

# Activ Whistleblower Procedure

## Contents

1. Introduction.....	1
2. Purpose .....	2
3. Scope.....	2
4. Definitions .....	2
4.1 Contractor.....	2
4.2 Immunity .....	2
4.3 Investigation .....	2
4.4 Misconduct .....	3
4.6 Whistleblower.....	3
4.7 Whistleblower Protection Officer.....	3
4.8 Whistleblower Investigations Officer .....	4
5. What should be reported under this Procedure.....	4
6. Procedure for Reporting Misconduct – Internal within Activ.....	4
7. Procedure for Reporting Misconduct - outside of Activ.....	6
8. Reporting of Investigation Findings.....	6
9. Whistleblower Anonymity .....	7
10. Whistleblower Protection.....	7
11. Feedback and Communication with the Whistleblower .....	8
12. False Misconduct Reports .....	8
13. Document Retention and Confidentiality.....	8
14. Key Related Policies and Documents .....	9
15. Consultation Process .....	9

## 1. Introduction

The Board of Activ (Board) recognises that any genuine commitment to detecting and preventing illegal and unethical conduct commences with the adoption by the entire organisation of an attitude of acceptance and openness regarding the reporting of misconduct within the organisation. This procedure sets out a mechanism whereby employees and others can report their concerns freely and without fear of reprisal or intimidation.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 1 of 9
-----------------------------	---	--	-----------------------------------	-------------

## 2. Purpose

In accordance with the Policy, this Procedure provides a reporting mechanism available when employees and other individuals related to Activ genuinely believe a person or persons have committed a serious breach of the law, or engaged in unethical conduct which may result in danger or an illegality that will affect others.

The Policy and Procedure relate to matters that are genuinely believed cannot be dealt with under the Activ Complaints Policy & Procedure, the Code of Conduct & Ethics Policy, the Management of Performance & Conduct Guidelines, or the Respect in the Workplace Policy.

## 3. Scope

This Procedure applies to all of Activ's staff, employees, customers, volunteers, directors (and any spouse, sibling, guardian, child or dependent of any of the preceding people), suppliers, contractors and consultants (including their employees).

## 4. Definitions

For the purposes of this Procedure, the definitions listed below apply.

### 4.1 Contractor

A person or firm that undertakes a contract to provide materials or labour to perform a service or do a job.

### 4.2 Immunity

An undertaking given by Activ to a Whistleblower that Activ will not take action against the Whistleblower, adverse to the interests of the Whistleblower, as a result of receiving a genuine report of Misconduct from the Whistleblower.

### 4.3 Investigation

A search of evidence connecting or tending to connect a person (either a natural person or a body corporate) with conduct that infringes the law.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 2 of 9
-----------------------------	---	--	-----------------------------------	-------------

#### 4.4 Misconduct

Whistleblowers are encouraged to report any genuine concerns they have that Activ, or any person acting by or on behalf of Activ, has breached, or intends to breach the law or engage in any unethical behaviour. Matters which should be reported under this Procedure, whether actual or suspected may include:

- Dishonest, fraudulent, corrupt or unlawful conduct or practices such as bribery, coercion, corruption, money laundering or theft.
- Misleading or deceptive conduct, including conduct or representations which amount to improper or misleading accounting or financial reporting practices.
- Unethical conduct taken by or on behalf of Activ such as the dishonest altering of company records or financial data, the adoption of unethical and unlawful accounting practices or serious financial impropriety.
- Conduct within Activ's control which presents a significant and imminent danger to the environment or to the health and safety of members of the public including any conduct that has been reported to the management of Activ but not acted upon within a reasonable time of being reported.
- Any action taken against, or harm suffered by a person as a result of making a report under this Procedure.
- Any serious breach of the laws relating to harassment, discrimination, victimisation, safety or bullying that cannot be dealt with under the Activ Complaints Policy and Procedure, the Code of Conduct & Ethics Policy, the Management of Performance & Conduct Guidelines, or the Respect in the Workplace Policy.

#### 4.5 Supplier

A person or organization that provides something needed such as a product or service.

#### 4.6 Whistleblower

A Whistleblower is an Activ staff member, employee, customer, volunteer, director (and any spouse, child or dependent of any of the preceding people), supplier, contractor and consultant (including their employees) who whether anonymously or not:

- a) makes or attempts to make a report of Misconduct to Activ using the Misconduct Report Form;
- b) wishes to avail themselves of protection against reprisal for having made the report; and
- c) is accepted by Activ under this procedure as a Whistleblower.

#### 4.7 Whistleblower Protection Officer

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 3 of 9
-----------------------------	---	--	-----------------------------------	-------------

A Whistleblower Protection Officer (WPO) is an appropriately qualified person who is appointed by Activ as a WPO under this Procedure and has responsibility for accepting reports of Misconduct from Whistleblowers and protecting Whistleblowers. Activ generally has three options for WPO:

- a) The Chief Executive Officer;
- b) The Executive Manager, People & Quality; and
- c) The Governance & Risk Manager.

The WPO will consider a disclosure made by a Whistleblower and determine if this Procedure applies.

#### **4.8 Whistleblower Investigations Officer**

A Whistleblower Investigations Officer (WIO) is an individual appointed by the WPO to conduct an investigation into a report of Misconduct received from a Whistleblower. The role of the WIO is to investigate the substance of the complaint to determine whether there is evidence in support of the matters raised or, alternatively, to refute the report made.

The WPO will appoint the WIO on a case by case basis, depending on the nature of the report. The WIO will be an independent party who is not associated with the area under investigation.

### **5. What should be reported under this Procedure**

All Whistleblowers are encouraged to report conduct that they believe qualifies as Misconduct under this Procedure.

Whistleblowers should, prior to making a report in accordance with this Procedure, consider whether the alleged Misconduct could be more appropriately dealt with under the Activ Complaints Policy & Procedure, the Code of Conduct & Ethics Policy, the Management of Performance & Conduct Guidelines, or the Respect in the Workplace Policy.

Reports made other than in accordance with the procedures set out in Paragraph 6 or 7 of this Procedure will not be considered reports of Misconduct and the Whistleblower will not be entitled to the anonymity and immunity protections afforded by the Whistleblower Policy or Procedure. These investigations will be dealt with either under the Complaints Policy or Procedure, or the Management of Performance & Conduct Guidelines.

Any report received from a Whistleblower must be accepted and investigated in the first instance in accordance with the procedure set out below.

### **6. Procedure for Reporting Misconduct – Internal within Activ**

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 4 of 9
-----------------------------	---	--	-----------------------------------	-------------

If a Whistleblower becomes aware of conduct that they believe could be Misconduct, then the following reporting mechanism is available:

6.1 Whistleblowers may contact Activ's CEO, EM P&Q or GRM to discuss and report any issue as outlined in Section 4.3.

*Concerns should be documented as soon as possible using the Misconduct Report Form ('MRF') (AQuA: 2532). This can be completed either by the Whistleblower or the WPO who was contacted by the Whistleblower.*

- a) The WPO must conduct an initial assessment of any verbal or written report of complaint within five (5) days to ascertain whether further investigation is warranted. Where the WPO is not the CEO, and the matter does not relate to the CEO, WPO will advise the CEO of the Misconduct reported;
- b) If further action is necessary, the WPO will communicate and assign an appropriate Whistleblower Investigation officer (WIO) within 5 days;
- c) The WIO will conduct an initial risk assessment with the Whistleblower in relation to any potential impacts of reporting the Misconduct to ensure necessary steps are taken to afford safeguard protections;
- d) The WIO must proceed with the investigation following the principles of fairness and a commitment to rectify any wrongdoing verified by the investigation. The WIO will determine what resources are needed and secure access to those resources, including where necessary the assistance of other employees or external professional help (including lawyers, accountants, forensic analysts or operational experts).
- e) The WIO will consider any process or/control improvements that may be implemented as result of the Misconduct report (such as risk assessments, audits, and internal reviews.).
- f) The Whistleblower must be kept informed verbally or in writing of the progress of the complaint at an agreed frequency, provided the disclosure of the information does not breach another person's privacy.
- g) The investigation process should be completed in a timely manner upon initial contact with the Whistleblower.

6.2 Whistleblowers may alternatively wish to discuss and report the matter with their direct manager or HR first to determine whether the conduct may qualify as Misconduct Managers who become aware of any matter in line with Section 4.3 should encourage the Whistleblower to contact a WPO as outlined in Paragraph 6.1 or can make a report on their behalf.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 5 of 9
-----------------------------	---	--	-----------------------------------	-------------

6.3 Where the Whistleblower does not feel comfortable reporting internally using the above mechanisms, or where the Whistleblower has previously done so and believes no appropriate action has been taken, they may contact the CEO (who will act as the WPO) directly to discuss the incident. In the event where the matter relates to the CEO or a Board Member, the matter can also be reported directly to the Chair of the Board (who will act as the WPO).

6.4 The WPO cannot decline to accept a report if the WPO determines it to be a valid report of potential Misconduct unless the WPO is absent from the office or the WPO has a conflict of interest.

It is Activ's aim that all Whistleblowers feel that any issues of Misconduct raised by them will be dealt with in a serious and timely fashion by Activ in accordance with this Procedure.

## **7. Procedure for Reporting Misconduct - outside of Activ**

The Whistleblower should attempt to report internally within Activ prior to reporting externally. However external reporting is also available as set out in this Section if deemed appropriate or where the Whistleblower believes they have taken adequate steps to report internally but appropriate action has not been taken.

The following external reporting is available to Whistleblowers:

- Your Call Disclosure Line;
- Australian Charities & Not-for-profits Commission (ACNC); and
- Australian Securities & Investments Commission (ASIC).

## **8. Reporting of Investigation Findings**

The WIO will prepare an Investigation Report and forward the Investigation Report to the WPO, the CEO (where the matter does not relate to the CEO) and the Chair of the Board in a timely manner. The Chair of the Board will manage reporting to the Board.

An appropriate response in accordance with the investigation report will be undertaken. This response will include addressing any unacceptable conduct and taking remedial action required to prevent any future occurrences of the same Misconduct.

Where issues of discipline arise, those issues will be dealt with in accordance with any applicable Activ procedures for disciplinary matters. Where allegations of unacceptable conduct made against another person cannot be substantiated, that person will be advised accordingly and will be entitled to continue in their role as if the allegations had not been made.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 6 of 9
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## 9. Whistleblower Anonymity

Once a report of Misconduct by a Whistleblower has been accepted by a WPO as warranting further investigation under this Procedure, the identity of the Whistleblower will be kept strictly confidential unless:

- (a) The Whistleblower consents to the disclosure;
- (b) It is required by law;
- (c) It is necessary to prevent or lessen a serious threat to a person's health or safety;
- (d) It is necessary to protect or enforce Activ's legal rights or interests; or
- (e) It is necessary to defend any claims.

Where the Whistleblower has requested anonymity under this Procedure, the WPO and the WIO will not directly disclose the identity of the Whistleblower and will take all reasonable precautions to ensure that no information is released that would identify the Whistleblower. A risk assessment will be undertaken with the Whistleblower in relation to any potential impacts of reporting the Misconduct to ensure necessary steps are taken to afford safeguard protections. This is particularly important where a Whistleblower's current working environment will be the subject of the investigation.

## 10. Whistleblower Protection

A Whistleblower will not be penalised or personally disadvantaged because they have reported a conduct that is genuine under this Procedure. Activ will not tolerate any instances of legitimate Whistleblowers being:

- (a) dismissed;
- (b) demoted;
- (c) subject to any form of unfair practices, harassment or persecution;
- (d) subject to any current or future bias; or
- (e) discriminated against.

A Whistleblower who believes he or she, or his or her immediate family, has been the victim of any of the above by reason of their status as a Whistleblower, should immediately report the matter to the WPO. Where an incident of this nature occurs, a report can be made pursuant to this Procedure or the Respect in the Workplace Policy.

Any Activ staff, employee, director, contractor, consultant or volunteer who is found to have dismissed, demoted, harassed, or discriminated against a Whistleblower by reason of their status as a Whistleblower, may be subject to disciplinary measures.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 7 of 9
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A Whistleblower who has been involved in the reported Misconduct may be provided with immunity or due consideration from Activ initiated disciplinary proceedings, by agreement with Activ. Activ however, has no power to provide immunity from criminal prosecution.

### **11. Feedback and Communication with the Whistleblower**

Where possible, and assuming the identity of the Whistleblower is known, the Whistleblower will be kept informed of the outcome of the investigation of his or her report by the WPO and/or the WIO, subject to privacy and confidentiality considerations.

All Whistleblowers must maintain confidentiality of all such reports, and not disclose details to any person.

### **12. False Misconduct Reports**

Where it is established that a Whistleblower has made a report of Misconduct pursuant to this Procedure where he or she knew, or ought to have known, that the allegation of Misconduct was false (including where the allegation has been made maliciously, vexatiously or without any reasonable basis), then the Whistleblower will be subjected to disciplinary proceedings, which may result in being summarily dismissed from his or her employment with Activ or having his or her contract with Activ terminated.

Whilst not intending to discourage Whistleblowers from reporting conduct of genuine concern, Whistleblowers must ensure as far as possible, that reports are factually accurate, complete, from first hand knowledge, presented in an unbiased fashion (and any possible perception of bias of the Whistleblower is disclosed), and without material omission.

### **13. Document Retention and Confidentiality**

All information, documents, records and reports relating to the investigation of a reported incident of Misconduct will be confidentially stored and retained by Activ in an appropriate and secure manner and will be retained for a period of 6 years from the date on which the report of Misconduct was made to the WPO using a Misconduct Report Form. Details relating to any individuals involved in investigations (including the Whistleblower) will remain confidential.

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 8 of 9
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## 14. Key Related Policies and Documents

Activ Whistleblower Policy (AQuA: 2530)  
Misconduct Report Form (AQuA: 2532)  
Complaints Policy (AQuA: 1588)  
Complaint Handling Procedure (AQuA: 1589)  
Respect in the Workplace Policy (AQuA: 2723)  
Equal Opportunity Policy (AQuA: 195)  
Investigation Protocols (AQuA: 2682)  
Guidelines – Management of Performance and Conduct (AQuA: 2792)  
Handling of Matters under Policy Investigation (AQuA: 1201)  
Australian Standard 8004–2003 (Whistleblower Protection Programs for Entities)  
Australian Standard 8001–2008 (Fraud and Corruption Control)

## 15. Consultation Process

Executive Team  
CEO  
Head of Human Resources  
Governance and Risk Manager  
HWL Ebsworth Lawyers  
Board

AQuA No: 2531 Version: 2	Issue Date: 28.02.2019 Review Period: 28.02.2021	Author: Governance & Risk Manager Authoriser: Board Minute 08/02/19	Uncontrolled Copy When Printed	Page 9 of 9
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