

<b>6.03</b>	<b>WHISTLEBLOWER POLICY</b>
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Applies to: Staff; Employees; Volunteers; Users
Specific responsibility: Board; Managing Principal Solicitor

Version	1
Date Approved	30 September 2021
Next Review	30 September 2022

<b>Policy Context: This policy relates to ensuring that MLC has a clear process and response to reports of fraud, misconduct, and undesirable behaviour</b>	
Standards or other external requirements	
Legislation or other requirements	<p>This Policy supports MLC's compliance with the following legislation:</p> <ul style="list-style-type: none"> <li>- Corporations Act 2001</li> <li>- Public Interest Disclosures Act 1994 (NSW)</li> <li>- Public Interest Disclosure Act 2013 (Cth)</li> </ul>
Contractual obligations	

## PURPOSE

This policy forms the basis of a confidential and clear response to reports of fraud, misconduct and undesirable behaviour within Marrickville Legal Centre (MLC)

This policy assists in:

- Compliance with laws;
- Eradicating unethical behaviour in the workplace;
- A healthier and safer work environment;
- A more effective management of fraud, misconduct, and undesirable behaviour;
- Improved morale; and
- A clear understanding by employees of their role and responsibilities

## SCOPE

This policy applies to all MLC employees, contractors, volunteers and directors as well as customers, previous employees, members of the public and other external stakeholders

## POLICY STATEMENT

MLC believes that a true commitment to identifying and stopping illegal and other undesirable conduct must include a way of reporting. This reporting must be open to all employees and others to report their concerns in confidence and without fear of consequence. The Corporations Act also includes provisions for Whistleblowers to report both internally and to specified external bodies and received specific protections.

The chair of the MLC board is responsible for overseeing this policy, protections of all disclosers, investigations, and the MLC Whistleblower program

## Legal protections

Under the Corporations Act, there are provisions that allow people to disclose misconduct or improper circumstances. These can be reporting internally to the organisation or externally to ASIC, APRA or other Commonwealth bodies. Where a Whistleblower is qualified under the Corporations Act, the following protections are in place;

- Identify protection (Confidentiality)
- Protection from detrimental acts or omissions
- Compensation and other remedies
- Civil, criminal and administrative liability protections

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For more information, see the Corporations Act section on page 4 below

### What to report

Whistleblowers are encouraged to report any conduct that they believe breaches our policies, government agreements, code of conduct or standards of behaviour. As well as those covered under the Corporations Act, MLC encourages people to report on the following behaviours although protections under the Corporations Act may not apply;

- Fraudulent or corrupt
- Dishonest
- Unlawful (including theft, drug sale or use, violence, bullying, harassment etc);
- Unethical; or
- Misleading or deceptive

Refer to the appropriate workplace policy for further information

Behaviour and/or conduct that is not covered by this policy includes staff grievances. These matters should be reported to your manager. Please refer to the MLC enterprise agreement and MLC policies.

Whistleblowers must act in good faith and have reasonable ground for believing the conduct or behaviour is inappropriate. Reports are investigated where enough information is provided by the Whistleblower to identify the individual/s involved in the impugned behaviour or circumstances reported. Without this level of information, and investigation cannot be conducted

### Confidentiality

The confidentiality of information collected as part of a Whistleblower report is maintained at all times. Information is stored securely by Clark McNamara Lawyers Sydney (see below) to ensure privacy and legal privilege is kept.

Whistleblowers have two options regarding their confidentiality when making a report;

1. Remain completely anonymous, not providing any contact of identifiable information
2. Provide contact details and grant permission for these to be passed onto MLC.

Whistleblower identities are kept confidential. This information is only shared with staff who need it as part of the investigation. Where the identity of a Whistleblower is not required as part of the investigation or follow-up actions, this is not shared.

After a Whistleblower investigation is completed, the results are only communicated to those who need to know the outcome. Where staff are notified about a Whistleblower, it is their responsibility to keep this information confidential. Unauthorised sharing of information by MLC staff may be the subject of disciplinary action.

Where a discloser is concerned about their confidentiality, they are able to make a complaint internally to the MLC Chair of the Board or externally to ASIC, APRA or the ATO. Where a discloser has a complaint about how their confidentiality has been maintained, this is taken very seriously within MLC and any complaint will be investigated and responded to

### How to report

MLC provides avenues both internally and externally of the organisation for those wanting to report any misconduct or improper behaviour to MLC. MLC takes any behaviour under this policy seriously and takes the opportunity to identify and address wrongdoing as early as possible.

Reports may be made anonymously, but if you provide your contact details those contact details will only be provided to MLC if you consent.

Whistleblowers can report matter to the following:

1. Peter McNamara  
Clark McNamara Lawyers (Sydney)  
Exchange House  
Level 3, 10 Bridge Street

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Sydney NSW 2000

GPO Box 835  
Sydney NSW 2001  
+61 2 9299 2223  
[mail@cml.com.au](mailto:mail@cml.com.au)

2. Graham Jenkins  
Chair – Marrickville Legal Centre  
+61 403 396 665  
[gjenkins@mlc.org.au](mailto:gjenkins@mlc.org.au)
3. Any directors of Marrickville Legal Centre  
Contact details are available from Peter McNamara (see above).

To report a matter under the Corporations Act, a Whistleblower can choose to report this to MLC under any of the ways listed above or externally. For information on external reporting covered by the Corporations Act, see page 4 below

The Whistleblower program and this policy aims to encourage reporting of genuine misconduct and is not to be used to resolve personal grievances or conflicts. Where false reports are made by employees, disciplinary action may be taken.

### Receiving Whistleblower reports

Whistleblower reports received internally are subject to the following process:

1. Reported to the MLC chair or relevant director from whomever received the report
2. Reviewed to determine Whistleblower protection, level of investigation required and conduct a disclosure assessment;
3. Lead investigator appointed based on the report contents; and
4. Prioritised by investigator to ensure allegations are investigated and resolved as soon as possible

Reviews of disclosers are used to determine:

- The nature and scope of the investigation;
- The persons within and/or outside the organisation that should lead the investigation;
- The nature of the technical, financial or legal advice that may be required to support the investigation; and
- The timeframe for the investigation

### Investigating reports

The purpose of investigating reports is to determine if there is enough evidence to substantiate or refute the allegations.

All Whistleblower reports are confidentially investigated by the chair and relevant directors. Any Whistleblower report that qualifies under the Corporations Act will be investigated with the possibility of assistance from third party investigators.

Investigations are completed objectively, fairly and independently and may involve internal or external specialists. Where reports include allegations of bullying, harassment and/or violence, guidance from the appropriate workplace policy will be applied.

An employee who is the subject of a disclosure will be advised about the subject matter of the disclosure prior to any actions being taken. There may be circumstances where an employee is not informed of the disclosure if it will impact the confidentiality of the Whistleblower and the investigation has identified the report is unsubstantiated.

The subject of an allegation is given the chance to respond. A discloser may refuse to answer questions that they feel could reveal their identity at any time. Someone who wishes to remain anonymous should maintain ongoing two-way communications with MLC, so they can ask follow-up questions or provide feedback.

No MLC employee or director will receive updates on investigation progress where they are the subject of the report.

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There may be circumstances where MLC is unable to provide details of the outcome to the discloser. MLC reduces the risk of reporters being identified from information in their report by limiting access to the discloser and the investigation to only those required.

### Reporting on investigations

Findings from any investigation will be documented in a report format. These findings are then reported to the Managing Principal Solicitor as soon as possible and the Board at the next board meeting. Based on the findings, the decision may be made to notify board members earlier, and also notify funding bodies or law enforcement where appropriate.

For more information on the process of investigations, see the Disclosure Risk Assessment below.

### Timeframes

Where achievable, MLC will work within the following timeframes for receiving, responding, investigating, and reporting Whistleblower allegations. (Only MLC business hours and MLC business days are counted in these timeframes).

Timeframe	Action
24hrs of report being received (where contact details are provided)	Receiving disclosure and responding to report
2hrs (within business hours AEDT)	Responding to subsequent messages from the discloser
48hrs from report being received	Receiving disclosure and assessing the report for investigation
2 weeks from decision to investigate	Commencing and finalising investigation
Weekly or based on discloser preferences	Updates to the discloser

### Corporations Act

Protections are available to people where specific information is disclosed either to specific external organisations (ASIC, APRA and Commonwealth Authority), an eligible recipient or in public interest emergency disclosures.

Protections available under the Corporations Act when reports are made to those below include;

- Identity protection (confidentiality)
- Protection from detrimental acts or omissions
- Compensation and other remedies
- civil, criminal and administrative liability protections

### What to report under Corporations Act

The Corporations Act states that protections are available to those who report any of the following to those listed above as able to receive reports;

Misconduct or improper circumstances relating to MLC, and officer or an employee of MLC that is an offence against

- State of federal law
- The Corporations Act
- The ASIC Act
- Banking Act 1959
- Financial Sector (Collection of data Act) 2001
- Insurance Act 1973
- Life Insurance Act 1995
- National Consumer Credit Protection Act 2009
- Superannuation Industry (Supervision) Act 1993
- Any instrument made under any of the above acts
- An offence of commonwealth law that is punishable by imprisonment for a period of 12 months or more or represents a danger to the public or the financial system

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### How to report

To be eligible to report for protections under the Corporations Act, a Whistleblower may use any of the reporting options under the 'How to Report' section of this policy (page 2). Disclosers eligible under the Corporations Act are also able to report externally to Australian Securities and Investments Commission (ASIC), Australian Prudential Regulation Authority (APRA) or another commonwealth body prescribed by regulation.

Below are information sheets to assist in reporting outside of MLC

[Information Sheet 239 How ASIC handles Whistleblower reports](#)

[Become a Whistleblower](#)

[Public Interest and Emergency Disclosures](#)

A disclosure may make a public Interest Disclosure to a journalist or a parliamentarian where they have previously made a disclosure to an external body (ASIC, APRA or another commonwealth body and don't believe sufficient action is being taken. Section 1317AAD of the Corporations Act provides more information about how to make a public interest disclosure.

Emergency disclosures are also available to disclosers to journalists or parliamentarians where they have disclosure to an external body (ASIC, APRA or another Commonwealth body) and they have reasonable grounds to believe that the information concerns imminent danger to the health and safety of one or more persons or to the natural environment.

In order to make an Emergency Disclosure or a Public Interest Disclosure, the disclosure must have previously been made to ASIC, APRA or a prescribed body and written notice provided to the body to which the disclosure was made. At least 90 days must have passed since the previous disclosure was made as well.

It is recommended that anyone considering making an Emergency Disclosure or a Public Interest Disclosure first contact an independent legal adviser

### Rights and protection of Whistleblower

Whistleblowers are protected, they cannot be punished or personally disadvantaged because of a report they have made based on actions they believe have occurred. Where a mischievous or misleading report is made, however, disciplinary action may be taken against the Whistleblower.

A person who believes they or their family are being discriminated against due to making a report should notify the Managing Principal Solicitor or Board Chair straight away. A MLC employee or director that has dismissed, demoted or harassed a Whistleblower due to making a report will face disciplinary action. Where a misleading report is made, an external party may be required to investigate and recommend appropriate actions.

Whistleblowers are not protected from the consequences of their own improper conduct. If they have participated in inappropriate behaviour, disciplinary action may be taken.

MLC encourages Corporations Act qualified Whistleblowers to seek independent legal advice regarding consequences and compensation.

Employees and volunteers are encouraged to access the Employee Assistance Program (EAP) when involved in a Whistleblower report and investigation. This is provided by Benestar. To book an appointment with a qualified clinician call 1300 360 364.

Where detriment has occurred, MLC will work with the Whistleblower to support and assist in getting compensation. Where a Whistleblower qualifies as a Whistleblower under the Corporations Act, they can seek compensation through the courts if they suffer loss, damage or injury because of a disclosure and MLC fails to take reasonable precautions to prevent this.

### RESPONSIBILITIES

#### Compliance, Monitoring and Review

- This policy is reviewed in line with changes to legislation

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- This policy is reviewed by the board on an annual basis

### Reporting

The Managing Principal Solicitor and Chair of the Board are notified of Whistleblower reports. Where the Managing Principal Solicitor is a subject of a Whistleblower report, only the chair will be notified. If the Chair is a subject, other board members will be notified

A summary of the allegation and the results of the investigation are reported to the board in a timely manner

### Communication

The Managing Principal Solicitor and Chair of the Board are the only people authorised to issue communication on behalf of MLC about a Whistleblower report

This policy is made available to staff and to members of the public via staff.

Depending on the nature, reports will be made to funding providers as per funder agreements.

### Records Management

The board maintains records of all reports

### DEFINITIONS

DEFINITIONS AND ACRONYMS	
<b>Whistleblower/Discloser</b>	A person who informs on a person or organisation about any wrongdoing, unlawful or immoral activity, which includes any form of fraud or corruption
<b>EAP</b>	Employee Assistance Program
<b>Whistleblower Program</b>	MLC program for managing and responding the Whistleblower reports including the use of MLC Whistleblower Policy, Internal Audit ownership of investigations and detailed and detailed investigation and reporting processes
<b>Whistleblower Protection and Investigation Officer</b>	Chair of the Board
<b>Eligible Recipient</b>	A person authorised by MLC to receive disclosures under the Corporations Act Authorised persons within MLC are; Board of Directors, MPS

## DISCLOSURE RISK ASSESSMENT

A risk assessment is conducted on all disclosures received by MLC to determine the notification and key initial steps to be taken. This assists in providing a uniform approach to all disclosures. All disclosures that are eligible for protection under the Corporations Act are treated as either High or Medium or Low depending on the detail of the report

RATING	DETAILS	NOTIFICATIONS
<b>High</b>	<p>Must meet all four criteria</p> <ol style="list-style-type: none"> <li>1. Discloser is confidential or asked to be anonymous and,</li> <li>2. Report details will impact discloser confidentiality (small site, small team, specific details of report and,</li> <li>3. Report includes possible breaches of law and or funding contract and,               <ol style="list-style-type: none"> <li>a. Details of the report is not clear or enough to initial determine who is involved (including which staff and if senior leaders are involved) or,</li> <li>b. Report details involved staff and/or members of the public being in danger</li> </ol> </li> </ol>	<p>Board and MPS notified a Whistleblower Report received, risk assessment level (high) and next steps</p> <p>Legal counsel advice sought</p> <p>Relevant other third-party organisations notified</p>
<b>Medium</b>	<p>Must meet all four criteria</p> <ol style="list-style-type: none"> <li>1. Discloser asked to remain anonymous or is confidential and,</li> <li>2. Report details will impact disclosure confidentiality (small site, small team, specific details of report) and,</li> <li>3. Details of report include breaches of law and or funding contract and,</li> <li>4. One of the following               <ol style="list-style-type: none"> <li>a. Details of report are not clear enough to determine senior leaders are involved or,</li> <li>b. Report details do not include staff and/or members of the public being in danger</li> </ol> </li> </ol>	<p>Board and MPS notified a Whistleblower Report received, risk assessment level (Medium) and next steps.</p> <p>Once initial investigation completed, and staff identified, discloser notified of report. No detail provided until investigation completed.</p>
<b>Low</b>	<p>Must meet all three criteria</p> <ol style="list-style-type: none"> <li>1. Person has asked to remain anonymous, hasn't provided details or report could involve identifiable staff and,</li> <li>2. Report could include breaches of law, funding contract, forcing people to do things and/or puts staff and or members of the public in danger and,</li> <li>3. Details of the allegation enough to determine identifiable staff involvement</li> </ol>	<p>Board and MPS notified a Whistleblower Report received, risk assessment level (Low) and next steps.</p> <p>Provide detail of report within 24 hours</p> <p>Identifiable staff member notified Whistleblower Report received.</p>
<b>Insignificant</b>	<p>Must meet all three criteria</p> <ol style="list-style-type: none"> <li>1. Person has provided insufficient details</li> <li>2. Report does not include breaches of law, funding contract, forcing people to do things and/or doesn't put staff or members of the public in danger and,</li> <li>3. Member of current staff not implicated</li> </ol>	<p>Board and MPS notified a Whistleblower Report received,</p> <p>Provided details of allegation within 24 hours.</p>

## DOCUMENTATION

Documents related to this policy	
Related policies and procedures	Policies detailed in the Knowledge Hub section of Sharepoint
Forms, record keeping or other organisational documents	

Reviewing and approving this policy		
Frequency	Person responsible	Approval
Annually	MLC Board	Board

Policy review and version tracking			
Review	Date Approved	Approved by	Next Review Due
1	30 September 2021	MLC Board	30 September 2023

## INDEXING

Section of Policy Manual:	6.03
Filepath:	<a href="#">Knowledge Hub - Policies - All Documents (sharepoint.com)</a>