



UNSW Student Life

# Whistleblower Policy

Version	Approved by	Approval date	Effective date	Next review
7.0	Board	22 March 2023	22 March 2023	March 2025
<b>Policy Statement</b>				
<b>Purpose</b>	<p>This Whistleblower policy has been prepared against the Australian Standard AS 8004-2003 – Whistleblower Programs for Entities and in accordance with the provisions of Part 9.4AAA of the Corporations Act 2001 (Cth). The policy protects individuals who in good faith, report conduct which they have reasonable grounds to suspect to be</p> <ul style="list-style-type: none"> <li>(a) dishonest;</li> <li>(b) fraudulent;</li> <li>(c) corrupt;</li> <li>(d) illegal;</li> <li>(e) in breach of Commonwealth or state legislation or local authority by laws;</li> <li>(f) unethical by reference to the standards expressed in Arc and UNSW policies;</li> <li>(g) seriously improper by reference to the standards expressed in Arc and UNSW policies;</li> <li>(h) an unsafe work practice; or</li> <li>(i) any other conduct which may cause financial or non-financial loss to Arc or be otherwise detrimental to the interests of Arc;</li> </ul>			
<b>Scope</b>	<p>A disclosure of information by a person (the Whistleblower) qualifies for protection under this policy if the Whistleblower is:</p> <ul style="list-style-type: none"> <li>(a) an officer of Arc;</li> <li>(b) a Director, employee or intern of Arc;</li> <li>(c) a person who has a contract for the supply of services or goods to Arc;</li> <li>(d) an employee of a person who has a contract for the supply of services or goods to Arc, or</li> <li>(e) a spouse, relative or dependant of any of the persons above.</li> </ul> <p>In this policy each person in the categories listed above is referred to as an “Arc person”.</p>			
<b>Policy Provisions</b>				

## 1. PROTECTION UNDER THIS POLICY

### 1.1. Whistleblower Protection

Under this policy, a Whistleblower who makes a report may not be dismissed, penalised or victimised by Arc because of having made a report.

### 1.2. Prohibition on Victimisation

An Arc person must not victimise any Whistleblower or cause any Whistleblower to be victimised, because a Whistleblower has made a report under this Policy.

Victimisation includes intimidation, harassment, threats, action causing injury, loss or damage, discrimination, disadvantage, or adverse treatment in relation to a person’s employment, career, profession, trade or business.

Arc regards victimisation very seriously and will take appropriate actions in response to victimisation, which may include, in the case of employees, disciplinary action and dismissal. If the victimisation could constitute a criminal offence, Arc will inform the appropriate authorities.

### **1.3. Improper conduct**

Making a report under this Policy does not shield the Whistleblower from the consequences of being involved in any improper conduct alleged in a report whether made under this Policy or otherwise.

In some limited circumstances, however, a full and frank admission by the Whistleblower may be a mitigating factor in the consideration of whether Arc takes disciplinary or other action as a result of a report.

### **1.4. Industrial Relations Complaints**

Complaints regarding terms and conditions of employment and industrial relations are excluded from the operation of this Policy.

### **1.5. Vexatious Complaints**

A trivial, malicious or vexatious complaint does not qualify for protection under this Policy. While Whistleblowers should be encouraged to report matters of serious concern, they must also ensure their complaint is based on evidence and presented in an unbiased manner. If a complaint is found by the WCO to be trivial, malicious or vexatious, the WCO may decline to take any further action. A Whistleblower who disagrees with this decision may escalate the matter to the Board, via the Chair of the Audit and Risk Committee, who may determine whether the matter should be investigated. A complaint found by the Board to be trivial, malicious or vexatious must be reported to the WCO and CEO, and may result in disciplinary action against the person concerned.

## **2. PROTECTION UNDER THE CORPORATIONS ACT**

### **2.1. Corporations Act**

Under the Corporations Act 2001 (Cth) the disclosure of information relating to improper conduct qualifies for certain protections under the Act where:

- a) the discloser is:
  - i. A current or former officer of a company; or
  - ii. an employee or former employee of a company; or
  - iii. a person who has, or had a contract for the supply of services or goods to a company; or
  - iv. an employee of a person who has, or had a contract for the supply of services or good to a company;
  - v. a family member or dependent of any person listed in part 4.1 (a) (i)-(iv)
- b) the disclosure is made to:
  - i. the Australian Securities and Investments Commission (ASIC);
  - ii. the Australian Prudential Regulatory Authority (APRA)
  - iii. Arc's external auditor or a member of the external audit team;
  - iv. a director, company secretary, officer of Arc, member of Arc's executive management or the WCO;
- c) the discloser has reasonable grounds to suspect that the improper conduct relates to a breach of the Corporations Act, Tax Administration Act 1953 or Australian Securities and Investments Commission Act 2001 ('ASIC Act') by the company or an officer or employee of the company.
- d) A Whistleblower is not required to identify themselves in order for a disclosure to qualify for protection under this part and may remain anonymous if they wish.

## **2.2. Suspected Breach Disclosure**

Where disclosure regarding a suspected breach of the corporations legislation is made to any of the persons referred to in paragraphs 4.1 (b) (ii) or 4.1 (b) (iii) above, those persons may not tell anyone other than ASIC, the Australian Prudential Regulation Authority (APRA) or the Australian Federal Police any of:

- a) the information disclosed;
- b) the identity of the person making the disclosure; or
- c) any information which will enable the identification of the person making the disclosure, unless the Arc person consents to that disclosure.

This means that where a Whistleblower discloses his or her identity prior to reporting information relating to a possible breach of the Corporations Act, Tax Administration Act or ASIC Act, Arc will be unable to investigate the report unless the Whistleblower consents to the information being released for use in the investigation. This may not prevent disclosure of the information to external agencies where there is an obligation to do so by law.

## **3. INVESTIGATING REPORTS OF IMPROPER CONDUCT**

### **3.1. Who investigates a report?**

Where a report of suspected improper conduct is referred by the WCO to the CEO, the CEO will ask an appropriate person within Arc to carry out the investigation.

The CEO may advise law enforcement authorities and/or appoint other external investigators.

A senior manager will not be asked to investigate any matter that relates to their own department, to avoid an actual, potential or perceived conflict of interest.

Where a report of suspected improper conduct relates to a significant matter involving the Chief Executive Officer, or the Whistleblower has a reasonable belief that reporting the matter to the WCO would not be sufficiently independent, the matter is to be referred directly to the Board, via the Chair or Chair of the Audit and Risk Subcommittee. With approval from a Simple Majority of Directors, the Chair of the Board may access legal advisers as required.

Where a report of suspected improper conduct relates to a significant matter involving a senior manager, the WCO will refer the matter directly to the CEO.

Where a report of suspected improper conduct relates to a significant matter involving a member of the Board, the WCO will refer the matter to the Chair (or where the matter relates to the Chair, to the CEO or Chair of the Audit and Risk Subcommittee) who will advise the Board of the existence of the report. The matter will then be referred to ASIC and any other appropriate external agencies.

### **3.2. How is an Investigation carried out?**

The person appointed to investigate the report will be required to follow normal Arc procedures for handling a complaint or disciplinary issue (refer to Arc's Grievance Resolution Policy). This would generally involve:

- a) undertaking a fair, independent and discreet investigation into the substance of the report to determine whether there is evidence to support the matters raised;
- b) respecting individual confidentiality (see section 6 for further information on confidentiality);
- c) collecting all available evidence data and verifying the reported information;
- d) in order to observe the rules of procedural fairness, interviewing any person who can give relevant information;
- e) proceeding with due care and appropriate speed; and
- f) advising the individual/s concerned of their right to seek independent advice, including from an employee representative body, and that they may arrange legal assistance at their own expense.
- g) Where a whistleblower has chosen to remain anonymous, the investigation must be carried out in a way which does not inadvertently disclose or compromise the whistleblower's anonymity.

Where the Whistleblower initiating the inquiry has identified him or herself, his or her identity must not be made known to the respondent without the Whistleblower's specific consent unless in the circumstances set out in section 7.1 below.

### **3.3. How a Disclosure is handled**

The person appointed to investigate the report will:

- a) inform the respondent of the details of the complaint in writing, as soon as practicable after being appointed to investigate the report;
- b) provide the respondent with a copy of this Policy and any associated Arc policies;
- c) inform the respondent that an investigation of the matter is required, and advise that the investigation will take place in accordance with the procedures outlined in section 5.2;
- d) advise the respondent that the details of the Whistleblower may not be disclosed;
- e) advise the respondent that upon completion of the investigation, a report will be submitted to the CEO, who will determine a response to the matter; and
- f) advise the respondent that a copy of the complaint report may be provided to them.

### **3.4. Expectations of the Whistleblower**

Whenever a report is made and investigation carried out under this policy, a Whistleblower is expected to:

- a) maintain absolute confidentiality regarding the issue, and not discuss the issue with any other person except the person investigating;
- b) behave in a manner which will not disrupt or corrupt the investigation process;
- c) follow any reasonable direction or request of the person investigating;
- d) cooperate at all times with the person investigating; and
- e) provide all information and documentation regarding the matter to which they have access.

The Whistleblower must be aware that any person/s whose conduct is the subject of a Whistleblower complaint will be informed of the report and given an opportunity to respond to it.

## **4. OUTCOME OF INVESTIGATIONS**

### **4.1. What happens after an investigation?**

At the end of the investigation, the person investigating will report their findings to the CEO who will determine the appropriate response. This response will address any improper conduct and take any action required to prevent any future occurrences of the same or similar conduct.

Where issues of discipline arise the response will also be in line with Arc's procedures for disciplinary matters (refer to Arc's Managing Conduct and Underperformance Policy and Procedure). Where allegations of unacceptable conduct made against another person cannot be substantiated, that person will be advised accordingly and will be entitled to continue in their role as if the allegations had not been made.

### **4.2. What if the Whistleblower is involved?**

Where any disclosure relating to a breach of the Corporations Act is made in accordance with Part 4 of this policy and the Whistleblower is an Arc employee, the Whistleblower's employment must not be terminated, nor any other action or detrimental conduct taken against that person, for the reason of having made such a disclosure.

A person who has committed or been involved in improper conduct will not be immune from disciplinary action merely because they have reported the improper conduct in accordance with this Policy. The person's conduct in making the report, however, is likely to be taken into account in determining what disciplinary action is appropriate. A report under this Policy does not provide immunity from any civil or criminal liability for conduct of the person revealed by the disclosure.

### **4.3. Further correspondence with the Whistleblower**

If a Whistleblower provides their contact details, the WCO will acknowledge receipt of the complaint in writing. The Whistleblower will be kept informed of the outcome of the investigation of their report, subject to privacy and confidentiality obligations being adhered to. The Whistleblower must maintain confidentiality of all such reports and not disclose this information to any person.

## 5. PROTECTING CONFIDENTIALITY AND PRIVACY

### 5.1. Confidentiality

Arc will take all reasonable steps to protect the identity of a Whistleblower. Accordingly, Arc will not disclose the Whistleblower's identity unless:

- a) the Whistleblower making the report consents in writing to the disclosure; or
- b) the disclosure is made to any of the following:
  - i. ASIC
  - ii. APRA
  - iii. the Australian Federal Police
  - iv. a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of Arc's disclosure obligations; or
- c) is otherwise required by law.

In a case where a Whistleblower qualifies for protection under the relevant sections of the Corporations Act, Arc will only disclose the identity of the Whistleblower in accordance with clause 4.2 of this policy, or where the Whistleblower consents to the disclosure.

Arc will also ensure that any records relating to a report of improper conduct are stored securely and are able to be accessed only by staff directly authorised by the CEO.

Unauthorised disclosure of:

- a) the identity of an Arc person who has made a report of improper conduct; or
- b) information from which the identity of the reporting person could be inferred, will be regarded as a disciplinary matter and will be dealt with in accordance with Arc's disciplinary procedures. Such disclosure may also constitute a criminal offence under the Corporations Act 2001.

### 5.2. Protection

Arc is committed to the protection of genuine Whistleblowers against actions taken in reprisal for making a protected disclosure. If a person believes they are the subject of victimisation or reprisals, they should provide the WCO with sufficient information to enable an investigation of the complaint. The WCO will undertake an investigation and report to the CEO, who will determine an appropriate response.

### 5.3. Privacy issues

To the extent that any of the information recorded by the WCO on Arc's behalf constitutes "personal information" about the Whistleblower under applicable privacy legislation, it should be noted that:

- a) the purpose of the collection of that information is to assist the WCO and Arc to respond to issues raised by the Whistleblower and to protect or enforce Arc's legal rights or interests or to defend any claims;
- b) personal information may be used for the primary purpose for which it was collected or for any related secondary purpose that could reasonably be expected; and
- c) personal information may be disclosed as described under section 7.1 above.

Arc will not collect "sensitive information" without the consent of the person to whom it relates unless the collection is required by law, is necessary to prevent or lessen a serious and imminent threat to the person's (or another person's) life or health or is necessary in relation to legal proceedings (current, anticipated or potential).

## 6. REPORTING

### 6.1. Reports provided under this Policy

The WCO will provide reports containing a general summary of the number and type of complaints made to the WCO together with a description of the nature and results of any investigation conducted as a result of a complaint.

A Whistleblower's identity will not be included in any such reports. These reports will be provided to the:

- a) CEO on a regular basis (the frequency to be determined by the CEO from time to time); and

- b) Audit & Risk Subcommittee every quarter, except where a report involves the CEO in which case the report must be provided to the Board immediately when it is received by the Chair.

A consolidated report will also be provided to the Board Audit and Risk Subcommittee each year.

## 7. POLICY REVIEW

The CEO will use the reports provided under this Policy to monitor and regularly review the effectiveness of the protection program described in this Policy.

This policy will be reviewed after its first year and then every two (2) years by the Audit and Risk Subcommittee.

<b>Accountabilities</b>	
<b>Responsible Officer</b>	Chief Executive Officer
<b>Contact Officer</b>	Whistleblower Complaints Officer
<b>Supporting Information</b>	
<b>Legislative Compliance</b>	This Policy supports Arc's compliance with the following legislation: Corporations Act (2001), in particular Part Part 9.4AAA: sections 1317AA-1317AK.
<b>Supporting Documents</b>	Code of Conduct Policy Delegation Policy and Register of Delegations
<b>Related Documents</b>	Credit Card Policy and Procedures Work Health and Safety Policy and Management Plan Privacy Policy
<b>Superseded Documents</b>	Nil

## **Definitions and Acronyms**

<b>Whistleblowing</b>	For the purpose of this policy, Whistleblowing is the disclosure (hereinafter referred to as "a report") of improper conduct by an Arc person, whether actual, suspected on reasonable grounds or anticipated, on reasonable grounds, as likely to occur.
<b>Whistleblower</b>	<p>For the purpose of this policy, a Whistleblower is an Arc person who, whether anonymously or not, makes or attempts to make a disclosure as defined in paragraph 2.1 and who wishes to avail themselves of protection against reprisal for having made the report.</p> <p>A person not listed as an Arc person may be classified as a Whistleblower if the CEO, Whistleblower Complaints Officer (see 2.4) or Chair (see 5.1) considers that the person's disclosure meets the criteria of paragraph.</p>
<b>Improper Conduct</b>	<p>For the purpose of this policy, Improper Conduct is defined as:</p> <ul style="list-style-type: none"> <li>(a) improper use of a position within Arc to gain an advantage for himself or herself, or someone else, or cause a detriment to Arc;</li> <li>(b) fraudulent or corrupt activity;</li> <li>(c) substantial mismanagement, whether intentional, reckless or negligent, of Arc resources;</li> <li>(d) conduct involving a risk of substantial harm to public health or safety;</li> <li>(e) conduct involving a risk of substantial harm to the environment;</li> <li>(f) conduct by an Arc person that would, if proven, constitute: <ul style="list-style-type: none"> <li>(i) a criminal offence;</li> <li>(ii) a danger to the public or the financial system;</li> <li>(iii) an offence against, or contravention of a provision of any of the following: <ul style="list-style-type: none"> <li>a) the Corporations Act</li> <li>b) the ASIC Act;</li> <li>c) the Banking Act 1959</li> <li>d) the Financial Sector (Collection of Data) Act 2001</li> <li>e) the Insurance Act 1973</li> <li>f) the Life Insurance Act 1995</li> <li>g) the National Consumer Credit Protection Act 2009</li> <li>h) the Superannuation Industry (Supervision) Act 1993</li> <li>i) the Tax Administration Act 1953</li> </ul> </li> <li>(iv) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of an Arc person who was, or is, engaged in that conduct; or</li> <li>(v) reasonable grounds for disciplinary action, or;</li> <li>(g) serious breach of Arc's policies and procedures.</li> </ul> </li> </ul>
<b>Whistleblower Complaints Officer (WCO)</b>	<p>The WCO is a person designated by the CEO, on behalf of Arc, as being responsible for the management of the Whistleblower complaint procedures. The WCO will seek the CEO's approval for all actions required as a result of complaint investigations, except where a matter is referred directly to the Board, which in that case will determine how a complaint shall be investigated.</p> <p>Arc's Whistleblower Complaints Officer is: Mr David Loonam: Tel: (02) 9065 0946 , email: d.loonam@arc.unsw.edu.au</p>
<b>Respondent</b>	The Respondent is the person about whom a complaint is made.
<b>Sensitive Information</b>	Sensitive Information includes information or an opinion about a person's racial or ethical origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a profession or trade, membership of a trade union, sexual preferences or practices, criminal record or health information as defined in the Commonwealth Privacy Act 1988.
<b>Simple Majority</b>	Simple Majority means the next whole number higher than one half of the total number of Directors or committee members eligible to attend and vote at a meeting.

Revision History					
Version	Approved by	Approval date	Author	Sections modified	Details of amendments
[1.0]	CEO, A&R, Board	29/8/11	Student Support Officer		This is a new policy
[2.0]	CEO, A&R, Board	27/8/12	Student Support Officer	n/a	Review – no amendments made.
[3.0]	BOARD	20/10/14	CEO	1.2 (a)  2.7  5.1 (4 <sup>th</sup> paragraph)	Amended from An officer of the Board to “An officer of Arc”.  Added definition of Simple Majority  Added info for the Whistleblower to contact the Chair of the Board or Chair of A&R if they cannot contact the WCO.
[4.0]	A&R, Board	1/9/16	Legal & Advocacy Solicitor	4  6  7.1	Added a definition of a discloser and amended wording to be in line with the Act.  Added first paragraph.  Added paragraph regarding disclosure of the Whistleblowers identity.
[5.0]	A&R, Board	05/03/19		1.2  4.1, 4.2	Add intern  Minor updates to reflect better ‘the Act’
[6.0]	A&R, Board	10/3/21	Legal and advocacy solicitor	Definitions  1.1  2.1  3.2  4.2.  5.1  New policy template in use. The numbering above follows the new numbering formatting.	Expanded definition of disclosable matters to reflect changes to Corporations Act  Removal of ‘good faith’ requirement which is no longer a requirement under the relevant sections of the Corporations Act  Expanded definition of eligible disclosures reflecting CA changes  Inclusion of allowance for anonymous disclosure  Addition of ‘detrimental conduct’ as a prohibited action against whistleblowers  Amendment of confidentiality provision to reflect changes to Corporations Act



7.0	A&R, Board		Legal and advocacy solicitor	Policy statement section – Scope  2.1  2.2.  Definitions section	Amended to include dependant, partner and spouse of those who may qualify for protection  Addition of Tax Administration Act as legislation which may be the subject of breach  Addition of Tax Administration Act – as above  Addition of Tax Administration Act – as above  Update to telephone number of WCO
-----	------------	--	------------------------------	--	---