

WHISTLEBLOWER PROTECTION AND PUBLIC INTEREST DISCLOSURES POLICY

Approved by Board: June 2020



LORD MAYOR'S CHARITABLE FOUNDATION VISION

Maximising impact
Strategic community giving since 1923

We exist for:

- A resilient and inclusive Melbourne.
- Inspiring Philanthropy.

Our purpose:

- To identify and scale solutions that address Melbourne's big social and environmental challenges.
- To inspire current and legacy giving through donor advised and collaborative philanthropy.

Purpose of this Policy

The objective of this policy is to encourage reporting of serious wrongdoing that is of legitimate concern by providing a convenient and safe reporting mechanism and protection for people who make serious wrongdoing disclosures.

In 2019 the Commonwealth Government amended the Corporations Act 2001 (Cth) to provide additional protections for whistleblowers in the corporate sector. From 1 January 2020, the new Commonwealth Whistleblower regime came into operation. The new whistleblower regime affords greater protection to whistleblowers in entities (including certain charities), as well as harmonising the previous patchwork of inconsistent Australian whistleblower protection laws.

The Foundation supports the making of whistleblower disclosures and the protection afforded to persons making disclosures under the Commonwealth whistleblower regime, and where applicable, the Victorian State law¹.

This Whistleblower Policy supersedes previous Foundation-related protected disclosure policies.

¹ The Public Interest Disclosures Act 2012 (Vic) creates a framework for the reporting of improper conduct by public officers or public bodies. The Act provides protection against detrimental action. In 2019 the Commonwealth Government amended the Corporations Act to provide additional protections for whistleblowers in the corporate sector. On 1 January 2020, new legislation came into effect that changes Victoria's integrity system. The changes support people who disclose improper or corrupt conduct and help agencies that investigate disclosures. Under the new legislation:

- a 'protected disclosure' is now called a 'public interest disclosure';
- there is a lower threshold for making a public interest disclosure to the Independent Broad-based Anti-Corruption Commission (IBAC);
- there is an expanded definition of 'improper conduct'.

There is also a new 'no wrong door' principle. This principle means if a person discloses to the wrong entity, that entity can send it to the right entity and the person won't lose their protection, so long as:

- it's an entity that can receive disclosures; and
- the person believes the entity they disclosed to was the right one.

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“No wrong door” Principle

The Foundation aims for a ‘no wrong door’ approach, whereby all those who disclose wrongdoing, or corrupt conduct, in good faith, will have their confidentiality protected and their disclosure investigated.

In 2020 the Victorian Government introduced a new ‘no wrong door’ principle which means that if a person discloses a “public interest disclosure” to the wrong entity, that entity can send it to the right entity and the person won’t lose their protection so long as: it’s an entity that can receive disclosures; and the person believes the entity they disclosed to was the right one².

Summary of Legislative regime

The Foundation is the trustee of a public ancillary fund, which is a registered charity and deductible gift recipient endorsed by the Australian Taxation Office. It was established by a private Act of Parliament.

The Lord Mayor’s Charitable Foundation Act does provide for the Minister to make a determination in respect of the application of money in special circumstances to a hospital or other charitable organisation that is not established or carried on within Victoria, with the approval of the Minister. However, the Minister’s declaratory power over application of monies outside Victoria, does not automatically classify the Foundation as a “public body”. The Foundation is not included in the list of entities established by Statute (State-owned corporations established by government legislation to undertake a public purpose).

The Foundation has charitable purposes for the public benefit.

It receives funds from private donors and bequests. It does not receive public funds from government (State or Federal) and is not performing a public purpose:

<https://vpssc.vic.gov.au/about-public-sector/employer-public-sector-bodies>. Powers of the Trustee (the Foundation Board) are conferred by statutory provision. However, this alone, may not be sufficient to extend the nature of the Foundation and its Officers as Public Officers. In addition, the Foundation is not a statutory body for the purposes of the Financial Management Act 1994 (Vic).

The Commonwealth whistleblower protection provisions in the Corporations Act 2001 (Cth) apply to a ‘regulated entity’³. Other bodies corporate incorporated under state or territory

² Most government agencies have an appointed representative, known as the PID Coordinator, trained to provide information and support to persons making a public interest disclosure. People wishing to disclose improper conduct can contact the relevant government agency’s PID Coordinator of IBAC. <https://ibac.vic.gov.au/publications-and-resources/ibac-insights/issue-23/it's-now-easier-and-safer-to-report-wrongdoing>

³ “Regulated entities” pursuant to the Corporations Act 2001 (Cth) whistleblower regime:

Each of the following is a regulated entity:

- (a) a company;
- (b) a corporation to which paragraph 51(xx) of the Constitution applies;
- (c) an ADI (within the meaning of the Banking Act 1959), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;
- (d) a general insurer (within the meaning of the Insurance Act 1973), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;
- (e) a life company (within the meaning of the Life Insurance Act 1995), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;
- (f) a superannuation entity or a trustee (within the meaning of the Superannuation Industry (Supervision) Act 1993) of a superannuation entity;
- (g) an entity prescribed by the regulations for the purposes of this paragraph.

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legislation that are *trading or financial corporations* will also be regulated entities. This includes where they are incorporated under their own piece of state or territory legislation. It can also include bodies corporate owned privately or by state or territory governments⁴.

The Commonwealth Whistleblower Regime applies to the Foundation insofar as the Foundation may be correctly characterised as a “*trading or financial corporation*” pursuant to section 51 of the Commonwealth of Australia Constitution Act⁵.

Scope

This whistleblower policy is applicable to Foundation personnel, Board Members, Executives, Managers, Contractors, Consultants, Volunteers and interns.

Who is an eligible whistleblower for the purposes of reporting wrongdoing?

An *eligible whistleblower* includes both current and former employees, officer and certain suppliers of a *regulated entity*, as well as their relatives, dependants and spouse's dependants and donors. It extends to contractors and suppliers.

Policy Statement

The Foundation is committed to the highest standards of conduct and ethical behaviour to promote and support a culture of honest and ethical behaviour, corporate compliance and sound corporate governance.

People who have an established relationship with the Foundation may be the first to realise that there may be something seriously wrong. However, they may not wish to speak up for fear of appearing disloyal or may be concerned about being victimised or subject to reprisals for reporting wrongdoing.

The Foundation encourages the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving the Foundation and provides protections and measures so that those persons who make a report may do so confidentially and without fear of intimidation, disadvantage or reprisal.

When a person makes a disclosure to the Foundation:

- Their identity must remain confidential if this is their wish;
- They will be protected from reprisal, discrimination, harassment or victimisation for making the disclosure;
- An independent internal inquiry or investigation will be conducted;
- Issues identified from the inquiry/investigation will be resolved and/or rectified;

⁴ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/whistleblower-protections-for-not-for-profit-organisations/>;

⁵ Whether a charitable corporation falls within the group of “trading or financial corporations” has been the focus of much attention and debate. The activities test is too narrow in approach.

An entity's charitable purpose does not determine whether it is a *trading or financial corporation*. The character of a corporation (as a *trading or financial corporation*) is not determined by its purpose as stated in its memorandum of association. If trading (exchange of goods or services for reward) or financial activities are a substantial part, or a sufficiently significant proportion, of the overall activities of the corporation, it may be described as a trading corporation. (Quickenden v O'Connor) [2001] FCA 303. (see also Adamson (1979) 143 CLR 190, 208). There are multiple factors to take into account including, whether it is a registered public benevolent institution, size of the organisation (annual revenue of less than \$1 million), how many employees does it have, the corporation's funding arrangements – is it government funded or does the corporation charge fees for services? The case law indicates that government funded activities do not contribute to the characterisation of a corporation as a trading or financial.

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- They will be informed about the outcome by the Foundation (unless the report was made anonymously in which case the Whistleblower will be subject to regulator's processes);
- Any retaliation for having made the disclosure will be treated as serious wrongdoing under this Policy.

Definitions

Terms used in this Policy are:

Terms	Description
Associate	<p>An individual who is an 'associate' of the Foundation (as defined in sections 9 and 10-17 of the Corporations Act 2001 (Cth)). Importantly, the Cth regime also provides that whistleblower protections also apply to:</p> <p>An individual who is an 'associate' of the organisation (as defined in sections 9 and 10-17 of the Corporations Act 2001 (Cth)). Importantly, the Cth regime also provides that whistleblower protections also apply to:</p> <ul style="list-style-type: none">• a relative of any of the above (eg. a spouse, child or dependant);• any person or organisation who formerly held any of the above positions — that is, former Board Members, officers, employees, contractors and closely related persons. <p>The new legislation also provides that there is no requirement for the whistleblower to provide their name when making a disclosure to qualify for protection. This means that the whistleblower can be anonymous and that their the identity of the whistleblower, if disclosed, must be kept confidential.</p>
Whistleblowing	Disclosure by (or for) a witness of actual or suspected wrongdoing.
Eligible Whistleblower	<p>The Corporations Act 2001 (Cth) provides that you can access the legal rights and protections for whistleblowers in the Corporations Act if you meet the definition of “eligible whistleblower”.</p> <p>The Australian Securities & Investments Commission provides the criteria in the attached Table (Appendix 2 to this policy). There is no formal registration process for whistleblowers; the protections apply to anyone who meets the criteria in the Table.</p>

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A person who reports wrongdoing in accordance with this Policy and is a person who is, or has been, any of the following:

- an officer or employee of the Foundation (this includes current and former employees who are permanent, part-time, fixed-term or temporary, interns, volunteers, secondees, managers and Board Members);
- a person who supplies goods or services to the Foundation or an employee of a person who supplies goods or services to the Foundation (whether paid or unpaid) - this could include current and former volunteers, contractors, consultants, service providers and business partners;
- a person who is an associate of the Foundation - for example, a director or company secretary of the Foundation or a related body corporate of the Foundation; or
- a relative, dependent or dependent of the spouse of any person referred to in this definition of Eligible Whistleblower.

Wrongdoing

Conduct that includes but is not limited to:

- Breaking the law, a criminal offence, breaches of legislation, regulations or local government by-laws or is otherwise illegal (including whistleblower laws, corporations law, theft, drug sale/use, violence or threatened violence or criminal damage against property);
- Is an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- An intentional or reckless breach of public trust.
- Is dishonest or fraudulent;
- Conduct of any person that adversely affects the honest performance by a public officer of their functions. The protections under the law do not, however, cover trivial matters.
- Perverts the course of justice;
- Unreasonably endangers health and safety or the environment;
- Is maladministration (e.g. unjust, based on improper motives, is unreasonable, oppressive or negligent);

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- An intentional or reckless misuse of information. Is serious or substantial waste (including public money or public property);
- Has financial or non-financial loss, detrimental to the interests of the Foundation;
- Is an unethical breach of the Foundation's Code of Conduct;
- Someone using their position at the Foundation for their own advantage or the advantage of a friend/family member/associate in consistent with the best interests of the Foundation.
- Is serious improper conduct or an improper state of affairs.

1. Responsibilities

Protection is available to Whistleblowers who disclose wrongdoing that is made with reasonable grounds to believe it is true.

To ensure that all employees are treated fairly and that resources are not wasted, protection is not available where the disclosure is:

- False, Trivial or vexatious in nature with no substance. This will be treated in the same manner as a false report and may itself constitute wrongdoing.
- Unsubstantiated allegations which are found to have been made maliciously, or knowingly to be false. These will be viewed seriously and may be subject to disciplinary action that could include dismissal, termination of service or cessation of a service or stakeholder relationship.
- A Personal Grievance or opinion about the manner in which any member of Foundation Personnel should carry out their work. When a personal grievance is reported, the Foundation's Grievance Policy will apply and the process under the Foundation's Grievance Policy will be followed.

Making a disclosure may not protect the Whistleblower from the consequences flowing from involvement in the wrongdoing itself.

A person's liability for their own conduct is not affected by their report of that conduct under this policy. However active cooperation in the investigation, an admission and remorse may be taken into account when considering disciplinary or other action. Even though a Whistleblower may be implicated in the wrongdoing they must not be subjected to any actual or threatened retaliatory action or victimisation in reprisal for making a report under this policy. The Foundation's Fraud Policy may apply.

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2. **Anonymous reporting**

Anonymous reports of wrongdoing are accepted under this policy. Anonymous reports have significant limitations that may inhibit a proper and appropriate inquiry or investigation. These limitations include the inability to provide feedback on the outcome and/or to gather additional particulars to assist the inquiry/investigation. Specific protection mechanisms may be difficult to enforce if the whistleblower chooses to remain confidential.

3. **Whistleblower Protection Officer (Internal Reporting)**

If a Whistleblower wishes, a Whistleblower Protection Officer may be appointed who is a Foundation Board Member or Foundation senior executive, to support and provide protection to the Whistleblower according to this policy.

The Whistleblower Protection Officer must have a direct reporting line to the Chief Executive Officer from an area of the organisation that is independent of line management in the area that is the subject of the report of wrongdoing.

The Whistleblower Protection Officer will provide mentoring and other support deemed necessary by the Whistleblower Protection Officer.

The Whistleblower Protection Officer is responsible for keeping the Whistleblower informed of the progress and outcomes of the inquiry/investigation subject to considerations of privacy of those against whom a disclosure has been made.

4. **Whistleblower Governance Officers (Internal Reporting)**

A Whistleblower Governance Officer is a person in this policy as such and is responsible for receiving whistleblower disclosures of wrongdoing and overseeing resolution. The Whistleblower Governance Officer is not the same person as the Whistleblower Protection Officer.

Whistleblower Governance Officers must (after reasonable preliminary inquiry):

- If the Whistleblower agrees appoint a Whistleblower Protection Officer to provide support to the whistleblower;
- Notify the In-house Legal Counsel and CEO of disclosure allegations unless either role is included in the Whistleblower report. The CEO will notify the Chair or if the CEO is included in the report, the In-house Legal Counsel will notify the Chair;
- Be satisfied that each disclosure of wrongdoing they received was appropriately inquired into or investigated;
- Be satisfied that action taken in response to the inquiry/investigation is appropriate to the circumstances;
- Provide governance oversight over any inquiry/investigation into retaliatory action taken against the Whistleblower.

If the disclosure contains allegations against any Foundation Executive or where the Whistleblower has a reasonable belief that the Whistleblower Governance Officers are not

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sufficiently independent a report may be made to: Chair of Board Governance, Audit & Risk Committee (GAR), or his or her delegate.

Alternatively, if the complaint relates to a public interest disclosure under the Victorian law, the report must be made to the Victorian Independent Broad-Based Anti-Corruption Commission (IBAC) at www.ibac.vic.gov.au, phone 1300 735 135 is an independent body established to receive public interest disclosures⁶.

5. Protected Disclosures Coordinator (Internal Reporting)

The Protected Disclosures Coordinator receives particulars about all whistleblower events and performs the following functions:

- Arranges for an inquiry/investigation into the disclosures made by the Whistleblower;
- Ensures appropriate government agencies are notified about Whistleblower events where required;
- Maintains a Whistleblower Register for trend analysis and to identify systemic issues requiring attention.

The Protected Disclosures Coordinator is the CEO unless the CEO is named in the Whistleblower report, in which case the Coordinator is the In-house Legal Counsel.

6. Investigator (Internal Reporting)

The Foundation will investigate all matters reported under this policy as soon as practicable after the matter has been reported. The Investigator is appointed by the Protected Disclosures Coordinator and may be internal or external to Foundation.

The Investigator must have internal independence of line management in the area affected by the wrongdoing disclosure.

The internal investigator may be the CEO, Chief Financial Operations Office, or the In-House Legal Counsel.

The investigation will be conducted in an objective and fair manner, and as is reasonable and appropriate having regard to the nature of the disclosure and the circumstances. Where a report is submitted anonymously,

The Foundation will conduct the investigation and its enquiries based on the information provided to it. However, anonymity can sometimes prevent the Foundation from taking the issue further if the Foundation is not able to obtain further information from the source of the report.

⁶ All complaints to IBAC must be provided in writing and are not accepted over the phone. IBAC's translating and Interpreting services are available via phoning 1300 735 135 or the Translating and Interpreting Service: 131 450. IBAC will not receive complaints regarding, administration actions of state government agencies and councils, traffic fines, legal services, health services, privacy concerns, court decisions.

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The Investigator may second the expertise of other officers in the Foundation or external advisors to assist in the investigation and may seek the advice of internal or external experts as required.

7. **Senior Managers & Staff (Internal Reporting)**

All senior managers and any staff who receive disclosure about wrongdoing must notify the CEO or if the CEO is named in the disclosure, the In-house Legal Counsel, and provide particulars and maintain confidentiality about it.

8. **Protection (Internal Reporting)**

Not all disclosures of serious wrongdoing are protected at law. To meet the Foundation's philosophy of accepting tip-offs from anyone, the Foundation adopts the principle of providing protection to people or organisations with a relationship (or a former relationship as an officer, employee or contractor, grant partner or donor) with the Foundation:

- At least to the extent of protection at law; and
- A brief summary of legal protection is at Appendix 1.

Regardless of whether the disclosure is made internally or externally, the Whistleblower may choose to remain anonymous. However, this may make it harder to investigate the disclosure.

If a person reports wrongdoing:

- the Foundation will protect confidentiality unless the law requires the Foundation to release it. This means that the Foundation will not tell people that the person has made the disclosure unless permission has been given, or if the Foundation needs to tell them so that the report can be investigated.
- a Whistleblower will not be disadvantaged for making the disclosure. If the person is donor, member of Foundation Personnel, the Foundation will still treat the whistleblower the same way as we did before.
- The Whistleblower will be protected from detrimental action or victimisation. Some examples of detrimental action and victimisation could be:
 - o Bullying or harassing someone for making a disclosure.
 - o Demoting, isolating or transferring an employee for making a disclosure
 - o Discriminating against someone for making a disclosure. For example, by not allowing an employee who has made a disclosure to work flexibly when other people in the same role are allowed.

In addition to internal disclosure, under the State Regime, external disclosure to IBAC may be relevant if it is in the *public interest*. For the disclosure to be a public interest disclosure under

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Victorian law, the disclosure must be made to IBAC, an independent body. How IBAC will handle a disclosure, may be found on the IBAC website.

Regardless of whether the whistleblower makes the disclosure internally or externally, the whistleblower will receive certain legal protections.

9. **Confidentiality - How will the Foundation protect my confidentiality if I make a disclosure?**

As stated above, the Foundation will not disclose a whistleblower's identity unless it is necessary to further an investigation and the Whistleblower consents to the disclosure; and/or the disclosure is required or authorised by law⁷.

When a report is investigated it may be necessary to reveal its substance to people such as other Foundation personnel, external persons involved in the investigation process and, in appropriate circumstances, law enforcement agencies. It will be necessary to disclose the facts and substance of a report to a person who may be the subject of the report as it is essential for natural justice to prevail.

Although confidentiality is maintained, in some circumstances, the source of the reported issue may be obvious to a person who is the subject of a report. The Foundation will take reasonable precautions to store any records relating to a report of wrongdoing securely and to restrict access to authorised persons only.

Unauthorised disclosure of information that could prejudice confidentiality and identify a Whistleblower will be regarded seriously and may result in disciplinary action and where applicable, the Foundation will notify Federal Police.

If a public interest disclosure is made to IBAC, it must not be publicly disclosed that the disclosure has been assessed as a public interest disclosure, or that their disclosure is to be investigated by IBAC or referred to another investigating entity.

The Foundation aims to foster an environment where people have confidence in calling out, in good faith, suspected or actual improper or corrupt conduct, whether or not the protections of the Whistleblower Provisions apply in the given circumstances.

Where the investigation does not substantiate the allegations made in a disclosure, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

⁷ The Corporations Act and the Tax Administration Act whistleblower regimes impose strict confidentiality obligation on any person who knows a whistleblower's identity either directly or indirectly from a protected disclosure (s. 1317AAE of the Corporations Act 2001 (Cth)). In practice, the strict confidentiality obligations may impact on an organisation's existing process for escalating and investigating a report of wrongdoing. This becomes a particularly live issue where the nature of the disclosed allegations tend to reveal the whistleblower's identity. Breaching a whistleblower's anonymity and engaging in (or threatening to engage in) detrimental conduct towards a whistleblower or potential whistleblower, will carry a **civil penalty** for a body corporate of a maximum of the greater of \$10,500,000, or if a Court can determine the benefit derived or detriment avoided because of the contravention, 3 times that amount, or 10% of the annual turnover of the entity up to a maximum of \$525 million. Penalties for an individual will be the greater of \$1,050,000, or if a Court can determine the benefit derived or detriment avoided, 3 times that amount. Failure to comply with the confidentiality and detrimental conduct provisions will also be **criminal offences**, punishable by imprisonment and / or fines.

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Whistleblower's are entitled to retain anonymity when making a disclosure⁸.

10. Making a disclosure (Internal and External)

Reports can be made in person or by telephone, post or email. Reports can be made within business hours or outside business hours.

If, at any time, the whistleblower is unsure about whether to make a protected disclosure, the whistleblower may choose to seek their own independent legal advice. Any discussions the whistleblower has with an external lawyer will be protected under this policy and under law.

11. Eligible Recipients (Internal and External)

A protected disclosure of a *Reportable Matter* can be made using any of the channels below (each is an *Eligible Recipient of Reportable Matter*):

- CEO, member of the Foundation's senior executive or the In-house Legal Counsel
- Chair of the Foundation's Board or Chair of the Governance, Audit & Risk Committee;

Other designated bodies that may receive disclosures

Disclosures of a Reportable Matter may also be protected when made to:

- ASIC;
- APRA;
- ACNC;
- IBAC;
- the Commissioner of Taxation; or
- another Commonwealth authority prescribed under the whistleblower/public interest disclosure regime.

12. False reports (Internal and External)

A Protected Whistleblower will still qualify for protection for a disclosure even if their disclosure turns out to be incorrect. However, anyone who knowingly makes a false report of a Reportable Matter, or who otherwise fails to act honestly with reasonable belief in respect of the report may be subject to disciplinary action, including dismissal.

13. Protection against detrimental treatment (Internal and External)

It's illegal for a person to engage in conduct that causes (or threatens) detrimental treatment to a Protected Whistleblower in the belief or suspicion that a person has made, may make, proposes to make or could make a report of a Reportable Matter and where that belief or suspicion is a reason for the conduct.

⁸ In addition to any compensation ordered by the court, individuals and corporations that breach a whistleblower's anonymity and/or threaten the victim can face civil penalties up to respectively \$200,000 and \$1 million. As such, in addition to executing and distributing a company whistleblower policy, companies should create internal structures of management, at all levels of the company hierarchy, to whom disclosures can be made.

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Detrimental treatment could include dismissal, demotion, harassment, damage to the whistleblower's reputation, discrimination, disciplinary action, bias, threats or other unfavourable treatment connected with making a disclosure as a Protected Whistleblower.

The Foundation will seek to ensure that Protected Whistleblowers are not subjected to detrimental treatment as a result of making (or intending to make) a disclosure under this policy. To protect Protected *Whistleblowers* from detrimental treatment, the Foundation will:

- make an assessment of the risk of detriment against a Protected Whistleblower as soon as possible after receiving a disclosure of a Reportable Matter;
- make sure the Foundation's executive management (CEO and/or CFO) are aware of their responsibilities to maintain the confidentiality of a Protected Whistleblower, address the risks of detriment and ensure fairness when managing the performance of, or taking other management action relating to, a Protected Whistleblower; and
- take practical action, as necessary, to protect a Protected Whistleblower from the risk of detriment and intervene if detriment has already occurred.

14. **Other protections for Protected Whistleblowers**

Protected Whistleblowers are protected from civil, criminal or administrative liability (including disciplinary action) for making reports of Reportable Matters. No contractual right (including under an employment contract) can be exercised against a Protected Whistleblower to stop them disclosing a Reportable Matter.

Eligible Whistleblowers may also be entitled to seek compensation and other remedies through the courts if the Foundation fails to protect the Eligible Whistleblower from detriment and the Eligible Whistleblower suffers loss or damage.

15. **Disclosure Management (Internal)**

The Foundation recognises that individuals against whom a report is made must also be supported during the handling and investigation of the wrongdoing report. The Foundation takes reasonable steps to treat fairly any person who is the subject of a report, particularly during the assessment and investigation process in accordance with an established support protocol which may be extended to include appointing an independent senior officer in the Foundation to provide support.

Where a person is identified as being suspected of possible wrongdoing, but preliminary inquiries determines that the suspicion is baseless or unfounded and that no formal investigation is warranted, then the Whistleblower will be if practicable, informed of this outcome and the matter laid to rest.

Generally, where an investigation is conducted and the investigator believes there may be a case for an individual to respond, the Investigator must ensure that a person who is the subject of a disclosure:

- is informed of the substance of the allegations;
- is given a fair and reasonable opportunity to answer the allegations before the investigation is finalised;

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- has their response set out fairly in the Investigator's report; and
- is informed about the substance of any adverse conclusions in the consider any conflicts of interest prior to investigating;

That is, Foundation will take steps to ensure fair treatment of any person who is the subject of the Reportable Matter report as well as the Whistleblower.

Investigations will be conducted promptly and fairly with due regard for the nature of the allegation and the rights of the people involved in the investigation. The Foundation recognises the importance of balancing the rights of the Eligible Whistleblower and the rights of people against whom a report is made in ensuring fairness.

16. Communications with the Protected Whistleblower

The Foundation will ensure that, provided the claim was not submitted anonymously, the Whistleblower is kept informed of the outcomes of the investigation of their allegations. This will be subject to the considerations of privacy of those against whom allegations are made and considerations of confidentiality affecting the Foundation.

If the Protected Whistleblower is not an employee of the Foundation, the Protected Whistleblower will be kept informed of the investigative outcomes (subject to privacy considerations as above), once the Protected Whistleblower has agreed in writing to maintain confidentiality in relation to any information provided to them regarding a report made by them.

17. How this policy is made available

This policy is made available on SharePoint under Policies and upon request.

18. Public interest disclosures and freedom of Information

Section 78 of the *Public Interest Disclosures Act 2012 (Vic)* excludes the application of the *Freedom of Information Act 1982 (Vic)* to any document that relates to a disclosure made under the Act. The Foundation should contact IBAC prior to allowing any document to be released which originates from IBAC or relates to a public interest disclosure.

Any breach of this Policy may result in disciplinary action that could result in severance from the organisation.

19. Other Complaint Mechanisms

This policy is in addition to:

- Grievance procedures for employees, which is for all staff to raise any matters they may have in relation to their work or their work environment, other persons, or decisions affecting their employment. This policy does not replace other reporting structures such as those for dispute resolution, discrimination, victimisation or matters relating to workplace bullying or harassment.
- Standard complaint mechanisms for stakeholders, donors or volunteers.
- Any exercising of rights under the terms of their contract by contractors and suppliers.

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An exception to this is where the issue is wrongdoing of a serious nature, yet the existing reporting system failed to attend to the issue or has processed it in a substantially inappropriate, grossly unfair or heavily biased manner.

20. **(Internal) Foundation Whistleblower Governance Officers**

Chief Executive Office of the Lord Mayor's Charitable Foundation

Dr Catherine Brown OAM
Catherine.brown@lmcf.org.au
Ph: (03) 9633 0033

Legal Counsel of the Lord Mayor's Charitable Foundation

Indiana Bridges
Indiana.bridges@lmcf.org.au
M. 0404098874

Current Foundation Board Chair

Mr Craig Bell
e: craigb@forestersfs.com.au

Current Foundation Governance, Audit & Risk Chair

Dr Sandra Hacker AO
e: sandra@smih.com.au

21. **Related policies**

This policy should be read in conjunction with the Foundation's other relevant Foundation policies including:

- Code of Conduct and Conflict of Interests Policy
- Grievance Policy
- Respectful Workplace Policy
- Occupational Health and Safety Policy
- Fraud Control Policy
- Gift Acceptance Policy
- Privacy Policy

Document History

Approved by the Lord Mayor's Charitable Foundation Board June 2020.

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Appendix 1 - Legal Protection

Part 9. 4AAA of the Corporations Act 2001 (as amended)

Essential Element	Description
Reportable conduct	A report is made about serious breaches of the corporation laws or other reportable conduct such as information concerning misconduct or an improper state of affairs or circumstances by the Foundation or by an officer or employee of the Foundation.
Reasonable grounds for suspecting.	The person making the report has reasonable grounds for suspecting the reportable conduct.
Person making the disclosure	The person is or has been: <ul style="list-style-type: none">• An officer of The Foundation;• An employee of The Foundation;• A supplier (including their employees) who provides or has provided services or goods to The Foundation;• An associate of The Foundation; or - A relative of an individual referred to any of the above.
Person receiving the disclosure	The person receiving the report is one of either: <ul style="list-style-type: none">• ASIC• The company auditor or an audit team member;• An actuary of the Foundation;• A Board Member, Board Secretary or Senior Leadership team Member of the Foundation;• A Foundation Whistleblower Governance Officer.

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Appendix 2 – Table 1: Criteria for protection as a whistleblower (extracted from ASIC's website)

Criteria	The law requires
Your role	<p>You must be a current or former:</p> <ul style="list-style-type: none"> employee of the company or organisation your disclosure is about, or a related company or organisation officer (usually that means a director or company secretary) of the company or organisation your disclosure is about, or a related company or organisation contractor, or an employee of a contractor, who has supplied goods or services to the company or organisation your disclosure is about, or a related company or organisation. This can be either paid or unpaid, and can include volunteers associate of the company or organisation, usually a person with whom the company or organisation acts in concert trustee, custodian or investment manager of a superannuation entity, or an officer, employee, or a goods or service provider to a trustee, custodian, investment manager, or spouse, relative or dependant of one of the people referred to above. <p>While you must hold or have held one of these roles to access the protections, you do not have to identify yourself or your role, and you can raise your concerns anonymously.</p>
Company or organisation your disclosure is about	<p>The organisation your disclosure is about must be:</p> <ul style="list-style-type: none"> a company a bank a provider of general insurance or life insurance a superannuation entity or a superannuation trustee, or an incorporated association or other body corporate that is a trading or financial corporation. This

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Criteria	The law requires
	<p>includes not for-profit organisations that trade in goods or services, lend or borrow money, or provide other financial services, and their trading or financial activities make up a sufficiently significant proportion of their overall activities. Not all not-for-profit organisations are subject to the whistleblower protections.</p>
Who you make the disclosure to	<p>You must make your disclosure to:</p> <ul style="list-style-type: none">a director, company secretary, company officer, or senior manager of the company or organisation, or a related company or organisationan auditor, or a member of the audit team, of the company or organisation, or a related company or organisationan actuary of the company or organisation, or a related company or organisationa person authorised by the company or organisation to receive whistleblower disclosuresASIC or the Australian Prudential Regulation Authority (APRA), oryour lawyer. <p>While you must make your disclosure to one of these people or organisations, you can raise your concerns anonymously.</p>
Subject of your disclosure	<p>You must have reasonable grounds to suspect that the information you are disclosing about the company or organisation concerns:</p> <ul style="list-style-type: none">misconduct, oran improper state of affairs or circumstances. <p>This information can be about the company or organisation, or an officer or employee of the company or organisation, engaging in conduct that:</p>

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Criteria	The law requires
	<p>breaches the Corporations Act breaches other financial sector laws enforced by ASIC or APRA breaches an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months, or represents a danger to the public or the financial system.</p> <p>'Reasonable grounds' means that a reasonable person in your position would also suspect the information indicates misconduct or a breach of the law.</p> <p>There are additional protections if your concerns relate to matters in the public interest or an emergency (see Table 2 or Table 3).</p>