Whistleblower Policy & Procedures

December 2019

Putting health in mind

Black Dog Institute

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Policy Statement

Black Dog Institute and the Black Dog Foundation (BDI) is committed to the highest standards of conduct and ethical behaviour, research integrity and good corporate governance ensuring it operates in accordance with all applicable legislation and regulations.

We welcome and encourage feedback and raising of issues and concerns from our clients, patients, staff, volunteers and community supporters. BDI also supports Whistleblowers to make reports based on reasonable grounds of Reportable Conduct involving BDI's activities, including its scientific research.

BDI wants Whistleblowers to be assured that they can do so:

- anonymously if they wish;
- without fear of intimidation, disadvantage or reprisal; and
- without being penalised in any way.

Officers, Directors, Employees and other associates of the BDI are required to cooperate with this commitment by maintaining legal, proper and ethical operations, and if necessary, by reporting non-compliant actions by others.

This policy is available both on the BDI Intranet and on our website at www.blackdog.org.au.

BDI will maintain ongoing training and awareness programs to its staff, and those individuals at BDI who may receive reports under this Policy, about their obligations under it.

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Relevant Legislation

As a medical research institute and a public company, BDI has a range of important corporate, clinical and research governance obligations. This policy reflects various rights and responsibilities of individuals as outlined in the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (**Whistleblower Legislation**), which incorporated those rights and responsibilities into the Corporations Act 2001 and Taxation Administration Act 1953 with effect from 1 January 2020.

Scope

The purpose of this Policy is to:

- ensure BDI maintains the highest standards of ethical behaviour and integrity;
- outline who can make a protected disclosure (Whistleblowers);
- outline matters about which a protected disclosure can be made (Reportable Conduct);
- identify who can receive a protected disclosure (Eligible Recipients);
- encourage the reporting of matters that may cause harm to individuals, or financial or non-financial loss to BDI, or damage to BDI's reputation;
- establish a process for BDI to deal with reports from Whistleblowers;
- ensure BDI protects the identity (including the disclosure of information that could lead to the identity) of a Whistleblower;
- provide for the secure storage of the information provided by Whistleblowers under BDI's processes; and
- protect Whistleblowers against unlawful detrimental conduct.

Whistleblowers and Protections

1. What is a Whistleblower?

A Whistleblower is a person who wishes to make, attempts to make, or makes a report of Reportable Conduct in accordance with this Policy; and

- is, or has been, an associate of BDI, which includes an Institute Board Director, officer, employee, UNSW employee working for BDI, contractor (i.e. Facilitator), supplier, tenderer or any other person, paid or unpaid (i.e. Volunteer), who works for, with or has business dealings with BDI; or
- is a relative or dependent of a person listed above.

2. What is Reportable Conduct?

Reportable Conduct is conduct a Whistleblower has reasonable grounds to suspect is misconduct or an improper state of affairs or circumstances, relating to BDI.

Reportable Conduct may include:

- conduct which involves serious impropriety regarding BDI's clinical, research or corporate governance.
- conduct which is dishonest, fraudulent or corrupt, including financial fraud or bribery;
- illegal activity including but not limited to theft, drug sale or use, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law;
- official misconduct or maladministration;
- unethical conduct or conduct in breach of BDI's policies, including but not limited to dishonestly altering company records or data, adopting questionable accounting practices or wilfully breaching BDI's Code of Conduct or other policies or procedures;
- conduct that could be damaging to BDI, a BDI employee or a third party (including any UNSW employees working for BDI), including but not limited to unsafe work practices, environmental damage, health risks or abuse of Institute property or resources;
- conduct which amounts to an abuse of authority;
- conduct which may cause financial loss to BDI, damage its reputation or be otherwise detrimental to BDI's interests;
- conduct which involves harassment, discrimination, bullying or victimisation that do not solely relate to personal work related grievances;
- conduct which indicates a significant risk to the stability of, or confidence in, the financial system; or
- conduct which involves any other kind of serious impropriety, including but not limited to serious and substantial waste of public resources, practices endangering the health or safety of employees, stakeholders or the general public, practices endangering the environment.

Reportable Conduct includes conduct which may not necessarily involve breaking the law.

A Whistleblower who reports conduct that is not considered Reportable Conduct (as defined above) does not qualify for protection under the Corporations Act or, where relevant, the Taxation Administration Act.

However, under the Taxation Administration Act, a disclosure of information to the Commissioner of Taxation (even if it does not constitute Reportable Conduct) still qualifies for protection if the Whistleblower considers the information may assist the Commissioner to perform his or her functions or duties under taxation law.

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

Disclosures that relate solely to personal work related grievances generally do not qualify for protection under the Whistleblower Legislation. Personal work-related grievances are those that relate to the Whistleblower's current or former employment and have, or tend to have, implications for the Whistleblower personally, but do not:

- have any other significant implications for BDI (or another entity); or
- relate to any conduct, or alleged conduct, constituting Reportable Conduct.

Examples of grievances that may be personal work-related grievances include:

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

Disclosures about, or including, a personal work-related grievance can still qualify for protection in certain circumstances, including if:

- it includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (i.e. a mixed report);
- it includes information that BDI has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the Whistleblower's personal circumstances;
- the Whistleblower suffers from or is threatened with detriment for making a disclosure; or
- the Whistleblower seeks legal advice, or legal representation, about possible protections afforded to them under the Whistleblower Legislation and that advice, or representation, is that the personal work-related grievance does fall within the protections afforded under the Whistleblower Legislation.

3. Can I remain anonymous and what confidentiality protections are afforded?

A Whistleblower is not required to disclose their identity to receive Whistleblower protections under this Policy and the Whistleblower Legislation. However, the Whistleblower must make a report of Reportable Conduct in accordance with this Policy.

A Whistleblower can also choose to remain anonymous over the course of any investigation into their report and after any investigation is finalised. For example, you may refuse to answer questions you feel may reveal your identity and you may adopt a pseudonym.

Other than the exceptions permitted by law, it is illegal for a person to identify a Whistleblower or disclose information that is likely to lead to the identification of the Whistleblower. The permitted exceptions are if the person discloses the identity of the Whistleblower:

- with consent of the Whistleblower;
- to ASIC, APRA or a member of the Australian Federal Police;
- to a person or body prescribed by legislation; or
- to a legal practitioner, for the purpose of obtaining legal advice or representation about the whistleblower provisions in the Whistleblower Legislation.

In addition, a person can disclose the information contained in a disclosure of Reportable Conduct with or without the Whistleblower's consent if:

- the information does not include the Whistleblower's identity;
- all reasonable steps are taken to reduce the risk that the Whistleblower will be identified from the information; and
- it is reasonably necessary for investigating the issues raised in the disclosure.

All records relating to a report of Reportable Conduct will be stored securely and remain confidential. Access to all information relating to a report of Reportable Conduct will be limited to those directly involved in managing and investigating the report.

BDI will utilise measures to protect confidentiality and anonymity, including but not limited to:

- removing identifying personal information of the Whistleblower in written material;
- referring to the Whistleblower in a gender-neutral context;
- where practicable, consulting with the Whistleblower in relation to measures that might be taken in order to maintain confidentiality and protect other identifying information; and
- ensuring that BDI staff likely to be involved in the handling and investigation of reports of Reportable Conduct are trained in accordance with the requirements of confidentiality / anonymity.

The Whistleblower is also expected to maintain confidentiality regarding the issue on their own account and to refrain from discussing the matter with any unauthorised persons.

4. What other protections are afforded to the Whistleblower?

If a Whistleblower makes a disclosure in relation to Reportable Conduct, then, in addition to the confidentiality protections outlined above, the Whistleblower is entitled to several other protections including:

- Protection from detrimental acts or omissions:

  Whistleblowers must not be subject to disciplinary action or detriment of any kind by BDI as a result of the reported conduct.
  Detriment includes:
  - dismissal;
  - alteration of an employee's position or duties to his or her disadvantage;
  - discrimination between the Whistleblower and other BDI employees and/or UNSW employees working for BDI;
  - harassment or intimidation of a person;
  - harm or injury to a person, including psychological harm; or
  - damage to a person's property, reputation, business or financial position.

  No contractual or other right may be enforced or exercised against the Whistleblower solely based on the disclosure. This means, among other things, that the Whistleblower's employment or service contract must not be terminated on the basis that the disclosure constitutes a breach of that contract with BDI.

If the Whistleblower's employment with BDI is terminated on the basis of the disclosure it can be reinstated by a court.

Victimisation (causing or threatening to cause detriment) of the Whistleblower is prohibited and is an offence.

Steps BDI will take to protect a Whistleblower from detriment include:

- assessing the risk of detriment to the Whistleblower;
- providing training to Eligible Recipients (as defined in point 5) about their obligations under this Policy; and
- during any investigation, informing individuals involved or interviewed that they may not victimise or take any detrimental action.

If you believe you have suffered a detriment:

- you should inform an Eligible Recipient(as defined in point 5) as soon as possible; and
- you may seek independent legal advice or contact regulatory bodies, such as ASIC, APRA or the ATO.

- Compensation and other remedies:

  Whistleblowers may seek compensation and other remedies through the courts if:

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

  Whistleblowers are free to seek independent legal advice, if they wish to do so. However, this will be at their own cost.

- Civil, criminal and administrative liability protection

  A Whistleblower is also protected from any of the following in relation to their qualifying disclosure:

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

  However, protections under the Corporations Act or Taxation Administration Act do not grant immunity for any misconduct a Whistleblower has engaged in that is revealed in their disclosure.

Reporting

5. To whom can a Whistleblower report?

If you become aware, on reasonable grounds, of an issue or behaviour that amounts or may amount to Reportable Conduct (including Reportable Conduct that relates to the tax affairs of BDI) and you wish to report your concerns, you are encouraged to report that concern to an Eligible Recipient, who is one of the following people:

- A Member of the Executive or Operational Leadership Team;
- An officer of BDI, such as a Board Director
- An auditor, or member of an audit team conducting an audit, of BDI;
- A BDI Whistleblower Protection Officer (WPO) with authority to receive protected disclosures; and

To remain anonymous, you may provide a report in writing (including by email from an address that does not identify you) to the Eligible Recipient or by post, marked to the attention of the WPO.

A WPO is a senior manager or Director of BDI, designated, authorised and trained by BDI to receive Whistleblower disclosures. Details of BDI's WPOs are published on BDI's intranet and internet.

The current WPOs are:
***Richard Sharps**, Director of Finance and Corporate Services*
P: 02 9382 3708 E: r.sharps@blackdog.org.au

***Marian Spencer**, Head of Operations, People & Culture*
P: 02 9382 3709 E: m.spencer@blackdog.org.au

If the Eligible Recipient receiving the report is not a WPO, they must in turn advise the WPO. Unless permitted by law, the identity of the Whistleblower must not be disclosed to the WPO by the Eligible Recipient.

A Whistleblower may also inform their lawyer (at their own cost) about suspected Reportable Conduct for the purpose of obtaining legal advice or representation about the operation of the whistleblower provisions. Such a disclosure to their lawyer will still be protected (by legal privilege) even in the event the lawyer concludes the disclosure does not constitute Reportable Conduct.

A Whistleblower may also report Reportable Conduct to relevant authorities specified in the Whistleblower Legislation, including the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA), or (for tax related disclosures) the Tax Commissioner (together, a **Relevant Authority**).

To be protected as a 'whistleblower' under the Whistleblower Legislation, a Whistleblower must have disclosed the Reportable Conduct directly to the individuals or authorities outlined above, or have made an 'emergency disclosure' or 'public interest disclosure', to

which we refer to in point 6 'Can I disclose Reportable Conduct to a Member of Parliament or a Journalist'.

If you wish to seek additional information before making a formal disclosure you can obtain additional information, for example, by contacting the WPO or your independent legal adviser.

6. Can I disclose Reportable Conduct to a Member of Parliament or a Journalist?

A Whistleblower will only qualify for protection by BDI under this Policy and the Corporations Act in the event they inform a Member of Parliament or journalist (meaning a person who is a working in a professional capacity as a journalist a newspaper, magazine, radio or television broadcasting service or a similar Internet service provider run on a commercial basis) of concerns about Reportable Conduct if the report is a '**public interest disclosure**' or an '**emergency disclosure**'.

The report will be a 'public interest disclosure' if:

- The Whistleblower has previously disclosed the Reportable Conduct to a **Relevant Authority** (eg ASIC, APRA);
- At least 90 days have passed since that report was made;
- The Whistleblower has reasonable grounds to believe that action is not being, or has not been taken to address the report;
- The Whistleblower has reasonable grounds to believe that making a further report would be in the public interest;
- The Whistleblower provides written notification to the **Relevant Authority** they had previously made the disclosure to of their intention to do so. This notification must include sufficient information to identify the previously made report and state that the Whistleblower intends to make a public interest disclosure; and
- The information disclosed is no greater than necessary to inform the MP or journalist of the misconduct or the otherwise improper state of affairs.

The report will be an 'emergency disclosure' if:

- The Whistleblower has previously disclosed the Reportable Conduct to a **Relevant Authority**;
- The Whistleblower has reasonable grounds to believe that the Reportable Conduct concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- The Whistleblower provides written notification to the Relevant Authority they had previously made the disclosure to of their intention to do so and this notice includes sufficient information to identify the previously made report and states that the Whistleblower intends to make an emergency disclosure; and
- The information disclosed is no greater than necessary to inform the MP or journalist of the substantial and imminent danger.

It is important for you to understand the criteria for making a public interest or emergency disclosure. Where possible, you should contact your independent legal adviser before making a public interest disclosure or an emergency disclosure.

7. Will BDI protect me if I disclose Reportable Conduct on social media or to someone other than an Eligible Person?

No, to be afforded the protections in this Policy, a Whistleblower must make any reports of Reportable Conduct in accordance with this Policy.

8. How should a report be made?

Where possible a report of Reportable Conduct should be in writing and should contain, as appropriate, details of:

- the nature of the alleged conduct;
- the person or persons responsible for the conduct;
- the facts on which the Whistleblower's belief that the conduct has occurred are based; and
- the nature and whereabouts of any further evidence that would substantiate the Whistleblower's allegations, if known.

9. What other Information should a Whistleblower receive?

Any Whistleblower who makes a report of Reportable Conduct in accordance with this Policy should be informed that:

- BDI will take all reasonable steps to ensure that the Whistleblower will not be disadvantaged for the act of making such a report;
- the Whistleblower can remain anonymous and still receive protection; and
- the Whistleblower will not necessarily be absolved from the consequences of their involvement in any misconduct.

Investigation of Reportable Conduct

10. Investigation of matters reported under this Policy.

All Reportable Conduct will be assessed to determine whether:

- it qualifies for protection; and
- a formal, in-depth investigation is required.

The WPO may only decline to investigate a Whistleblower's report, if on reasonable grounds, the WPO has a high degree of confidence there is no substance to the complaint. Otherwise the WPO must on receiving a report of Reportable Conduct:

- notify the BDI Director/Chief Scientist; or
- if the Director/Chief Scientist is implicated in the disclosure, notify the Treasurer of the BDI Finance Risk and Audit Committee; or
- if the both the Director/Chief Scientist and Treasurer are implicated in the disclosure, notify the Chair of the BDI Board.

However, if the Whistleblower's consent is not provided, the WPO must not disclose the name of the Whistleblower to the above individuals unless permitted by law.

In the event of all of the above being implicated in the disclosure, then the WPO has the authority to proceed with the investigation of the Reportable Conduct without notifying any of the above individuals.

Once notification has occurred as per above, the WPO will either undertake an investigation themselves or may determine to appoint an external person as an investigator. Where an external person is appointed to investigate the conduct reported (the Investigator), the WPO must ensure that the Terms of Reference provided to the Investigator include:

- relevant questions to be addressed;
- that the scale of the investigation is in proportion to the seriousness of the allegation(s);
- allocation of sufficient resources;
- a requirement that confidentiality of all parties, including witnesses, is maintained to the extent required by law;
- a requirement that procedural fairness be applied to all parties;
- a requirement that strict security is maintained during the investigative process;
- a requirement that information obtained is properly secured to prevent unauthorised access;
- a requirement that all relevant witnesses are interviewed, and documents examined;
- a requirement that contemporaneous notes of all discussions, phone calls and interviews must be made; and
- a requirement that the Findings comply with clause 11 of this Policy;

The WPO will provide regular updates to the Whistleblower (if they can be contacted) regarding the investigation's progress and/or outcome (subject to considerations of the privacy of those against whom allegations are made). The frequency and timeframe may vary depending on the nature of the Reportable Conduct.

The investigation must be conducted in an objective and fair manner, and otherwise as is reasonable and appropriate having regard to the nature of the Reportable Conduct and the circumstances. Given this, the investigation process may vary depending on the nature of the Reportable Conduct. However, where possible, the investigation will be completed no later than 3 months after the disclosure of Reportable Conduct is made.

Maintaining confidentiality is critical in ensuring no reprisal action is taken against the Whistleblower. Depending on the nature of the Reportable Conduct and/or the need to involve police or other regulatory or investigative agencies and bodies, it may not be possible to advise individuals mentioned in the Reportable Conduct notification that a notification has been made or the nature of the allegations.

Subject to confidentiality requirements, and the requirements of external bodies and agencies involved in the investigation, BDI will take reasonable steps to ensure the fair treatment of an individual mentioned in a disclosure of Reportable Conduct, or to whom such a disclosure relates. This will include:

- handling disclosures confidentially, when it is practical and appropriate in the circumstances;
- providing the individual with an opportunity to respond to any allegations which may have a material impact on their employment or engagement as part of any investigation or other process under this Policy; and
- notifying an employee who is subject of a disclosure that they may contact BDI's employee assistance program.

However, this Policy will not protect the Whistleblower or any other individual from disciplinary proceedings and/or disciplinary sanction if they are found to be involved in or connected to any wrongdoing.

Findings

11. A report of findings must be prepared by the WPO if investigating the Reportable Conduct or by the external Investigator and provided to the WPO when an investigation is complete.

The report must include:

- the allegations;
- a statement of all relevant findings of fact and the evidence relied upon to reach conclusions on each allegation;
- the basis for each conclusion reached (including the damage caused, if any, and the impact on the organisation and other affected parties) and their basis;
- recommendations based on those conclusions to address any wrongdoing identified and any other matters arising during the investigation.

Document owner: Director of Finance and Corporate Services

Version	Date	Name	Summary of changes
1	19/12/2019	R Sharps	Policy drafted incorporating Maddocks legal review, including all new ASIC requirements and as amended on review of the Board