



## POLICY

# WHISTLEBLOWER POLICY

*Registered group policy of the Victorian Bar*

The Victorian Bar (the Bar) encourages and supports the reporting of suspected or actual misconduct or unlawful activity within the Bar and the protection of whistleblowers from any retaliation that may arise as a result of disclosing misconduct or unlawful activity.

This whistleblower policy (Policy) operates in accordance with the relevant whistleblower protection provisions as applicable to incorporated associations and extends to the Bar's subsidiaries.

## PURPOSE

The purpose of the Policy is to:

- 1) encourage reporting of matters that may cause harm to individuals, pecuniary or non-pecuniary loss to the Bar or damage to its reputation;
- 2) allow the Bar to protect the identity of whistleblowers as far as practicable;
- 3) protect whistleblowers against reprisal;
- 4) provide appropriate reporting and record-keeping mechanisms; and
- 5) help maintain the Bar's high standards of ethical behaviour and integrity.

## SCOPE

The Policy sets out the Bar's safe reporting mechanism for whistleblowers and applies to the following persons or entities (current and former):

- the Victorian Bar Council;
- the Executive Director and senior management; Bar staff;
- barrister clerks; Victorian Bar members;
- volunteers, interns, secondees, consultants and contractors (including their employees);
- Barristers' Chambers Limited and all other subsidiaries of the Bar, including directors, shareholders, auditors, customers and tenants of these entities; and
- relatives and dependents of each of the above.

## DEFINITIONS

For purposes of this Policy, the following terms are defined:

**Misconduct** embraces breaches of general law, organisational policy, or generally recognised principles of ethics, and may include:

- breaches of legislation, regulations or local government by-laws or otherwise illegal conduct (including whistleblower laws, corporations law, theft, drug sale or use, violence or threatened violence or

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- criminal damage against property);
- any offence against any other Commonwealth law that is punishable by imprisonment for a period of 12 months or more;
- corruption or abuse of public trust;
- fraud or an improper state of affairs;
- conduct that unreasonably endangers health and safety;
- practices endangering the health, safety or the environment of staff, volunteers or the general public;
- gross mismanagement or repeated breaches of administrative procedures;
- financial or non-financial loss detrimental to the interests of the Bar or the reputation of the Bar; and
- serious improper conduct.

If a whistleblower is involved in the Misconduct, disclosure of it does not protect the whistleblower from his or her own liabilities for the Misconduct.

**Protection** refers to the support and protection available to whistleblowers who have reasonable grounds to suspect there to be Misconduct, including protection from reprisal as a result of such disclosure.

Protection is not available where a disclosure is:

- trivial or vexatious in nature with no substance; and/or
- involves unsubstantiated allegations found to be maliciously, or knowingly, false. Disclosures of this nature will be treated seriously and may be subject to disciplinary action.

**Whistleblower** is a person covered under the scope of this Policy who reports known or reasonably suspected Misconduct within the organisation. The disclosure may be reported openly or anonymously.

**Whistleblower Protection Officer or WPO** is a suitably qualified person appointed by the Bar to communicate with and safeguard the interests of the whistleblower, in adherence with this Policy and any other relevant Bar policies, and the law. The WPO's role does not require provision of legal advice.

The designated WPO of the Bar is the Senior In-house Legal Counsel, whose title may change from time to time.

**Whistleblower Investigations Officer or WIO** is a suitably qualified person (internal or external to the Bar) appointed by the Bar to investigate the substance of the disclosure.

## POLICY STATEMENT

Whistleblower protection is a key element of the culture of ethical behaviour, strong corporate governance and effective compliance and risk management at the Bar. It helps protect the interests of whistleblowers, eliminating fear of reprisal following disclosure and acts as a deterrent to illegal, inappropriate or unethical conduct or behaviour.

## THE AUSTRALIAN STANDARD

The Australian Standard on Whistleblower Protection Programs for Entities (AS 8004-

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2003) published by Standards Australia (the Australian Standard) and updated from time to time, offers a guide to the key requirements of a whistleblowing framework, including confidentiality, anonymity and protection.

The Bar adopts the Australian Standard as far as it is applicable to the Bar as a not-for-profit incorporated association under the *Associations Incorporation Reform Act 2012* (Vic) and as far as it accords with current whistleblower legislation. The Australian Standard sets out the key elements of an effective whistleblower protection program, covering structural, operational and maintenance elements. See link to the Australian Standard for further details.

## REPORTING AND INVESTIGATION

### Secure online reporting mechanism

Actual or alleged Misconduct as defined in this Policy is reportable via the Bar's online reporting mechanism, which is open to the general public. All reports will be received by the Bar's WPO and WIO and treated confidentially.

The WPO will communicate with the whistleblower and make appropriate arrangements for the WIO to conduct an inquiry or investigation into the disclosures made. Depending on the severity of the disclosure, the WPO will escalate the disclosure to the Executive Director and/or the President of the Bar Council to assess the allegations together.

The WPO will take reasonable precautions to keep secure records with restricted access on the Bar's Whistleblower Register.

The online reporting platform for whistleblowers and reporting form is accessible [here](#).

### Investigation of report

Where an investigation is deemed necessary, the WPO will engage the Bar's designated WIO to proceed with an inquiry/investigation into the matter and prepare an investigations report. The report must not identify the whistleblower, unless there is express consent from the whistleblower or it is permitted by law.

The WIO will investigate the alleged Misconduct as soon as practicable after each report. The WIO must have internal independence from the line of management that is affected by the disclosure and have regard to the Bar's conflict of interest policy. The investigation must be properly assessed, and be independently and fairly conducted. Without identifying the whistleblower, the WIO may during the investigation consult the expertise of internal or external experts for advice.

The WIO must ensure the person subject of the Misconduct is:

- informed of the allegations made;
- given fair and reasonable opportunity to respond;
- has their response set out in the WIO's report; and
- informed of the conclusions reached in the WIO's report.

The WIO's investigation report will be provided to the WPO.

Investigation reports will be submitted to the Executive Director, the President and/or Bar Council as appropriate.

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If the disclosure is found to be baseless, lacking in substance or on reasonable grounds determined by the WIO that no formal investigation should be warranted, the whistleblower will be notified, and the matter closed.

### **Anonymity**

There is an option of anonymous reporting under the online reporting platform, however, anonymous reporting may involve significant limitations that hinder a proper investigation being undertaken, given the inability to provide feedback, to contact the individual, or gather additional information necessary to assist with the investigation. The whistleblower may be required to produce further information, in the absence of which the investigation may not be able to proceed. There would also not be any enforceable protection mechanisms.

### **Alternative – Internal reporting (only)**

If the whistleblower is internal to the Bar, he or she may report Misconduct directly to the WPO via the online reporting mechanism, or alternatively, to the Executive Director of the Bar directly at [ED@vicbar.com.au](mailto:ED@vicbar.com.au).

### **Barristers' Chambers Limited**

In accordance with cl. 11 of the Memorandum of Understanding between the Bar and BCL, it is agreed that policies and protocols are to be consistent between the two entities to the extent possible. BCL has accepted this Policy as a registered group policy of the Bar.

Whistleblower reports to BCL of actual or alleged Misconduct are to be directed to the Disclosure Co-ordinator appointed by BCL from time to time and reported to the Executive Director and Audit & Risk Management Sub-Committee of BCL.

### **CONFIDENTIALITY**

All information reported and further disclosed will be treated confidentially. Strictly no identifying information will be provided to persons engaged in Misconduct or for any external reporting process.

Exceptions are:

- if the whistleblower consents to disclosure; and/or
- if disclosure of identity is required by law.

### **Other complaint mechanisms**

This Policy is in addition to other complaints mechanisms of the Bar.

This Policy does not cover OH&S complaints, interpersonal staff disputes, the Bar's employment decisions, and personal grievances including harassment, discrimination or workplace bullying.

### **COMPLIANCE STATEMENT**

This Policy is developed having regard to the whistleblower protection provisions and applicable legislative requirements.

Relevant laws include but are not limited to the *Protected Disclosure Act 2013* (Vic),

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*Public Interest Disclosure Act 2013 (Cth) and Corporations Act 2001 (Cth).*

## **BREACH**

Unauthorised disclosure of information that could prejudice confidentiality and identify a whistleblower may be subject to disciplinary action. The Bar will notify the appropriate authorities and regulatory bodies where appropriate.

Any breach of this Policy will be treated seriously and may result in disciplinary action taken by the Bar.

## **REVIEW**

This Policy will be reviewed every 2 years.

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