

# Protected Disclosure (whistleblowing)

## POLICY AND PROCEDURE

### POLICY AND PROCEDURE STATEMENT

Melba Support Services (Melba) is committed to safeguarding the health and wellbeing of all people supported and to operating legally, ethically and properly in accordance with relevant legislation and regulation, recognised ethical principles, and our organisational policies and procedures. Employees, volunteers and contractors are expected to support this objective, if necessary, by reporting non-compliant actions by other people. Those who make such reports, as set out in this policy, will not be penalised in any way.

Melba's Code of Conduct requires staff to report immediately any unethical behaviour or wrongdoing by any person associated with Melba to an appropriate person in management (see clause 4.3). Clause 4.7 requires staff to report immediately any behaviour or interaction by staff that is perceived to be violence, abuse, neglect, mistreatment or exploitation of a person supported by Melba Support Services. Further, clause 8.4 requires staff to report to management any performance or behavioural issues of other staff members that impacts on service quality or integrity.

Without changing the intent of our Code of Conduct, it is recognised that at times, for various reasons, individuals may not feel they can raise concerns about unethical behaviour or misconduct with their supervisor or a Melba senior manager. In these circumstances, staff may raise their concerns via Melba's whistleblower process. The following policy and procedure is intended to build confidence and trust in Melba's whistleblower processes and procedures.

### SCOPE

This policy and procedure applies to all current and former Melba Support Services officers, employees, volunteers (including interns, secondees, and directors) and suppliers of goods and services to Melba (including contractors, consultants, and business partners) and their relatives, dependents, and spouses. Each of the above is an eligible whistleblower and qualifies for protection as a whistleblower if they have made a disclosure of information relating to a disclosable matter to a relevant person or body.

A Melba staff member who believes in good faith that another employee, volunteer or contractor has breached the law, Melba's Code of Conduct, Melba's Rules of Association, or generally recognised principles of ethics, must report their concern to their supervisor, a senior manager, Chief Outcomes Officer (COO) or the Chief Executive Officer (CEO).

If a staff member who wishes to raise a concern anonymously and/or believes their supervisor, senior manager or CEO may be complicit in the breach, the staff member must report their concern to Melba's Whistleblower Protection Officer as set out in Melba's Whistleblowing Procedure. Disclosures may be made anonymously, and this anonymity shall, as far as possible, be preserved by the Protection Officer.

A staff member reporting a concern will not suffer any sanction from the organisation because of making a report, providing they have acted in good faith, on reasonable grounds and in accordance with Melba's procedure.

Any reported concern that is not obviously trivial, fanciful or vexatious will be investigated in accordance with the rules of natural justice and procedural fairness and be in line with Melba's guiding Policies and Procedures.

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This policy does not authorise any employee to inform commercial media or social media of their concern (except in the very limited circumstances of a ‘public interest disclosure’ – see below under ‘Who Can Receive a Disclosure’). Staff should note clauses 9.2 and 9.3 of Melba’s Code of Conduct that prohibits them from making any formal comments to the community regarding Melba unless authorised to do so and require staff to ensure any concerns about colleagues or the management of services are directed through the appropriate internal mechanisms.

### PURPOSE

This policy establishes the intent of Melba’s whistleblower process to:

- Encourage and enable the reporting of wrongdoing, including matters that may cause harm to people supported.
- Encourage and enable the identification of wrongdoing which might not otherwise be uncovered.
- Enable Melba to deal with reports from whistleblowers in a way that protects the identity of the whistleblower and supports them in their actions.
- Ensure disclosures are dealt with appropriately and in a timely manner.
- Provide for the secure storage of information collected through the whistleblower process.
- Protect whistleblowers against reprisal; and
- Help ensure Melba maintains the highest standards of ethical behavior and integrity within its service delivery and direct supports.

### DEFINITIONS

Term	Definition
<b>Disclosable matter</b>	is defined in the next section.
<b>Good faith</b>	means with honest intent and without malice
<b>A whistleblower</b>	is a person who, whether anonymously or not, makes a report in connection with a disclosable matter and wishes to avail themselves of protection against any reprisal for having made the report.
<b>Protected disclosure</b>	A report is also known as a protected disclosure.

### ACTIONS

#### MATTERS THE POLICY APPLIES TO

This policy applies to ‘disclosable matters’. Disclosures that are not about ‘disclosable matters’ do not qualify for whistleblower protections.

Disclosable matters are those where you have reasonable grounds to suspect:

- misconduct or an improper state of affairs in relation to Melba (which may not involve the contravention of a particular law); or
- that Melba has engaged in conduct that constitutes an offence against a provision of certain Acts, e.g., including the *Corporations Act 2001*, the *Australian Securities and Investments Commission*

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*Act 2001, the Banking Act 1959, the Financial Sector (Collection of Data) Act 2001, the Insurance Act 1973, the Life Insurance Act 1995, the National Consumer Credit Protection Act 2009, and the Superannuation Industry Supervision Act 1993.*

- that Melba has engaged in conduct which constitutes an offence against any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- that Melba had engaged in conduct which represents a significant risk to public safety or the stability of or confidence in the financial system.

Examples of disclosable matters include:

- Illegal conduct, such as theft, violence or threatened violence, and criminal damage against property;
- Fraud, money laundering or misappropriation of funds;
- Offering or accepting a bribe;
- Financial irregularities;
- Breach of legal or regulatory requirements;
- Engaging in or threatening to engage in detrimental conduct against a person who has made a disclosure or is believed or suspected to have made or be planning to make a disclosure.

You are protected under this policy even if your disclosure turns out to be incorrect.

### **Matters not covered by this policy**

The policy is not designed to question financial or business decisions taken by Melba or to seek reconsideration of any matter that has already been addressed under other policies and procedures.

Concerns regarding occupational health and safety should, where possible, be made through Melba’s occupational health and safety procedures.

Disclosures that relate to personal work-related grievances are not covered by this policy, unless those grievances also relate to a disclosable matter. Personal work-related grievances include things such as:

- An interpersonal conflict between the person disclosing and another employee;
- A decision that does not involve a breach of workplace laws;
- A decision about the engagement, transfer or promotion of the person disclosing;
- A decision about the terms and conditions of engagement of the person disclosing; or
- A decision to suspend or terminate the engagement of the person disclosing or to otherwise discipline the person disclosing.

Employees with personal work-related grievances should consult the internal grievance and dispute resolution policy.

A personal work-related grievance may still qualify for whistleblower protection if it includes information about misconduct, or if Melba has breached employment or other laws punishable by imprisonment for a period of 12 months or more or engaged in conduct that represents a danger to the public, or the person disclosing (the discloser) suffers from or is threatened with detriment for making a disclosure.

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### WHO CAN RECEIVE A DISCLOSURE?

If you wish to make a protected disclosure, you can do so to the following eligible recipients:

- Whistleblower protection officer: the Board has nominated the organisation 'STOPline' to act as Melba's whistleblower protection officer. Accordingly, reports (protected disclosures) may be made under this procedure to 'STOPline'. 'STOPline' can also be contacted if the discloser wants to obtain additional information before making a disclosure;
- A legal practitioner for the purposes of obtaining legal advice or legal representation in relation to whistleblowing;
- ASIC; or
- Under certain circumstances, a journalist or parliamentarian as a 'public interest disclosure'.

For a 'public interest disclosure' to be protected, the following must apply:

- At least 90 days must have passed since the person disclosing made the disclosure to ASIC or another Commonwealth body prescribed by regulation;
- The discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to the disclosure;
- The discloser has reasonable grounds to believe that making a further disclosure of information is in the public interest; and
- Before making the public interest disclosure, the discloser has given written notice to the body to which the previous disclosure was made (e.g., ASIC) that includes sufficient information to identify the previous disclosure and states that the discloser intends to make a public interest disclosure.
- A discloser can also make an 'emergency disclosure' to a journalist or parliamentarian in certain circumstances.

It is important that a discloser understands the criteria for making a public interest or emergency disclosure, and a person who intends to disclose should contact an independent legal advisor before doing so.

### HOW TO MAKE A DISCLOSURE

Disclosures to STOPline can be made anonymously. A discloser can maintain their anonymity while making a disclosure, over the course of any investigation, and after the investigation is finalised. A discloser can refuse to answer questions that they feel could reveal their identity at any time.

STOPline has several methods of receiving a disclosure as set out below. A telephone call is preferred so that sufficient information can be obtained to enable the conduct of an appropriate investigation.

<i>Telephone:</i> Toll Free – 1300 304 550	<i>Locked Bag Mail:</i> Melba Support Services C/- The STOPline Locked Bag 8 Hawthorn VIC 3122
<i>Facsimile:</i>	<i>Email:</i> melba@stopline.com.au

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Melba Support Services C/- The STOPLine (03) 9882 4480	
<i>Website:</i> Go to STOPLine's website <a href="http://www.demo2016.stoplinereport.com">http://www.demo2016.stoplinereport.com</a>	<i>App:</i> Search for STOPLine in the iTunes App Store or Google Play to download the free app and submit a disclosure
<i>Melba Website</i> <i>Link to make a disclosure via the Melba website</i>	

### LEGAL PROTECTIONS FOR DISCLOSERS

People who report 'disclosable matters' qualify for protection as whistleblowers. These protections apply to all disclosures under this policy, including those to STOPLine, to legal practitioners, to regulatory and other external bodies and to public interest and emergency disclosures.

The following are protections that are provided to whistleblowers (disclosers):

#### Identity protection/confidentiality

If a person makes a report of alleged or suspected improper conduct under this procedure, STOPLine will protect that person's identity from disclosure wherever possible. It is illegal for a person to disclose the identity of a discloser, or information that is likely to lead to the identification of a discloser, except:

- If a person discloses the identity of the discloser to:
  - ASIC or a member of the Australian Federal Police;
  - A legal practitioner (for the purpose of obtaining legal advice); or
  - With the consent of the person disclosing.
- A person can disclose the information disclosed in a disclosure with or without the discloser's consent if:
  - The information does not include the discloser's identity;
  - The person or entity has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
  - It is reasonably necessary for investigating the issues raised in the disclosure.
- If a discloser wishes to make a complaint about breach of confidentiality, that person can do so:
  - With Melba by:
    - Employees can either report the breach directly to their line manager or relevant senior manager, who will complete a Privacy and Data Breach Form, or alternatively employees can submit a complaint directly through FIMS;
    - Volunteers, suppliers of goods and services, relatives, dependents, and spouses can speak with any Melba staff member in line with Melba's Complaints Procedure to lodge a complaint or record a complaint online through Melba's website.
  - With ASIC.

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Unauthorised disclosure of any information relating to a report will be regarded seriously and may result in disciplinary action, which may include dismissal.

### Protection from detrimental acts or omissions.

Where a person makes a disclosure in good faith and on reasonable grounds, Melba will act in the person's best interest to protect any person from any reprisal, victimisation, adverse reaction or intimidation and ensure they will not be disadvantaged in their employment with Melba.

A person cannot engage in conduct that causes detriment to a discloser (or another person) in relation to disclosure if:

- The person believes or suspects that the discloser (or another person) made, may have made, proposed to make or could make a disclosure that qualifies for protection; and
- That belief or suspicion is the reason, or part of the reason for the conduct.

In addition, a person cannot make a threat to cause detriment to a discloser (or another person) in relation to a disclosure.

A threat may be expressed or implied, or conditional or unconditional. The discloser (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

- Detrimental conduct includes:
  - Dismissal of an employee or their employment.
  - Injury of an employee in their employment.
  - Alternation of an employee's position or duties to their disadvantage.
  - Discrimination between an employee and other employees of the same employer.
  - Harassment or intimidation of a person.
  - Harm or injury to a person, including psychological harm.
  - Damage to a person's property, reputation, business or financial position or any other damage to a person.
- Detrimental conduct does not include:
  - Administrative action that is reasonable for the purpose of protecting a discloser from detriment; and
  - Managing a discloser's unsatisfactory work performance in line with Melba's performance management framework.

### Compensation and other remedies

A discloser (or any other employee or person) can seek compensation and other remedies through the courts if:

- They suffer loss, damage or injury (detrimental conduct) because of a disclosure; and
- Melba failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

Disclosers should seek independent legal advice in relation to compensation and other remedies.

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### Civil, criminal and administrative liability protection

A discloser is protected from any of the following in relation to their disclosure:

- Civil liability (e.g., any legal action against the discloser for breach of an employment contract, duty of confidentiality or any other contractual obligation);
- Criminal liability (e.g., attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure); and
- Administrative liability (e.g., disciplinary action for making the disclosure).

The whistleblower protections do not grant immunity for any misconduct a discloser has engaged in that is revealed by their disclosure. In addition, where it is shown that a person reporting has knowingly made a false report of improper conduct, and it is evident that the reporter knows, or should have known the report has no substance, then that conduct itself will be considered a serious matter and that person may be subject to disciplinary action which may include dismissal.

### SUPPORT AND PROTECTION FOR DISCLOSERS

Melba will support and protect disclosers in the following ways:

#### Identity protection/confidentiality

If a person makes a report of alleged or suspected improper conduct under this procedure, STOPline cannot disclose information that is likely to lead to the identification of the discloser as part of its investigation process unless:

- The information does not include the discloser's identity.
- Information relating to the discloser's identity or other information that is likely to lead to the identification of the discloser is removed (e.g., their name, position title and other identifying details); and
- It is reasonably necessary for investigating the issues raised in the disclosure.

STOPline will not disclose the person's identity unless:

- the person making the report consents to the disclosure; or
- the disclosure is required or authorised by law; or
- In each of the above circumstances, the matter will be discussed with the discloser before any identifying information is provided.

#### Protection from detrimental acts or omissions.

Where a person makes a disclosure in good faith and on reasonable grounds, Melba will act in the person's best interest to protect any person from any reprisal, victimisation, adverse reaction or intimidation and ensure they will not be disadvantaged in their employment with Melba.

Melba will undertake the following to protect disclosers from detrimental acts and omissions:

- Assess the risk of detriment against a disclosure and others as soon as possibly after receiving a disclosure.
- Provide access to support services, such as EAP.

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- Ensure that disclosers are assisted in managing stress, time or performance impacts resulting from the disclosure or its investigation.
- Consider all options for protecting a discloser from the risk of detriment, such as allowing the discloser to work from a different location or move to a different role or reassigning or relocating other staff involved in the disclosable matter.
- Ensure that management are aware of their responsibilities to the discloser under this policy.
- Ensure that the discloser is aware of how to lodge a complaint if they have suffered detriment in relation to a disclosure, and that this complaint would be investigated separately to the disclosable matter and by someone who is not involved in dealing with the disclosable matter.

### HANDLING AND INVESTIGATING A DISCLOSURE

STOPline will assess each disclosure to determine if it qualifies for protection and if a formal, in-depth investigation is required.

Reports made under this policy will be treated confidentially. However, when a report is investigated it may be necessary to discuss the allegations with people such as other Melba staff, external persons involved in the investigation process and, in appropriate circumstances, the police.

At some point in time, it will be necessary to disclose the allegation and the substance of a report to the person who is the subject of the report to ensure compliance with the principles of natural justice and procedural fairness. It should be noted, however, that in some circumstances if the discloser does not consent to being identified, this might mean an investigation cannot take place.

Even when confidentiality is maintained, in some circumstances the source of the reported conduct may be obvious to a person who is the subject of a report.

Unauthorised disclosure of any information relating to a report will be regarded seriously and may result in disciplinary action, which may include dismissal.

### Investigation

All reports of alleged or suspected improper conduct made under this procedure will be properly assessed and if appropriate, will be investigated in a timely manner, in accordance with a developed investigation plan. The investigation plan will outline the parties to be involved in the investigation as respondents or witnesses and anticipated timeframe for completion of the investigation process, with the objective of locating evidence that either substantiates or refutes the claims made by the whistleblower. Investigations will be conducted in a fair and discreet manner. The person appointed to investigate the report will be required to follow Melba's normal procedures for handling a complaint or disciplinary issue.

The whistleblower protection officer (STOPline) is responsible for providing feedback to the whistleblower on:

- on the anticipated timeframe for the investigation process;
- maintaining contact during the course of the investigation, if the whistleblower desires;
- notifying the whistleblower on completion of the investigation.

(Note: due to privacy considerations, whistleblowers are not entitled to know the details of disciplinary action or consequences for people involved in the investigation. They may however be informed that the investigation is closed and provided general advice on what action has been taken by Melba).

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At the end of the investigation, the investigating officer will report their findings to the CEO or, if the CEO is a subject of the reported disclosure, to the President who will determine the appropriate response. Where issues of discipline arise, the response will also be in line with Melba’s procedures for disciplinary matters. Where allegations of unacceptable conduct made against another person cannot be substantiated, that person will be advised accordingly.

### ENSURING FAIR TREATMENT OF INDIVIDUALS MENTIONED IN A DISCLOSURE

Melba will ensure the fair treatment of its employees who are mentioned in a disclosure that qualifies for protection (including those who are the subject of a disclosure) through the following measures:

- disclosures will be handled as confidentially as possible;
- disclosures will be objectively assessed and may be the subject of an investigation;
- when an investigation needs to be undertaken, the process will be objective, fair and independent;
- an employee who is the subject of a disclosure will be advised about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness and prior to any actions been taken;
- an employee who is the subject of a disclosure may contact Melba’s EAP support services.





### ACCESSABILITY OF WHISTLEBLOWER POLICY

This policy, and the related Whistleblowing Procedure, will be accessible to staff via the MOS. It will also be included in employee induction packs and referred to in the employee handbook. The policy will also be posted on Melba’s external website, for disclosers outside Melba to access.

### REFERENCES

- Protected Disclosure Act 2012 (Vic)

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 <b>Related Policies</b>	<ul style="list-style-type: none"> <li>• Code of Conduct Policy</li> <li>• Employee Disciplinary Policy (MSS Inc)</li> <li>• Managing Discipline Policy- DSEAV</li> <li>• Internal Grievance and Dispute Resolution Policy</li> <li>• Sexual Harassment Policy</li> <li>• Health Safety and Wellbeing Policy</li> <li>• Incident Reporting – Persons Supported Policy</li> <li>• Complaints, Compliments &amp; Feedback Policy</li> </ul>
 <b>Related Procedures:</b>	<ul style="list-style-type: none"> <li>• Incident reporting – Persons Supported Procedure</li> <li>• Complaints, Compliments &amp; Feedback Procedure</li> <li>• Suggested Change and Improvement Procedure</li> <li>• Internal Grievance and Issue Resolution Procedure</li> <li>• Employee Disciplinary Procedure (MSS Inc)</li> <li>• Managing Discipline Procedure- DSEAV</li> <li>• Sexual Harassment Procedure</li> <li>• Bullying Procedure</li> </ul>
 <b>Related Supporting Documents or Tools:</b>	
 <b>Relevant Legislation/Standard(s)</b>	<ul style="list-style-type: none"> <li>• National Disability Insurance Scheme Act 2013</li> <li>• NDIS National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018</li> <li>• National Disability Insurance Scheme (Quality Indicators for NDIS Practice Standards) Guidelines 2018</li> </ul>