

**WOOLCOCK**

LEADERS IN BREATHING & SLEEP RESEARCH



ABN 88 002 198 905

**Woolcock Institute of Medical Research Limited**

**Whistleblower Policy**

Approved by the Board 4 December 2019

## 1. Introduction

At the Woolcock Institute of Medical Research Limited (**the Woolcock**), we are guided by our core values as documented in our Code of Conduct. These values are the foundation of how we behave and interact with each other, our customers, suppliers, shareholders, and other stakeholders. Together, our values reflect the priorities of the business and provide guidance in decision making. The Woolcock's Code of Conduct and other policies have been developed to align with our values to ensure that we observe the highest standards of fair dealing, honesty and integrity in our business activities. This Whistleblower Policy has been put in place to ensure employees and other persons who are engaged to perform work for the Woolcock (collectively: **Workers**) can raise concerns regarding any serious wrongdoing (including unethical, illegal, corrupt or other inappropriate conduct) without being subject to victimisation, harassment or discriminatory treatment.

This policy has been drafted in accordance with ASIC's Regulatory Guide 270 (issued November 2019).

## 2. Purpose

This policy aims to:

- to encourage more disclosures of wrongdoing;
- to help deter wrongdoing, in line with the Woolcock's risk management and governance framework;
- to ensure individuals who disclose wrongdoing in accordance with this policy (also referred to as a "Whistleblower" or "Discloser") can do so safely, securely and with confidence that they will be protected and supported;
- to ensure disclosures are dealt with appropriately and on a timely basis;
- to provide transparency around the Woolcock's framework for receiving, handling and investigating whistleblowing disclosures;
- to support the Woolcock's values and Code of Conduct;
- to support the Woolcock's long-term sustainability and reputation; and
- to meet the Woolcock's legal and regulatory obligations.

Whilst it is generally expected that these issues will be raised through the normal channels of line management, reporting by these avenues may not always be appropriate in certain situations.

## 3. Policy principles

The Woolcock has adopted the following principles in relation to its whistleblowing program:

- The Woolcock will support and protect Whistleblowers who act honestly, reasonably and with genuine belief about the reportable conduct, from reprisals that stem from making a disclosure;
- The Woolcock will conduct investigations in an objective, independent and confidential manner. Appropriate corrective action will be taken as

- warranted by the findings of any investigation;
- The Woolcock will not take any disciplinary action against a Whistleblower where a disclosure is unable to be substantiated or is found to be untrue, when the disclosure was made with a genuine or reasonable belief regarding the reportable conduct;
  - The Woolcock may pursue legal or disciplinary action against a Whistleblower acting with malicious intent or who knowingly provides any false information as part of a discloser. In such circumstances, the Woolcock may not extend protection or indemnify a Whistleblower against reprisals (including civil actions);
  - The Woolcock will not prevent (whether through confidentiality agreement or otherwise) a prospective, current, or former company officer, employee or contractor (including its employees) or affiliate (including professional service providers) in making a disclosure to a regulator.

#### **4. Who does this policy apply to?**

An eligible Whistleblower is an individual who is, or has been, any of the following in relation to the Woolcock:

- an officer or employee (e.g. current and former employees who are permanent, part-time, fixed-term or temporary, interns, secondees, managers, and directors);
- a supplier of services or goods to the entity (whether paid or unpaid), including their employees (e.g. current and former contractors, consultants, service providers and business partners);
- an associate or affiliate of the Woolcock; and
- relatives, dependents, spouses, or dependents of a spouse of any of the above (e.g. relatives, dependents or spouse of current and former employees, contractors, consultants, service providers, suppliers and business partners)

#### **5. Matters that should be reported**

Disclosable Matters involve information that the Discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances in relation to the Woolcock.

Any Disclosable Matter should be reported in accordance with this policy. Disclosable Matters can include any conduct that involves:

- dishonest behaviour;
- fraudulent activity e.g. money laundering;
- unlawful, corrupt or irregular use of company funds or practices;
- illegal activities (including theft, dealing in or use of illicit drugs, violence or threatened violence and criminal damage against property);
- unethical behaviour, including anything that would breach the Woolcock's

Code of Conduct;

- breach of trust and breach of duty;
- improper or misleading accounting or financial reporting practices;
- a breach of any legislation relating to the Woolcock's operations or research activities;
- contraventions of certain laws including the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Taxation Administration Act 1953* or offences against any law of the Commonwealth that is punishable by imprisonment for 12 months or more;
- behaviour that is oppressive, discriminatory or grossly negligent;
- an unsafe work-practice;
- any behaviour that poses a serious risk to the health and safety of any person at the workplace;
- a serious risk to public health, public safety or the environment; or
- any other conduct which may cause loss to the Woolcock or be otherwise detrimental to the interests of the Woolcock.

Disclosures that relate solely to personal work-related grievances, and that do not relate to detriment or threat of detriment to the Discloser for making a Disclosure under this policy, do not qualify for protection under this policy.

To be clear, personal work-related grievances can include:

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

A personal work-related grievance may still qualify for protection if:

(a) it includes information about a Disclosable Matter, or information about a Disclosable Matter includes or is accompanied by a personal work-related grievance (mixed report);

(b) it involves concerns of a breach of any laws punishable by imprisonment for a period of 12 months or more, conduct that represents a danger to the public, or the disclosure relates to information that suggests a Disclosable Matter beyond the Discloser's personal circumstances;

(c) the Discloser suffers from or is threatened with detriment for making a disclosure; or

(d) the Discloser seeks legal advice or legal representation about the operation

of the whistleblower protections under the Corporations Act.

## **6. Responsibility to report**

The Woolcock relies on its Workers to help maintain and grow its culture of honest and ethical behavior. The Woolcock will not tolerate conduct that should be reported under this policy. It is therefore expected that any Worker who becomes aware of such conduct will make a report.

## **7. Protection of Whistleblowers**

A Worker making a report in accordance with this policy will not be discriminated against or disadvantaged in their employment or engagement with the Woolcock, even if the report is subsequently determined to be incorrect or not substantiated.

Note, a Discloser qualifies for protection as a whistleblower under the Corporations Act or Taxation Administration Act if they are an eligible Whistleblower in relation to the Woolcock. Refer to section 7.3 below to review the legal protections available.

All reasonable steps will be taken to ensure that a Whistleblower will not be subject to any form of victimisation, discrimination, harassment, demotion, dismissal or prejudice, because they have made a report. However, this policy will not protect the Whistleblower if they are also involved in or connected to the improper conduct or illegal activities that are being reported.

In any event, a Whistleblower is encouraged to seek independent legal advice.

### **7.1. Anonymous Reporting**

A report can be made anonymously and still be protected under the Corporations Act or Taxation Administration Act and this policy.

The Discloser can choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised. The Discloser can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations. In addition, a Discloser who wishes to remain anonymous should maintain ongoing two-way communication with the Woolcock, so that the Woolcock can ask follow-up questions or provide feedback.

In practice, if a Disclosure comes from an email address from which the person's identity cannot be determined, and the Discloser does not identify themselves in the email, it will be treated as an anonymous disclosure.

To assist users of this Whistleblower Policy, the Woolcock's measures and / or mechanisms for protecting anonymity may include:

- communication with disclosers might be through anonymised email

- addresses; and
- a Discloser may adopt a pseudonym for the purpose of their disclosure—this may be appropriate in circumstances where the Discloser’s identity is known to the recipient of the Disclosure, the Whistleblower Protection Officer or equivalent but the Discloser prefers not to disclose their identity to others.

## **7.2. Reporting on a proper basis**

A report may have serious consequences, including potential damage to the career prospects and reputation of people who are the subject of allegations of wrongdoing. Therefore, it is very important that those who make a report under this policy do so with reasonable grounds for believing that the information is correct or likely to be correct. The Woolcock takes very seriously all reports made under this policy and it looks particularly unfavorably on any false reports or claims. Disciplinary action may be taken against any employee who makes a report that is intentionally not properly based. A report will not be considered to be properly made if it is frivolous, raised for a malicious reason or ulterior motive, or if it is not based on facts and/or circumstances that provide a reasonable basis for the report. Repeated reports about trivial matters may also be considered not to be properly made.

## **7.3. Legal protections available**

A Whistleblower is entitled to the protections set out below if they:

- make a Disclosure of a Disclosable Matter to an eligible recipient in accordance with this policy;
- make a public interest or emergency disclosure; or
- make a disclosure to a legal practitioner for the purposes of obtaining legal advice about the operation of the whistleblower protections in the Corporations Act.

A Discloser can still qualify for protection even if their disclosure turns out to be incorrect.

### **A. Identity protection (confidentiality)**

It is illegal for the Woolcock to disclose the identity of a Discloser or information that is likely to lead to the identification of the Discloser (obtained directly or indirectly because the Discloser made a disclosure that qualifies for protection), except if the Woolcock discloses the identity of the Discloser:

(a) to ASIC, APRA, or a member of the Australian Federal Police (within the meaning of the Australian Federal Police Act 1979);

(b) to a legal practitioner (for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the

Corporations Act);

(c) to a person or body prescribed by the Corporations Act regulations; or

(d) with the consent of the Discloser.

**Examples of measures and / or mechanisms of how the Woolcock may protect a Discloser's identity:**

***Reducing the risk that the Discloser will be identified from the information contained in a disclosure***

- all personal information or reference to the Discloser witnessing an event will be redacted;
- the Discloser will be referred to in a gender-neutral context;
- where possible, the Discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- disclosures will be handled and investigated by qualified staff.

***Secure record-keeping and information-sharing processes***

- all paper and electronic documents and other materials relating to disclosures will be stored securely;
- access to all information relating to a Disclosure will be limited to those directly involved in managing and investigating the disclosure;
- only a restricted number of people who are directly involved in handling and investigating a Disclosure will be made aware of a Discloser's identity (subject to the Discloser's consent) or information that is likely to lead to the identification of the Discloser;
- communications and documents relating to the investigation of a disclosure will not to be sent to an email address or to a printer that can be accessed by other staff; and
- each person who is involved in handling and investigating a Disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a Discloser's identity may possibly be a criminal offence.

**B. Protection from detrimental acts or omissions**

The Woolcock cannot engage in conduct that causes detriment to a Discloser (or another person), in relation to a disclosure, if:

(a) the person believes or suspects that the Discloser (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection under this policy; and

(b) the belief or suspicion is the reason, or part of the reason, for the conduct.

The Woolcock cannot make a threat to cause detriment to a Discloser (or

another person) in relation to a Disclosure. A threat may be express or implied, or conditional or unconditional. A 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.

Examples of detrimental conduct that are prohibited under the law include:

- (a) dismissal of an employee;
- (b) injury of an employee in his or her employment;
- (c) alteration of an employee's position or duties to his or her disadvantage;
- (d) discrimination between an employee and other employees of the same employer;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person's property;
- (h) damage to a person's reputation;
- (i) damage to a person's business or financial position; or
- (j) any other damage to a person.

Examples of actions that are not detrimental conduct include:

- administrative action that is reasonable for the purpose of protecting a Discloser from detriment (e.g. moving a Discloser who has made a disclosure about their immediate work area to another office to prevent them from detriment); and
- managing a Discloser's unsatisfactory work performance, if the action is in line with the Woolcock's usual performance management framework.

A Discloser may seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO, if they believe they have suffered detriment and they believe such a step is warranted in the circumstances.

Note, if a whistleblower of a charity like the Woolcock wants protection or is concerned about possible harm as a result of making a disclosure, they must raise their concerns with an eligible recipient as specified in this policy, which includes ASIC. It is important to remember that the ACNC is not an eligible recipient for this purpose.

**Examples of measures and / or mechanisms for protecting the Discloser from detriment:**

- the Woolcock Whistleblower Investigation Officer (**WIO**) will assess the

risk of detriment against a Discloser and other persons (e.g. other staff who might be suspected to have made a disclosure) throughout the process, which will commence as soon as possible after receiving a Disclosure;

- support services will be made available if needed (including counselling or other professional or legal services) to Disclosers;
- strategies will be considered with the Discloser to help the Discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the Disclosure or its investigation;
- actions for protecting a Discloser from risk of detriment may include allowing the Discloser to perform their duties from another location, making modifications to the Discloser's workplace or the way they perform their work duties, or reassigning or relocating other staff involved in the Reportable Matter conduct and/or the investigation;
- taking steps to address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, a Discloser;
- a complaint of detriment may be investigated as a separate matter by a Woolcock officer not involved in dealing with the disclosures and the investigation findings will be provided to the Finance, Risk & Compliance Committee (FRC); or
- intervening to protect a Discloser if detriment has already occurred— for example, the Woolcock will investigate and address the detrimental conduct, such as by taking disciplinary action, or the Woolcock might allow the Discloser to take extended leave, develop a career development plan for the Discloser that includes new training and career opportunities, or offer compensation or other remedies.

### **C. Compensation or other remedies**

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

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

### **D. Civil, criminal and administrative liability protection**

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

- (a) civil liability (e.g. any legal action against the Discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- (b) 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

- (c) administrative liability (e.g. disciplinary action for making the disclosure).

The above protections do not grant immunity for any misconduct a Discloser has engaged in that is revealed in their disclosure.

## **8. Resources**

The Woolcock Board, through its FRC governs and is responsible for the ultimate decision-making power regarding reports and investigations under this policy.

### ***8.1. Whistleblower Protection Officer***

The Woolcock has appointed the Company Secretary, as the Whistleblower Protection Officer (WPO), who will safeguard the interests of Workers making reports under this policy and will ensure the integrity of the reporting mechanism. Reports under this policy should be directed to the WPO in the first instance. The WPO reports directly to the Executive Director. The WPO also has access to independent advisers as and when required.

### ***8.2. Whistleblower Investigation Officer***

The Woolcock has also appointed the Chief Operating Officer, as a WIO, who is independent of the WPO. The WIO will conduct investigations into reportable conduct, in a timely manner. This may include the use of internal or external investigative resources. The WIO reports directly to the Executive Director.

## **9. Making a report**

This section outlines the persons to whom Disclosures should be made under this Policy.

Employees may wish to first discuss their concerns informally with their direct line manager in order to determine whether serious misconduct has occurred. This is an opportunity to clarify the incident, ask questions and determine whether the matter comes under this policy. At all times, these discussions will remain confidential.

However, it is important to note that a Disclosure must be made to one of the Eligible Recipients listed in sections 9.1 to 9.6 to qualify for protection under this policy.

When making a Disclosure to one of the Recipients below, a Discloser should

advise that they are making a report under this policy.

### **9.1. Eligible Recipients - Internal Reporting**

The Woolcock encourages Disclosures to be made to the Woolcock's WPO. Refer to 8.1 above.

The current WPO's details are as follows:

Name: Ian White  
Email: [ian.white@woolcock.org.au](mailto:ian.white@woolcock.org.au)  
Telephone: 0411 126 856

In addition, Disclosures may also be made internally to:

- a Director of the Woolcock; or
- any senior manager of the Woolcock.

Where this is not appropriate, or where the Whistleblower does not feel comfortable making an internal report, the report can be made using the external reporting channel referred to below.

### **9.2. Eligible Recipients - External Reporting**

If a Whistleblower is not comfortable making a disclosure under this policy to an officer or employee of the Woolcock, the Whistleblower can make a report to the Woolcock's external independent member of the Board's FRC. This person is currently **Julie Osborne** (as at the date of this policy).

Julie is the Chairperson of the FRC and is well placed to act as an independent medium and assist in maintaining anonymity for the Whistleblower. Julie's contact details are:

Email: [julie.f.osborne@gmail.com](mailto:julie.f.osborne@gmail.com)  
Telephone: 0414 453 845

### **9.3. Disclosing to a legal practitioner**

Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act are protected under this policy (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').

### **9.4. Disclosing to the regulators**

Disclosures of information relating to Disclosable Matters can also be made to ASIC, APRA or another Commonwealth body prescribed by regulation and

qualify for protection under the Corporations Act and this policy.

### **9.5 Disclosing to an auditor**

Disclosures of information relating to a Disclosable Matter can also be made to an auditor of the Woolcock, or a member of an audit team conducting an audit of the Woolcock and will qualify for protection under the Corporations Act and Taxation Administration Act and this policy.

### **9.6. Public interest and emergency disclosures**

Disclosures can be made to a journalist or parliamentarian under certain circumstances and qualify for protection under the Corporations Act and this policy.

It is important for the Discloser to understand the criteria for making a public interest or emergency disclosure. Such disclosure must have previously been made to ASIC, APRA or a prescribed body and written notice provided to the body to which the disclosure was made.

In the case of a public interest disclosure, at least 90 days must have passed since the previous disclosure to ASIC, APRA or another Commonwealth prescribed body. It is recommended that a Discloser seek independent legal advice before making a disclosure of this nature.

## **10. Reports concerning the Executive Director, WPO and WIO**

If the report involves the Executive Director, the WPO and the WIO (all three representatives for the avoidance of doubt), the Disclosure should be directed to the Chair of the FRC.

In this instance, a Whistleblower may make a report as per Section 9 'Making a Report' and include the instruction to refer the report directly to the Chair of the FRC.

## **11. Investigating a report**

Where a report is properly made to an eligible recipient about a Disclosable Matter the WIO will, where appropriate and practicable, investigate the report.

Where the WIO deems necessary, the WIO may use an external investigator to conduct an investigation, either in conjunction with the WIO or independently. Where the WIO deems necessary, the WIO may also use an external expert to assist with an investigation.

All investigations will be conducted in a fair and independent manner and all reasonable efforts will be made to preserve confidentiality of an investigation. To avoid jeopardising an investigation, a Worker who has made a report under this policy is required to keep confidential the fact that a report has been made

(subject to any legal requirements).

Without the Discloser's consent, the Woolcock cannot disclose information that is likely to lead to the identification of the Discloser as part of its investigation process unless:

- (a) the information does not include the Discloser's identity;
- (b) the Woolcock removes information relating to the Discloser's identity or other information that is likely to lead to the identification of the Discloser (e.g. the Discloser's name, position title and other identifying details); and
- (c) it is reasonably necessary for investigating the issues raised in the disclosure.

It is acknowledged that there are some limitations of the Woolcock's investigation process. The Woolcock may not be able to undertake an investigation if it has insufficient information and/or it is not able to contact the Discloser (e.g. if a disclosure is made anonymously and the Discloser has refused to provide, or has not provided, a means of contacting them).

## **12. Investigation feedback**

Wherever possible, the Discloser will be provided with regular updates as to the progress of the investigation, if the Discloser can be contacted (including through anonymous channels), subject to privacy and confidentiality considerations.

The frequency and timeframe of the updates may vary depending on the nature of the disclosure. The Woolcock will ensure that anonymity is not compromised when providing the regular updates.

Ultimately, it is aimed to complete the investigation within 1 month from the disclosure having been lodged. Of course, this timeframe is subject to change depending on the specific case circumstances.

## **13. Documenting the investigation findings**

The findings from an investigation will be documented and reported to those responsible for oversight of the policy, while preserving confidentiality.

The WPO is responsible for ensuring the findings are filed in a restricted access folder within the Woolcock's shared drive (at O:\EXECCOMM\Whistleblower Reporting). To close the investigation, the Discloser will receive a formal written letter from the Woolcock confirming the findings of the investigation effort and the resulting actions.

To clarify, the method for documenting and reporting the findings will depend on the nature of the disclosure. There may be circumstances where it may not be

appropriate to provide details of the outcome to the Discloser.

#### **14. Reports to other bodies**

In certain circumstances a Worker may have a legal obligation to make a report to a statutory body or government department. Workers should ensure that they comply with all such reporting requirements. The WPO can advise Workers on these reporting obligations.

#### **15. Ensuring fair treatment of individuals mentioned in a disclosure**

The Woolcock 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.

#### **Examples of measures and / or mechanisms for ensuring fair treatment of individuals mentioned in a disclosure (where applicable):**

- disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- each disclosure will be assessed and may be the subject of an investigation;
- the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported;
- 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 being taken—for example, if the disclosure will be the subject of an investigation; and
- an employee who is the subject of a disclosure may be provided with access to counselling services.

#### **16. Breach of this policy**

Any breach of this policy will be taken seriously and may result in counselling and/or disciplinary action, up to and including summary dismissal.

#### **17. General**

It is a condition of any employment or engagement by the Woolcock that all Workers must always comply with this policy. However, this policy does not form part of any agreement between any person and the Woolcock, nor does it constitute terms and conditions of any person's employment or engagement

with the Woolcock.

This policy is made available to the Woolcock's officers and employees through:

- the holding of staff briefing sessions and/or smaller team meetings;
- posting the policy on the staff intranet site, and
- incorporating the policy in the Woolcock's employee induction information packs and training for new starters.

This policy will also be made available on the Woolcock's external website for access by any disclosers outside of the Woolcock.

### **18. Review of the policy**

This policy will be reviewed every two years to ensure it remains consistent with all relevant legislative requirements, as well as the changing nature of the organisation.

Version control:

<b>Date</b>	<b>Reason for update</b>	<b>Version</b>
4 Dec 2019	Initial draft	Version 1.0