WHISTLEBLOWER POLICY

Policy no: BP02

Policy detail

Policy description	This policy aims to protect and support those who make disclosures of misconduct and to provide a reporting and investigation process.
Policy applies to:	Employees and interns, volunteers and members, directors of the National Board, casework clients, contractors, suppliers and service providers engaged by AI Australia. Former employees, volunteers, and interns may make a protected disclosure.
Policy owner:	Chair, Governance Committee

Policy approval

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TABLE OF CONTENTS

WHISTLEBLOWER POLICY **3**

Policy and purpose **3**

WHISTLEBLOWER PROCEDURES **3**

1.1 Scope and application **3**

1.2 Roles and the meaning of certain terms **4**

1.3 Reportable concerns **4**

1.4 Anonymous reporting **4**

1.5 Protection for the whistleblower **5**

1.6 False reporting **5**

2. Procedure for reporting **5**

2.1 Hotline **5**

2.2 Reports and disclosures **5**

2.3 Confidentiality and privacy protection **6**

3. Investigation **7**

3.1 Internal investigation **7**

3.2 Contravention of laws and regulations **7**

3.3 Findings **8**

4. Support **8**

4.1 Whistleblower **8**

4.2 Individuals **8**

5. Legislation **9**

6. Distribution **9**

7. Related Policies **9**

WHISTLEBLOWER POLICY

Policy and purpose

Amnesty International Australia (**AI Australia**) endeavours to uphold the highest standards of legal, ethical and moral behaviour. We are guided by our values framework which aims to develop a culture of accountability, respectful dealings with others, and sound judgement, and by our values of empowerment, persistence, integrity and courage.

AI Australia's policy is to encourage anyone associated with it who becomes aware of serious misconduct to report that misconduct. Reporting concerns in good faith is viewed as a positive contribution to the protection of the movement and our reputation. AI Australia will not tolerate any retaliatory action or threats of retaliatory action against a person reporting such misconduct (referred to as a whistleblower) or any person involved in the investigation process.

At the time of establishing this policy the National Board has also approved the accompanying Whistleblower Procedures. The Procedures have been created to ensure that concerns about misconduct can be raised through a safe reporting and investigation process. It is essential that the reporting person should be able to make a report without fear of retribution, harassment, victimisation or discrimination.

The purposes of these procedures are to:

(a) encourage the reporting of wrongdoing;

(b) protect and support those who make disclosures;

(c) set out a safe reporting mechanism; and

(d) outline how AI Australia will investigate and resolve protected disclosures made in accordance with this policy.

The procedures may be varied in any way not inconsistent with this policy by:

(a) the National Board; or

(b) the National Director after consultation with the Governance Committee.

WHISTLEBLOWER PROCEDURES

1.1 Scope and application

These procedures apply to:

- employees and interns
- volunteers and members
- directors of the National Board
- clients
- contractors, suppliers and service providers engaged by AI Australia.

Former employees, volunteers and interns may make a protected disclosure.

This policy is one of a number of policies to support people wishing to raise concerns. It should be read in conjunction with other relevant policies, including the Complaints Policy, the Grievances Policy and the grievance procedure in the staff Enterprise Agreement. Anyone who considers there has been misconduct is

encouraged to read each policy to choose the most relevant policy and/or procedure for reporting their concern. Personal work-related grievances are generally not whistleblower disclosures and should be managed under the relevant policy or procedure.

Making a protected disclosure does not absolve the whistleblower from the consequences – including criminal proceedings or disciplinary action – of any involvement in the misconduct. However, the whistleblower's action in reporting the concern may be taken into consideration in the decision about what disciplinary action (if any) is appropriate.

1.2 Roles and the meaning of certain terms

- Where a disclosure is made against the National Director, the Chair of the National Board will assume responsibility for all matters for which the National Director would otherwise be responsible under this Policy. Where a disclosure is made against a Board Director, the Chair of the National Board will assume responsibility for all matters which the National Director would otherwise be responsible under this Policy.

- The National Director may delegate their responsibilities under this Policy to a suitably qualified and independent person as appropriate. If the National Director delegates their authority in relation to all disclosures, or a particular type of disclosure, they must publicize that regular delegation on the AI Australia website and internally.

- Where these procedures talk about “disciplinary action”, that includes all the actions legally available in the particular circumstances.

1.3 Reportable concerns

AI Australia encourages the reporting of misconduct and/or reasonable suspicions that any of the following have taken place, are taking place, an intent exists to carry any of the following out in the future, or that any of the following have been concealed:

- fraud, that is, a deliberate deception in order to secure personal gain, or to cause disadvantage to AI Australia; this includes theft, bribery and facilitation payments and money laundering;
- corruption, that is, the improper use of influence or position and/or improper use of information by commission or omission;
- unauthorised use or misuse of AI Australia property, equipment or materials;
- criminal offences by AI Australia staff or third parties;
- damage to the environment;
- breaches of health and safety;
- undeclared conflicts of interest;
- sexual exploitation, harassment or abuse;
- unethical or other serious improper conduct, including such conduct that is in breach of AI Australia’s policies and procedures.

1.4 Anonymous reporting

Anonymous reports of misconduct are accepted under this policy. However, such reports have limitations that 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 investigation. Specific protection mechanisms cannot be provided.

If an anonymous report is made, it remains at AI Australia's discretion as to whether it will proceed with a full investigation because of the limited ability to interview the whistleblower to seek further information.

1.5 Protection for the whistleblower

Those who make protected disclosures are protected from any civil, criminal or administrative liability (including disciplinary action) for making the disclosure. AI Australia is committed to protecting and respecting the rights of anyone who has made such a disclosure.

Protection is available to those who make a disclosure that is:

- serious in nature;
    - made with reasonable grounds to believe it is true.

Whistleblowers, as far as possible, will not be disadvantaged for making a report. Any adverse action, harassment, discrimination or reprisals for a protected disclosure made under this policy or procedure will be treated by AI Australia as serious misconduct and may result in disciplinary action against the perpetrator.

For example, a whistleblower must not be disadvantaged for having made the report by:

- dismissal, or termination of services or supply;
- demotion;
- discrimination, victimisation or harassment;
- current or future bias;
    - threats of any of the above.

Any reporting person who believes that they have been subject to detriment as a consequence of making a disclosure should report the details to the National Director.

1.6 False reporting

While AI Australia does not wish to discourage the reporting of matters of genuine concern, anyone making a report must ensure that their reporting complies with this policy.

Making false or vexatious disclosures undermines the effectiveness of this policy. A false report under this policy (including where the report has been made maliciously, vexatiously or without basis) may itself constitute misconduct. AI Australia may use disciplinary action against the person making a false or vexatious report.

2. Procedure for reporting

2.1 Hotline

The Whistleblower Hotline service is 1800 676 787 and provides an opportunity to report matters in accordance with this policy.

2.2 Reports and disclosures

Reports and disclosures can be made verbally or in writing and can be anonymous. However, whistleblowers are encouraged to make such reports in writing. All reports are subject to the confidentiality provisions set out in this policy.

Reports or disclosures should be made to the National Director, or, if appropriate, the Chair of the National Board.

When making a report, the whistleblower should clearly outline:

- the issue or concern;
- the alleged misconduct;

- the individual(s) involved;
- their reasons for believing that the misconduct has occurred, including when and how it occurred; and
- the nature and whereabouts of any further evidence that would substantiate their allegation, if known.

This is to ensure that the recipient has sufficient information to take appropriate action without delay.

The whistleblower should ensure that their report is:

- factually accurate, noting the suspected misconduct and their own actions;
- based on firsthand knowledge;
- objectively based on reasonable grounds; and
- contains all relevant details.

The whistleblower must keep secure any relevant documents as possible evidence and not alter them.

2.3 Confidentiality and privacy protection

AI Australia will not use or 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 law.

Personal information may be used or disclosed where:

- it is made with the individual's express or implied consent;
- it is necessary to prevent or lessen a serious threat to a person's health or safety; or
- it is necessary to protect or enforce AI Australia's legal rights or interests, or to defend itself against any claims.

During an investigation, it will be necessary to disclose the facts and substance of the misconduct to the subject/s of it. This is essential for a fair investigation to be undertaken and for the laws of natural justice and procedural fairness to prevail. However, it is also acknowledged that by ensuring the protection of the reporting person at all times, this may limit AI Australia's ability to conduct a full and thorough investigation.

Where an investigation does not substantiate misconduct, the fact that the investigation has been carried out, the results of the investigation, the identity of the person making the report and the identity of the person who is the subject of it must be handled confidentially.

AI Australia will ensure that any relevant records are stored securely and are able to be accessed only by the National Director or by a director with the knowledge of the Chair of the National Board and *bona fide* for the purposes of discharging their responsibilities as a director. The identity of the whistleblower will not be recorded unless legally required.

The whistleblower must also maintain confidentiality and refrain from discussing the matter with anyone else. This includes informing commercial media or social media of their concern. Any person who violates this may not be offered protection.

3. Investigation

3.1 Internal investigation

All disclosures (including the Whistleblower Hotline) must be referred to the National Director to determine what further action, if any, is to be taken, including the investigation process that will apply.

Following a disclosure being made, the National Director will be responsible for:

- assessing whether this policy applies to the disclosure;
- triaging all available information to quickly determine risk, urgency, independence, legal obligations and any protective measures;
- coordinating an investigation into any protected disclosure received (provided the National Director has determined it is appropriate to do so);
- documenting and handling all matters related to the disclosure and investigation, although the National Director cannot conduct the investigation personally; and
- keeping the reporting person properly informed verbally or in writing (as they determine is appropriate) of the progress and final outcome of the investigation, and the actions taken or to be taken in response, subject to considerations of the privacy of all those concerned.

If a disclosure does not relate to reportable conduct the matter may be dealt with in accordance with AI Australia's Complaints Policy, Grievance Policy or other applicable procedures.

Where an investigation is deemed warranted by the National Director, an investigator must be appointed. The appointed investigator must be external to AI or a person who is completely at arm's length from the management and administration of AI Australia and the matters raised by the report or disclosure. It may be considered necessary to appoint a team of investigators if the matter is complex. The appointed investigator/s will be required to:

- take all reasonable steps to ensure that the investigation is fair, timely and that the rules of procedural fairness are applied;
- provide regular and timely feedback on the status of an investigation and the outcome of the investigation to the parties involved;
- report the findings of the investigation to the National Director.

3.2 Contravention of laws and regulations

If the National Director is of the opinion that the reported misconduct could be considered to be illegal or criminal, they must first consult AI Australia's legal advisor before taking further action. This may result in the matter being referred to the police or other appropriate authority. If the legal advisor is of the opinion that the evidence is insufficient to take to an external authority, then the misconduct will be treated as an internal matter.

3.3 Findings

On completion of an investigation, a written report of the findings must be provided by the investigator/s to the National Director. The report must summarise the conduct of the investigation and the evidence collected and should detail any conclusions drawn, as well as making recommendation/s for response by AI Australia.

The National Director will determine the appropriate responses to the findings of the investigation. This will include determining whether disciplinary action is necessary.

The misconduct may have wider implications for AI Australia regarding such matters as policy, structure and operations. The National Director can make recommendations for a wider systemic response and AI Australia will take reasonable steps to review policies and processes to prevent such misconduct continuing or occurring in the future.

4. Support

All parties should be given the opportunity to give their perspective and have a support person allocated.

4.1 Whistleblower

AI Australia understands that the whistleblowing process can be difficult for all those involved. AI Australia employees have access to its Employee Assistance Program (EAP). Information discussed with an EAP counsellor is confidential and AI Australia will not seek to access information disclosed to an EAP counsellor. The EAP can also be contacted on 1300 361 008.

Anyone other than AI Australia employees who requires additional support throughout the process should contact the person to whom they originally made their report.

4.2 Individuals

AI Australia recognises that the subject/s of a protected disclosure may also require support during the investigation process. AI Australia will take all reasonable steps to fairly treat any individual who is the subject of a report. They are also eligible to access the EAP.

Where a person is identified as being suspected of reportable conduct, but preliminary inquiries determine that the suspicion is unfounded and that no formal investigation is warranted, then the whistleblower will be informed of this outcome. It will be at the discretion of the National Director as to whether the individual named in the disclosure will be informed of the allegation.

Generally, where an investigation is conducted, the National Director must ensure that a person who is the subject of a protected disclosure:

- is informed of the substance of the allegations;
- is given a fair and reasonable opportunity to respond to the allegations before the investigation is finalised;
- has their response fairly represented by the investigator/s; and
- is informed about the substance of any adverse conclusions in the investigator's findings that affects them.

When adverse conclusions are made in the investigator's report about an individual, that individual has the right to respond to those conclusions prior to any action being taken by AI Australia against them.

5. Legislation

The principle pieces of legislation governing AI Australia are the *Corporations Act 2001* (Cth), the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the Australian Charities and Not-for-profits Commission Regulation 2013. In addition, AI Australia is subject to a range of legal requirements imposed by government agencies at local, State and Territory and Commonwealth levels.

AI Australia's regulators include:

- Australian Securities and Investment Commission (ASIC) – is principally responsible for the enforcement of the Corporations Act. ASIC is also responsible for overseeing the ASIC Act.

- Australian Charities and Not-For-Profits Commission (ACNC) – is the independent national regulator of charities. AI Australia is a registered charity. To remain eligible to be registered and receive charitable tax concessions, charities must meet certain obligations to the ACNC.
- Australian Taxation Office (ATO) – administers tax legislation.
- State government fundraising regulators – administer fundraising regulation.
- State government revenue offices – state taxes, stamp duty and compliance.
- Office of the Australian Information Commissioner – is responsible for privacy functions conferred by the Privacy Act and other laws.

Misconduct is any action by a person or persons connected with AI Australia that constitutes:

(a) an offence against, or a contravention of, a provision of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2018;

(b) an offence against any other law of the Commonwealth, a State or Territory or a local government, such as laws creating crimes punishable by imprisonment, laws relating to equal employment opportunity, occupational health and safety, and environmental protection, and any other form of recognised legal criminal code in any jurisdiction, including internationally.

6. Distribution

This policy will be circulated to employees, contractors, members and volunteers via the intranet and internet and will be reinforced as part of AIA's ongoing policy review and renewal processes. The policy will be made available for external stakeholders via the website.

7. Related Policies

1. Complaints Policy
2. Grievance Policy
3. Fraud / Corruption Control Policy

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