the following three requirements must be met:

- The person who makes the disclosure is within categories of people who are prescribed as eligible whistleblowers in the Corporations Act (as discussed in "Who can make a disclosure" *Section 6* below);
- The disclosure is of a type that qualifies for whistleblower protection (as discussed in "What types of disclosures qualify for whistleblower protection" *Section 7* below); and
- The disclosure is made to a person to whom a disclosure can be made (as discussed in "Who should a whistleblower make their disclosure to?" *Section Eight* and "Can I disclose misconduct to an independent organisation?" *Section nine* below).

3. Legal protection for whistleblowers.

A whistleblower who meets the requirements for legal whistleblower protection is entitled to protections under the Corporations Act including:

- Not to have their identity revealed by MDFA, and
- Not to have information revealed by MDFA that is likely to lead to their identification.

It should be noted these requirements are not considered to be compromised where MDFA provides information to ASIC, APRA, a member of the Australian Federal Police, a legal practitioner for the purpose of obtaining legal advice, a Commonwealth or State authority for the purpose of assisting the authority in the performance of its functions, or where the whistleblower consents. MDFA will at all times take all reasonable steps to reduce the risk that the whistleblower's identity will be revealed when making disclosures to third parties under the law.

A whistleblower who meets the requirements for legal whistleblower protection is also entitled to:

- Protection from civil or criminal liability for making the disclosure
- Not suffer any detriment (real or threatened as discussed further below) as a result of the disclosure
- Have their contract not terminated on the basis of their disclosure, and
- Protection from victimisation (as discussed further below).

A whistleblower must not be disadvantaged by any form of detriment or victimisation including reprisals such as dismissal, demotion, alteration of their position or duties, blocking of promotion, discrimination, harassment, intimidation, harm or injury (including psychological harm), damage to property, damage to reputation, damage to their business or financial position or any other damage.

MDFA will treat all reports of disclosable matters seriously and endeavour to protect anyone who raises concerns in line with this Policy. An eligible whistleblower can still qualify for protection under this Policy where their disclosure turns out to be incorrect. However, deliberate false or vexatious reports will not be tolerated. Anyone found making a deliberate false claim or report will be subject to disciplinary action, which could include dismissal.

4. How will MDFA support whistleblowers and protect them from detriment?

MDFA will provide this policy and training to all parties who are entitled to receive a disclosure under this policy. This training will include ensuring they are aware of their strict obligation not to reveal a whistleblower's identity in contravention of this policy, and to ensure they are aware of their obligations in relation to no detriments or reprisals towards the whistleblower.

MDFA will provide this policy to all employees. All Officers and employees must ensure they are familiar with this policy of what it means for a person to suffer a detriment or be victimised and in particular, the description in *Section three* of this policy (Legal protection for whistleblowers). They must ensure they do not engage in such conduct where they are either aware of the identity of a whistleblower or suspect they are aware of the identity of a whistleblower.

If a whistleblower is concerned that they have suffered any detriment or victimisation as a result of having made a disclosure, the whistleblower is encouraged to contact the CEO, and provide full details of what has occurred. The CEO (or another key contact person as appointed by MDFA) will be available to respond to queries or concerns raised by the whistleblower.

5. How MDFA will ensure fair treatment of employees who are mentioned in disclosures that qualify for whistleblower protection, and employees to whom such disclosures relate.

Please refer to section 10 "How MDFA will investigate disclosures".

Further, MDFA, through the CEO will take reasonable steps to protect other employees who have been requested to assist in investigating from any detriment or reprisal as a consequence of their involvement in an investigation.

Where any Officer, employee or contractor breaches the Whistleblower Policy by acts of intimidation, retaliation or similar acts this will be considered to be a breach of MDFA's Code of Conduct and will be dealt with as such as outlined within that policy (Refer Employee Handbook).

Unsubstantiated or malicious allegations which are proven to be false will be viewed seriously and followed up with appropriate disciplinary action up to and including termination of employment. This refers to unsubstantiated whistleblower claims.

6. Who can make a whistleblower disclosure?

Persons who are within the following categories (or formerly in one of these categories, or their relatives), can make a disclosure and be eligible for whistleblower protection:

- MDFA's officers or members of committees (e.g. directors, committee members)
- Full time, part time and casual staff
- Volunteers
- Contractors (and their employees)
- Suppliers whether unpaid or not (and their employees and volunteers).

7. What types of disclosures qualify for whistleblower protection?

MDFA encourages the disclosure of information that suggests misconduct, an improper state of affairs or a contravention of legislation.

A disclosure qualifies for protection if the whistleblower has **objectively reasonable grounds** to suspect the information available to them falls under one of the following categories:

- Concerns misconduct, or an improper state of affairs or circumstances in relation to MDFA or a related body, or
- Indicates that MDFA, or an officer or employee of MDFA (or a related body, or an officer or employee of a related body), has engaged in conduct that breaches the:
 - Corporations Act
 - Australian Securities and Investments Commission (ASIC) Act 2001
 - Taxation Administration Act 1953
 - ACNC Regulations
- Constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more
- Represents a danger to the public or the financial system.

As noted above, the person making the disclosure must have objectively reasonable grounds to suspect wrongdoing.

Misconduct or an improper state of affairs or circumstances includes breaches of general law, organisational policy or generally recognised principles of ethics and, depending upon the specific circumstances and the seriousness of the breach includes:

- Corrupt conduct
- Fraud or theft
- Official misconduct
- Systemic harassment or unlawful discrimination

- Systemic practices seriously endangering the health or safety of staff, volunteers or the general public
- Systemic practices seriously endangering the environment.

Some examples of a disclosure that qualifies for whistleblower protection under this policy includes the following hypothetical scenarios:

- Conflict of interest/fraud: Information suggests that an employee is a director of a company that is being used as a supplier and no disclosure of the employee's interest in the supplier has occurred (that is MDFA has paid the supplier without being aware of the conflict of interest).
- An unethical breach of the Code of Conduct. Eg taking a bribe to promote a health product

Personal work-related grievances **do not** qualify for protection under this policy unless they relate to a detriment suffered in contravention of this policy. A personal work-related grievance is where the information concerns a grievance about any matter in relation to the whistleblower's employment, or former employment, having (or tending to have) implications for the whistleblower personally, provided:

- The information does not have significant implications for MDFA that do not relate to the whistleblower, and
- The information does not concern conduct that indicates a breach of the legislation set out above or constitute an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more or represent a danger to the public or the financial system.

Examples of grievances that may be personal work-related grievances, and consequently **do not qualify** for protection under this policy, are as follows:

- An interpersonal conflict between the whistleblower and another employee
- A decision relating to the engagement, transfer or promotion of the whistleblower
- A decision relating to the terms and conditions of engagement of the whistleblower
- A decision to suspend or terminate the engagement of the whistleblower, or otherwise to discipline the whistleblower.

This policy must not be used for frivolous or vexatious purposes since there must always be objectively reasonable grounds to suspect wrongdoing for it to be reported under this policy.

8. Who should a Whistleblower make their disclosure to?

A disclosure can be made to an 'eligible recipient'. It is MDFA's preference that disclosures be made to the following 'eligible recipients':

Eligible Recipients	Disclosing What
Chair of the Board	Any disclosure concerning the CEO or another Board member
CEO	Any disclosure concerning an Executive Manager or supplier
Executive Manager	Any disclosure concerning an employee, volunteer or contractor
Chair of the A&R Committee	Any disclosure where the whistleblower is concerned with reporting to other recipients
Allworts Chartered Accountants	Any potential financial breach of the Corporations Act 2001

Whistleblowers are encouraged to initially make a disclosure on a non-anonymous basis since such a report can assist the 'eligible recipient' to more readily investigate the allegations. Although whistleblowers are entitled to make an anonymous disclosure if they wish, doing so results in certain challenges in both investigating the disclosure and seeking to provide whistleblower protection and support to the whistleblower.

If a person makes a disclosure that would otherwise qualify for protection under this policy, to a person who is not an 'eligible recipient' (as set out above – for example, to a colleague or supervisor), the person to whom the disclosure is made must:

- Keep it strictly confidential
- Not disclose the name of the person who made the disclosure
- Not victimise the whistleblower, and
- Direct the person to this policy and encourage them to report it to an 'eligible recipient' as listed above.

This ensures the whistleblower is entitled to the whistleblower protections that are available in the Corporations Act and under this policy and enables the matter to be investigated properly.

9. Can I disclose misconduct or improper affairs/circumstances to an independent and external organisation?

The Corporations Act outlines to whom disclosures **must** be made to. The list is as follows:

- A director, company secretary, company officer, or senior manager of the company or organisation, or a related company or organisation
- An auditor, or a member of the audit team, of the company or organisation, or a related company or organisation
- An actuary of the company or organisation, or a related company or organisation
- A person authorised by the company or organisation to receive whistleblower disclosures
- ASIC or the Australian Prudential Regulation Authority (APRA), or
- Your lawyer.

The first two points are further detailed in the previous *Section eight* of this policy. Should MDFA authorise a third party person or organisation to receive whistleblower disclosures, the contact details will be made available to all employees.

While it is essential that disclosure is made to one of these people or organisations, whistleblowers can raise their concerns anonymously.

10. How will MDFA investigate disclosures?

To reassure whistleblowers as to the integrity with which the material they provide will be assessed by MDFA, the investigation of a disclosure will be undertaken by appropriately qualified parties, depending on the matter or content of the material disclosed.

Investigations will be conducted in accordance with the usual principles that apply to ensure a fair investigation occurs. The exact procedure will be determined on a case by case basis.

Where appropriate to do so, the whistleblower will receive relevant and timely feedback on the progress of the investigation, which may vary on a case by case basis. At the conclusion of the investigation they will typically be informed of the outcome.

If the whistleblower chooses to disclose an issue anonymously, this may affect the ability to fully investigate the matter. However, MDFA will still assess the material that is provided and investigate to the extent possible.

11. FLOWCHART OF TYPICAL WHISTLEBLOWER PROCESS

