

# Policy regarding disclosure of complaints and concerns

## 1. Purpose

- 1.1 Mesoblast Limited and its subsidiaries (referred to in this Policy as the **Company**), are committed to maintaining high standards of integrity, transparency and to building an environment in which people feel free to raise legitimate issues relating to the Company's operations.
- 1.2 The aim of this Policy is to help deter wrongdoing relating to the Company's operations, by encouraging disclosure of wrongdoing and ensuring that anyone who makes a disclosure can do so safely, securely and with confidence that they will be protected and supported.
- 1.3 The Australian whistleblower legislation contained in the *Corporations Act 2001* (Cth), and the *Taxation Administration Act 1953* (Cth) provides for protections for whistleblowers (**Protection Scheme**). This Policy sets out when a disclosure may qualify for protection under the Protection Scheme. There are protections available to disclosers under the laws of the United States and other relevant jurisdictions and while these are not described in this policy, disclosers under this Policy could be covered by such protections.
- 1.4 As the Company operates in multiple countries, this Policy is applicable to the Company in all locations worldwide. This Policy is subject to the laws that apply in those countries, which means that in some cases, whistleblower matters may be handled differently. However, the Company intends to apply this Policy in all cases, unless it is unable or impractical to do so.

## 2. "Eligible Disclosers" – who can make a disclosure under this Policy?

- 2.1 A disclosure can be made under this Policy by an Eligible Discloser.
- 2.2 The following persons are capable of being an "Eligible Discloser":
  - (a) a director, an officer or employee of the Company (including, but not limited to employees who are permanent, part-time, fixed-term or temporary);
  - (b) an individual who is an associate of the Company;
  - (c) an individual who supplies goods or services to the Company (whether paid or unpaid) or an employee of a supplier (which may include, among others, contractors, consultants and service providers);
  - (d) an individual who previously held any of the above positions or functions or who is a relative of the individuals set out above or a dependant of one of those individuals or of the spouse of such an individual; and
  - (e) any individual who reasonably believes that they are aware of any violation of the securities laws or other laws of the United States.
- 2.3 An Eligible Discloser who makes a disclosure must have 'reasonable grounds to suspect' that the disclosed information concerns a Disclosable Matter (see paragraph 3), to qualify for protection under this Policy, and under the Protection Scheme. This means that even if a disclosure turns out to be incorrect, the protections under the Protection Scheme will still apply, provided the Eligible Discloser had 'reasonable grounds to suspect'.

## 3. Disclosable Matters – what matters should be reported under this Policy?

- 3.1 The Company encourages the reporting of information qualifying as a Disclosable Matter under this Policy.
- 3.2 A "Disclosable Matter" is information that:

- (a) concerns misconduct or an improper state of affairs or circumstances in relation to the Company or one of its related bodies corporate;
- (b) indicates the Company, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against, or a contravention of applicable corporations related legislation;
- (c) indicates the Company, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against or a contravention of any law that is punishable by imprisonment for 12 months or more; or
- (d) represents a danger to the public or the financial system.

3.3 Examples of Disclosable Matters include:

- (a) fraud, money laundering or misappropriation of funds;
- (b) fraud in the preparation, review or audit of the Company's financial statements;
- (c) fraud in the preparation, review or presentation of any of the Company's clinical trial results or characterization of clinical data;
- (d) significant deficiencies in internal and reporting controls or intentional noncompliance with those controls;
- (e) fraud against investors, securities fraud, mail or wire fraud, bank fraud or fraudulent statements to management, the U.S. Securities and Exchange Commission (**SEC**) or ASIC or members of the investing public; or
- (f) offering or accepting a bribe;
- (g) fraud or misconduct in respect of tax affairs;
- (h) failure to comply with, or breach of, legal or regulatory requirements, including violations of ASIC or SEC rules and/or regulations;
- (i) violations of the Company's Code of Conduct, Audit and Non-Audit Services Pre-Approval Policy, Market Disclosures and Communications Policy, the Global Anti-Corruption Policy, Share Trading Policy, or the applicable securities laws; and
- (j) 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.

**4. Disclosures excluded from this Policy**

4.1 Disclosures that are not about a Disclosable Matter do not qualify for protection under the Protection Scheme.

4.2 A disclosure does not qualify for protection under the Protection Scheme to the extent that the information disclosed concerns a "personal work-related grievance" of the Eligible Discloser, and does not concern a contravention, or an alleged contravention, of the detriment provisions referred to in Annexure B of this Policy.

4.3 A disclosure is a "personal work-related grievance" if:

- (a) the information concerns a grievance about a matter relating to the Eligible Discloser's employment, or former employment, having (or tending to have) implications for the Eligible Discloser personally; and
- (b) the information:

- (i) does not have significant implications for the Company, or another regulated entity, that do not relate to the Eligible Discloser; and
- (ii) does not concern conduct, or alleged conduct, that is a Disclosable Matter.

4.4 However, a personal work-related grievance may still qualify for protection if:

- (a) it relates to a Disclosable Matter and a personal work related grievance (i.e., it is a mixed disclosure); or
- (b) the Eligible Discloser seeks legal advice or legal representation about the operation of the whistleblower protections under applicable law.

4.5 Examples of “Personal work-related grievances” are an interpersonal conflict between the Eligible Discloser and another employee, or decision to suspend or terminate the employment of the Eligible Discloser, or otherwise to discipline the Eligible Discloser.

4.6 Complaints about personal work-related grievances should be raised under the Company's Workplace Bullying Policy, or with the Company's HR Manager.

## 5. Who can Eligible Disclosers disclose Disclosable Matters to?

5.1 For the protections under this Policy and the Protection Scheme to apply, a disclosure must be made directly to a person identified in this section.

5.2 The Company encourages that disclosures be made internally to the persons set out below (referred to as **Authorised Recipients**). Authorised Recipients can be contacted in the following ways:

- (a) to the Company's Audit and Risk Committee at [arc@mesoblast.com](mailto:arc@mesoblast.com); or
- (b) to the Company's General Counsel:

Address: Mesoblast Limited  
Level 38  
55 Collins Street  
Melbourne 3000  
Australia  
Attn: General Counsel

Email: [generalcounsel@mesoblast.com](mailto:generalcounsel@mesoblast.com)

5.3 Details of disclosures made to the Company's General Counsel may be shared with the Audit and Risk Committee, and vice versa, for the purposes of reporting and/or investigation (subject to confidentiality requirements, as appropriate).

5.4 Disclosures can also be made via the external whistleblower hotline (**Provider**) using the following details:

URL: <https://www.whistleblowerservices.com/MESO/>

US/Canada Toll Free line: 844-307-3846

International Toll line: 402-572-5439

The Provider is an independent whistleblowing service that has been engaged to act as an Authorised Recipient to enable disclosures to be made anonymously, confidentially and either during or outside of business hours, while enabling Eligible Disclosers to receive updates while retaining their anonymity and the Company to obtain additional information.

- 5.5 If an Eligible Discloser does not feel comfortable raising their disclosure with an Authorised Recipient, they could also raise it with any of the following:
- (a) an officer or senior manager of the Company or a related body corporate. For these purposes, a senior manager means the Company's CEO and CFO; or
  - (b) the internal or external auditors or actuaries of the Company or a related body corporate (including a member of an audit team conducting an audit).
- 5.6 While the Company encourages Eligible Disclosers to make disclosures internally, nothing in this policy restricts the ability of an Eligible Discloser to make a disclosure directly to ASIC, APRA, a prescribed Commonwealth authority or the SEC, or a legal practitioner for the purpose of obtaining legal advice or legal representation (in relation to the Protection Scheme). These disclosures also qualify for protection under the Protection Scheme.
- 5.7 The Protection Scheme protects certain disclosures made in "emergency" and "public interest" situations, in which case disclosures can be made to additional recipients – see the Annexure A to this Policy for more detail in relation to such disclosures. In general, before making a public interest or emergency disclosure, it is important that an Eligible Discloser understands the criteria for protection under the relevant law. Eligible Disclosers should obtain independent legal advice prior to making any such public disclosure.

## **6. Investigation of disclosures**

- 6.1 The Company will acknowledge receipt of a disclosure within a reasonable period, assuming the Eligible Discloser can be contacted (including through anonymous channels). The Company will assess disclosures to determine whether:
- (a) they fall within this Policy and the Protection Scheme; and
  - (b) an investigation is required – and if so, how that investigation should be carried out.
- 6.2 Generally, if an investigation is required, the Company will determine:
- (a) the nature and scope of the investigation;
  - (b) who should lead or assist the investigation – including the Company's General Counsel or Company's Audit and Risk Committee or whether an external investigation is appropriate;
  - (c) the nature of any technical, financial or legal advice that may be required to support the investigation; and
  - (d) the anticipated timeframe for the investigation. Each investigation will be different which will impact the applicable timeframe.
- 6.3 Where practicable, Eligible Disclosers will receive updates about when the investigation has begun, while the investigation is in progress and after the investigation has been finalised. The frequency and timeframe of any updates may vary depending on the nature of the disclosure. The Company will also have regard to confidentiality considerations when providing updates.
- 6.4 Where appropriate, the Company may report findings of investigations to the Company's Board of Directors. There may be circumstances where it may not be appropriate to provide details of the outcome to the Eligible Discloser.

## **7. Anonymous disclosures and confidentiality**

- 7.1 An Eligible Discloser can choose to make a disclosure anonymously and to remain anonymous over the course of the investigation and after the investigation is finalised – they may also decide not to answer questions that they feel could reveal their identity at any time, including during

follow-up conversations. Anonymous disclosures are still capable of being protected under the Protection Scheme.

- 7.2 Reporting anonymously may hinder the Company's ability to fully investigate a reported matter. For this reason, the Company encourages anonymous Eligible Disclosers to maintain ongoing two-way communication (such as via an anonymous email address), so that the Company can ask follow-up questions or provide feedback.
- 7.3 It is likely that, regardless of whether or not the disclosure is made anonymously, the Eligible Discloser will be asked to provide consent to the disclosure of their identity or information that is likely to lead to their identification. This would be to facilitate any investigation and/or resolution of the matter. If consent is withheld, it may not be possible to adequately investigate and respond (if at all) to the disclosure.

## **8. Protections**

- 8.1 Important protections relating to confidentiality and detriment apply to Eligible Disclosers who report Disclosable Matters in accordance with the Protection Scheme. These protections are outlined in **Annexure B** to this Policy. The protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Protection Scheme.

## **9. Support and fair treatment**

- 9.1 The Company is committed to transparency and to building an environment in which people feel free to raise legitimate issues relating to the Company's operations. The Company is also committed to protecting Eligible Disclosers from detriment. When a qualifying disclosure under the Protection Scheme is made, the Company will reiterate the requirements of this Policy to the Eligible Discloser to ensure the protections are not undermined.
- 9.2 The Company will consider a range of other matters to protect an Eligible Discloser from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure. Steps it will take to help achieve this could include:
- (a) assessing whether anyone may have a motive to cause detriment;
  - (b) analysing and evaluating the likelihood of each risk and evaluating the severity of the consequences;
  - (c) developing and implementing strategies to prevent or contain the risks;
  - (d) monitoring and reassessing the risk of detriment where required—the risk of detriment may increase or change as an investigation progresses, and even after an investigation is finalised;
  - (e) taking steps to ensure that:
    - (i) disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
    - (ii) each disclosure will be assessed and may be the subject of an investigation;
    - (iii) the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed;
    - (iv) when an investigation needs to be undertaken, the process will be objective, fair and independent; and
  - (f) disciplinary action, including dismissal, against any person who causes or threatens to cause any detriment against an Eligible Discloser.

- 9.3 If the disclosure mentions or relates to employees of the Company other than the Eligible Discloser, the Company will take steps to ensure that those individuals are treated fairly. Typically, this would include giving those persons an opportunity to respond to the subject matter of the disclosure having regard to principles of procedural fairness. In addition, action would only be taken against such a person if there is cogent evidence of wrongdoing.
- 9.4 The Company's usual employee assistance services will be available to all Eligible Disclosers and other employees affected by the disclosure, should they require that support.

## **10. Vexatious or false disclosures**

- 10.1 An Eligible Discloser will only be protected if they have objectively reasonable grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of this Policy or the Protection Scheme.
- 10.2 The protections referred to in this Policy will not extend to vexatious or deliberately false complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.
- 10.3 Depending on the circumstances, it may be appropriate for the Company to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure, for example, anyone found making a deliberate false claim or report will be subject to disciplinary action. Such action may include the termination of employment.

## **11. Other matters**

- 11.1 This Policy will be made available to the Company's employees and officers via the Company's website.
- 11.2 This Policy should be considered alongside the Company's Code of Conduct, Audit and Non-Audit Services Pre-Approval Policy, Market Communication Policy, the Global Anti-Corruption Policy and Share Trading Policy.
- 11.3 This Policy is not intended to go beyond the legislation. This Policy is not a term of any contract, including any contract of employment and does not impose any contractual duties, implied or otherwise, on Company. This Policy may be varied by the Company from time to time, including as part of any review described below.

## **Annexure A – Public interest disclosures and Emergency disclosures**

### **1. Public interest disclosures**

- 1.1 There is an additional category of disclosures called 'public interest disclosures' that qualify for protection in Australia. These can be made to journalists and members of Parliament, but only if the Eligible Discloser complies with the following strict requirements:
- (a) the Eligible Discloser must have first made a qualifying disclosure to ASIC, APRA, or a prescribed Commonwealth authority;
  - (b) at least 90 days has passed since the qualifying disclosure was made;
  - (c) the Eligible Discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the qualifying disclosure related;
  - (d) the Eligible Discloser has reasonable grounds to believe that making a public interest disclosure would be in the public interest;
  - (e) after 90 days has passed, the Eligible Discloser must give the body to which the qualifying disclosure was originally made, a written notification that:
    - (i) includes sufficient information to identify the qualifying disclosure; and
    - (ii) states that the Eligible Discloser intends to make a public interest disclosure; and
  - (f) the extent of the information disclosed in the public interest disclosure is no greater than to inform the journalist or member of Parliament of the misconduct or improper state of affairs or circumstances, or other conduct falling within the scope of the Protection Scheme.

### **2. Emergency disclosures**

- 2.1 There is an additional category of disclosures called 'emergency disclosures' that qualify for protection in Australia. These can be made to journalists and members of Parliament, but only if the Eligible Discloser complies with the following strict requirements:
- (a) the Eligible Discloser must have first made a qualifying disclosure to ASIC, APRA or a prescribed Commonwealth authority;
  - (b) the Eligible Discloser has reasonable grounds to believe that information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
  - (c) the Eligible Discloser gave notice to the body to which the qualifying disclosure was made that states:
    - (i) that they intend to make an emergency disclosure; and
    - (ii) includes sufficient information to identify the qualifying disclosure; and
  - (d) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.
- 2.2 Before making a public interest or emergency disclosure, it is important that an Eligible Discloser understands the criteria for protection under the relevant legislation. Eligible Disclosers should obtain independent legal advice prior to making any disclosure.

## **Annexure B – Protections under the Protection Scheme**

### **1. Background**

- 1.1 The Company takes contraventions of these protections very seriously and will take disciplinary action against anyone for doing so. If an Eligible Discloser has any particular concerns about this, they can raise them with an Authorised Recipient (see paragraph 5.2 above).
- 1.2 In Australia and the United States, civil and criminal sanctions also apply for breaches of these protections.

### **2. Confidentiality**

- 2.1 Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the Protection Scheme.
- 2.2 Under the Protection Scheme, unless the Eligible Discloser consents, it is against the law for a person to disclose an Eligible Discloser's identity or any information that may lead to their identification (subject to the exceptions set out below). However, regardless of the applicable law, an Eligible Discloser's identity will be kept confidential to the fullest extent practicable, having regard to the need to conduct and conclude a thorough investigation. Exceptions to this include disclosures to ASIC, the Australian Federal Police, Commissioner of Taxation (in relation to tax matters), the SEC, a legal practitioner for the purpose of obtaining advice about the application of the whistleblower protections or made with the consent of the Eligible Discloser.
- 2.3 It will also be lawful in Australia to disclose information in a disclosure without the Eligible Discloser's consent if this is reasonably necessary for the purpose of investigating the disclosure (provided the information does not include the Eligible Discloser's identity and the Company takes all reasonable steps to reduce the risk that the Eligible Discloser will be identified as a result of the disclosure).
- 2.4 In Australia, ASIC, APRA or the AFP can also disclose the identity of an Eligible Discloser, or information that is likely to lead to the identification of the Eligible Discloser, to a Commonwealth, State or Territory authority to help the authority in the performance of its functions or duties.
- 2.5 The Company takes the protection of an Eligible Discloser's identity seriously. Steps it will take to help achieve this may include:
  - (a) maintaining mechanisms to reduce the risk that the Eligible Discloser will be identified from the information contained in a disclosure (such as redactions or referring to the person in gender neutral terms etc);
  - (b) maintaining mechanisms for secure record-keeping and information-sharing processes and limiting access to records and information;
  - (c) reminding each person (as appropriate) who is involved in handling and investigating a disclosure about the confidentiality requirements, including that an unauthorised disclosure of an Eligible Discloser's identity may be a criminal offence.
- 2.6 If there is a breach of confidentiality, an Eligible Discloser can lodge a complaint with an Authorised Recipient or a court in Australia, a regulator such as ASIC or APRA for investigation.

### **3. Protection from liability and detriment**

- 3.1 An Eligible Discloser is protected from any civil liability, criminal liability and/or administrative liability (including disciplinary action) for making a qualifying disclosure in accordance with the Protection Scheme, and no contractual or other remedy may be enforced or exercised against the Eligible Discloser on the basis of a qualifying disclosure.

- 3.2 The protections also make it unlawful in Australia for a person to engage in conduct against another person that causes or will cause a detriment:
- (a) in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure; and
  - (b) if the belief or suspicion held by that person is the reason or part of the reason for their conduct.
- 3.3 Threats of detriments will also be unlawful in some jurisdictions, including Australia, and are against this Policy.
- 3.4 The meaning of 'detriment' is very broad and includes:
- (a) dismissing an employee;
  - (b) injuring an employee in their employment;
  - (c) altering an employee's position or duties to their disadvantage;
  - (d) discriminating between an employee and other employees;
  - (e) harassing or intimidating a person;
  - (f) harming or injuring a person;
  - (g) damaging a person's property, reputation, business or financial position; and
  - (h) any other damage to a person.
- 3.5 However, the protections do not grant immunity for any misconduct an Eligible Discloser has engaged in that is revealed in their disclosure. An Eligible Discloser may be subject to disciplinary action if, in the course of investigating a disclosure, the Company determines that the Eligible Discloser was complicit in the misconduct or improper state of affairs or has otherwise acted in an improper way.
- 3.6 If an Eligible Discloser believes they have suffered detriment they can lodge a complaint with an Authorised Recipient, or a court or, in Australia, a regulator such as ASIC for investigation.
- 3.7 In certain jurisdictions, courts are given broad scope to make orders remedying a detriment or threatened detriment. These include injunctions, compensation orders (including against individual employees and their employer), reinstatement, exemplary damages and the making of apologies. The Company encourages Eligible Disclosers to seek independent legal advice in regards to seeking compensation or other remedies.