

Whistleblower Policy (Serious Reportable Issues): How to make a disclosure of wrongdoing safely, securely and with confidence

Summary:

The McGrath Foundation (“the Foundation” or “the Company”) is committed to encouraging disclosures of wrongdoing and ensuring individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported.

Policy statement

1 Philosophy

The McGrath Foundation (“the Foundation” or “the Company”) recognises the importance of transparency and accountability in its operations to promote best practice in corporate governance. It is committed to the highest standards of conduct and ethical behaviour in all business activities across each entity within the McGrath Foundation.

The purpose of this policy is to encourage disclosures of wrongdoing and ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported.

This policy does not apply in respect of any disclosures which do not qualify for protection under the *Corporations Act 2001* (Cth) (**Corporations Act**) (however these disclosures may be protected under other legislation, for example the *Fair Work Act 2009* (Cth)).

Part A – Does this policy apply to you?

2 Who is covered by this Policy?

This policy will apply to you if you are, or have previously been, any one of the following in relation to the McGrath Foundation that is a ‘regulated entity’ as that term is defined in the Corporations Act:

- (a) an **officer** of the McGrath Foundation;
- (b) an **employee** of the McGrath Foundation (which includes permanent, part time, maximum-term or temporary employees, interns, secondees and managers);
- (c) an individual who **supplies** services or goods the McGrath Foundation, or is an **employee** of a person that supplies services or goods to the McGrath Foundation (which includes paid or unpaid suppliers, contractors, consultants and service providers);
- (d) an individual who is an **associate** of the McGrath Foundation; or
- (e) a **relative, spouse or dependant** of any individual referred to in (a) to (d) above (which includes a dependant of such an individual’s spouse).

3 What matters / issues are covered by this policy?

3.1 What disclosures can be made under this policy?

If you are a person this policy applies to (see Section two), you can make a disclosure under this policy about certain information relating to the McGrath Foundation.

To make a disclosure under this policy, you must have “reasonable grounds” to believe that the information concerns **Reportable Conduct** (as defined in Section 3.3). If you do not have reasonable grounds, or the information does not relate to Reportable Conduct, your disclosure will not qualify for protection under this policy.

3.2 What constitutes reasonable grounds?

Any disclosure of Reportable Conduct must be based on objective reasonable grounds. Your motive for making a disclosure, or your personal opinion of the person(s) involved, does not prevent you from qualifying for protection.

While you do not have to prove the allegations raised in your disclosure, you should have some form of supporting information underlying your belief in order to qualify for protection - you cannot make a completely baseless allegation.

3.3 What is reportable conduct?

Reportable Conduct involves information that falls into one of the following categories:

- (a) **Information concerning misconduct**

The information concerns misconduct in relation to the McGrath Foundation, including information indicating fraud, negligence, default or a breach of trust or duty.

- (b) **Information concerning an improper state of affairs**

The information concerns an improper state of affairs or circumstances in relation to the McGrath Foundation, including information:

- (i) indicating a systemic issue that the relevant regulator should know about to properly perform its functions;
- (ii) relating to conduct that may cause harm;
- (iii) relating to dishonest or unethical behaviour or practices; or
- (iv) relating to conduct that is prohibited by McGrath Foundation' standards or code(s) of conduct.

(c) Information indicating a legal offence or contravention

The information indicates that the McGrath Foundation, or one of its officers or employees, has engaged in conduct that constitutes:

- (i) an offence against any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- (ii) an offence against, or a contravention of, a provision of the Corporations Act or one of the prescribed list of other legislative instruments (including the *Australian Securities and Investments Commission Act 2001* (Cth), *Banking Act 1959* (Cth), *Financial Sector (Collection of Data) Act 2001* (Cth), *Insurance Act 1973* (Cth), *Life Insurance Act 1995* (Cth), *National Consumer Credit Protection Act 2009* (Cth), *Superannuation Industry (Supervision) Act 1993* (Cth) and *Superannuation Industry (Supervision) Act 1993* (Cth)), or an instrument made under any of those Acts.

(d) Information indicating conduct representing a danger or significant risk to the public

The information indicates that the McGrath Foundation, or one of its officers or employees, has engaged in conduct that represents a danger or significant risk to the public or public safety.

(e) Information indicating conduct representing a danger or significant risk to the financial system

The information indicates that the McGrath Foundation, or one of its officers or employees, has engaged in conduct that represents a danger or significant risk to the establishment of, or confidence in, the financial system.

Examples of Reportable Conduct include:

- engaging in cartel conduct or other forms of anti-competitive conduct prohibited under competition laws
- illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property
- insider trading, fraud, money laundering, misappropriation of funds or offering or accepting a bribe
- improper or illegal use of McGrath Foundation funds or resources
- insolvent trading
- breach of the continuous disclosure rules

- failure to keep accurate financial records
- falsification of accounts or financial irregularities
- failure to comply with, or breach of, legal or regulatory requirements
- failure of a director or other officer of McGrath Foundation to act with the care and diligence that a reasonable person would exercise, or to act in good faith in the best interests of the corporation
- failure of a director to give notice of any material personal interest in a matter relating to the affairs of McGrath Foundation
- 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
- any instruction to cover up or attempt to cover up any Reportable Conduct

3.4 Disclosures that cannot be made under this policy

Even if you are a person this policy applies to, this policy will not apply to any disclosure you make that does not qualify for protection under the Corporations Act. We encourage you to raise such issues with a member of the People and Culture Team.

Disclosures that cannot be made under this policy include personal work-related grievances. A personal work-related grievance is one that relates to your current or former employment and has, or tends to have, implications for you personally but does not relate to Reportable Conduct or have any other significant implications for the McGrath Foundation.

3.5 No protection for deliberate false reporting

If you deliberately make a malicious, false or vexatious allegation under this policy, you will not be able to access the whistleblower protections under the Corporations Act and may be subject to disciplinary proceedings.

However, if you reasonably suspect misconduct or have some information leading to a suspicion (but lack all the details) we encourage you to nonetheless come forward. Provided you make your disclosure in good faith, you may still be protected even if your allegation is then found to be incorrect, unfounded or unable to be substantiated in a subsequent investigation.

4 How can you report an issue?

4.1 Contact points for making a disclosure

Even if you are a person this policy applies to (see Section 2.0), and have reasonable grounds to believe you have information concerning Reportable Conduct (see Section 3.3), you may make a disclosure to any of the persons or organisations referred to in this Section.

Disclosures can be made verbally or in writing and can be made anonymously.

[How to report to a Disclosure Officer](#)

In the first instance, we encourage you to make your disclosure to one of the following Disclosure Officers (in person or by phone during office hours, or by appointment, via letter or by email at all times) to allow us to take the appropriate steps to investigate, rectify (if possible) or otherwise resolve the issue internally as soon as possible:

| Disclosure Officer | Email | Phone | Address |
|-------------------------------------|--------------------------------|--------------|--|
| People and Culture Business Partner | emma@mcgrathfoundation.com.au | 02 8962 6164 | 1/32 Walker ST North Sydney NSW 2060 |
| Chief Executive Officer | holly@mcgrathfoundation.com.au | 02 8962 6116 | 1/32 Walker ST North Sydney NSW 2060 |

How to make anonymous or external disclosures

Should you wish to make an anonymous or confidential disclosure, or a disclosure outside of office hours, you can:

- (a) send your concern in writing, in an envelope marked 'CONFIDENTIAL' to:

Chief Executive Officer
McGrath Foundation Limited
1/32 Walker Street North Sydney NSW 2060
- (b) if you prefer not to speak to anyone internally, you can make a disclosure directly to ProAct Link, an external and independent hotline and reporting service operated by ProActive Strategies. ProAct Link reporting options are:
 - Online: www.proactlink.com.au
 - Phone: 1800 888 340
 - Email: report@proactlink.com.au

You can identify yourself or remain anonymous when you make a report to ProAct Link. If you disclose your identify to ProAct Link, you can request that your identity not be disclosed to your employee.

ProAct Link will not disclose your identity to your employer without your consent, unless it is legally required to do so.

After it receives a disclosure, ProAct Link will provide details of that disclosure to the nominated recipients in your employers' organisation, dependent on the nature of the disclosure.

Alternatively, you can choose to use a pseudonym to make your disclosure if you are not comfortable making one in your own name.

In such instances, we suggest you still maintain ongoing two-way communication with the McGrath Foundation and provide a means of contacting you anonymously, to ensure the McGrath Foundation can properly investigate your disclosure and provide feedback to you during the course of the investigation.

You can choose to remain anonymous even after making your disclosure, both during the course of the investigation of your disclosure, when receiving updates on the status of your disclosure and after the investigation is finalised.

Additional contacts

Alternatively, at law you will still qualify for protection if you make your disclosure to any of the following:

- (c) an **officer** of the McGrath Foundation (i.e. a director or company secretary);
- (d) a **senior manager** of the McGrath Foundation (i.e. a person that makes or participates in making decisions that affect the whole, or a substantial part, of the business of the McGrath Foundation or has the capacity to significantly affect the financial standing of the McGrath Foundation). For the purposes of this policy, the senior managers include the following:
 - (i) a McGrath Foundation Board Member;
 - (ii) a McGrath Foundation Leadership Team Member; and
 - (iii) a McGrath Foundation People and Culture Business Partner.
- (e) the McGrath Foundation's internal or external **auditor**, KPMG, or a member of the audit team;
- (f) a **legal practitioner** for the purpose of obtaining legal advice or representation in relation to the operation of the Corporations Act (even if the legal practitioner subsequently concludes that the information does not relate to Reportable Conduct);
- (g) the Australian Securities and Investments Commission (**ASIC**); and
- (h) the Australian Prudential Regulatory Authority (**APRA**).
- (i) The Australian Charities and Not for Profits Commission (**ACNC**)

Part B – Protection and Processes under the Policy

Part B sets out the legal protections that apply to persons who qualify for protection under this policy under Part A, and the process through which their disclosure will be handled and investigated.

5 What protections are you entitled to if you make a disclosure?

5.1 Protection of your identity (confidentiality)

No person can disclose the information contained in your disclosure, your identity or any information likely to lead to your identification (where that information has been obtained directly or indirectly because of your disclosure). It is illegal to do so except in one of the following instances:

- (a) you consent to the disclosure;
- (b) the disclosure is made to the following recipients:
 - (i) Australian regulatory bodies (ASIC, APRA, a member of the Australian Federal Police or any other entity prescribed by the Corporations Regulations from time to time); or
 - (ii) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of the Corporations Act; or
- (c) the information disclosed:
 - (i) is not your identity; and
 - (ii) is reasonably necessary for the purposes of investigating Reportable Conduct, and all reasonable steps are taken to reduce the risk that you will be identified as a result of the information disclosed.

You should obtain legal advice to determine how your information could be used if you are considering making a disclosure under this policy.

To protect your confidentiality from the time of initial receipt of your disclosure onwards, McGrath Foundation has secure filing systems in place for all paper, electronic documents and other materials relating to disclosures and will ensure only those directly involved in managing and investigating your disclosure have access to information relating to the disclosure. However, people may still be able to guess your identity if, for example, you told people you were considering making a disclosure, are one of few people who had access to the disclosed information or were previously told the disclosed information privately or in confidence.

5.2 Protection from detriment

No person can engage in or threaten to engage in conduct that causes you (or anyone else) detriment because (or partly because) they believe or suspect that you (or anyone else) made, may have made, propose to make or could make a disclosure under this policy.

Where a person engages in conduct causing detriment, the person must have intended to cause detriment. However, where a person threatens detriment, it is irrelevant whether they intended to cause you (or anyone else) to actually fear that their threat would be carried out, or were simply reckless as to this effect.

A threat to cause detriment may be express, implied, conditional or unconditional, and it is irrelevant whether you (or the other person) actually fears that the threat will be carried out.

Examples of detrimental conduct:

For the purposes of this policy, detrimental conduct includes any of the following:

- dismissal of an employee
- injury of an employee in his or her employment
- alteration of an employee's position or duties to his or her disadvantage
- discrimination between an employee and other employees of the same employer
- harassment or intimidation of a person
- harm or injury to a person, including psychological harm
- damage to a person's property
- damage to a person's reputation
- damage to a person's business or financial position
- any other damage to a person

However, this does not protect you from all forms of differential treatment where there are alternative reasons behind that treatment.

Examples of non-detrimental conduct:

For the purposes of this policy, non-detrimental conduct includes any of the following:

- administrative action that is reasonable to protect you from detriment (e.g. when the disclosure relates to wrongdoing in your immediate work area)
- managing your unsatisfactory work performance

If you have suffered detriment, McGrath Foundation will take such steps as are reasonable in the circumstances (depending on factors such as the nature of the Reportable Conduct and the circumstances of the detriment) to protect your welfare. Such steps may include, for example, providing access to support services and modifying your working arrangements (subject to work needs and availabilities, and the practicality of such measures being put in place).

5.3 Compensation

If you suffer loss, damage or injury because of a disclosure where the McGrath Foundation failed to prevent a person from causing you detriment (considering factors such as whether the McGrath Foundation took reasonable precautions to avoid the detrimental conduct and the extent of its compliance with its whistleblower policy (if applicable)), you may go to court to seek compensation or other remedies (e.g. injunctions, apologies). We encourage you to seek independent legal advice before doing so.

5.4 Protection from liability

You will be protected from civil, criminal and administrative liability relating to your disclosure. However, this protection will not grant you immunity for any misconduct you have engaged in that is revealed in your disclosure or for any action brought in relation to any false disclosure you make.

5.5 Protections available under the Taxation Administration Act

The Tax Act gives you special protection for disclosures about a breach of any Australian tax law by McGrath Foundation or misconduct in relation to McGrath Foundation' tax affairs where all of the following conditions are satisfied:

- a) you are a person to whom the tax protections apply;
- b) you report the matter to a Disclosure Officer, a director, secretary or senior manager of McGrath Foundation, any Company external auditor (or member of that audit team), a registered tax agent or BAS agent who provides tax or BAS services to McGrath Foundation, or any other team member or officer of McGrath Foundation who has functions or duties relating to tax affairs of McGrath Foundation (eg an internal accountant) (each, a Company Recipient), the Commissioner of Taxation (Commissioner), or a lawyer for the purpose of obtaining legal advice or representation in relation to a disclosure; and
- c) if the disclosure is made to:
 - i. a Company Recipient, you:
 - A. have reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of McGrath Foundation or an associate of that Company; and
 - B. consider that the information may assist McGrath Foundation Recipient to perform functions or duties in relation to the tax affairs of McGrath Foundation or an associate of McGrath Foundation; or
 - ii. the Commissioner, you consider that the information may assist the Commissioner to perform functions or duties in relation to the tax affairs of McGrath Foundation or an associate of McGrath Foundation.

The protections given by the Tax Act when the above conditions are met are as follows:

- a) protection from civil, criminal and administrative legal action relating to your disclosure;
- b) protection from detriment (or threat of detriment) engaged in on the belief or suspicion that you have made, may have made, propose to make or could make a disclosure, and certain rights to compensation for damages caused by such detriment;
- c) protection of your identity, unless you consent to the disclosure or where:
 - i. the disclosure is only to the extent reasonably necessary for the effective investigation of the allegations raised in your disclosure;
 - ii. the concern is reported to the Commissioner or the Australian Federal Police; or
 - iii. the concern is raised with a lawyer for the purpose of obtaining legal advice or representation;
- d) where the disclosure was made to the Commissioner, non-admissibility of the reported information in criminal proceedings or in proceedings for the imposition of a penalty (except where the proceeding relates to the veracity of the information); and
- e) unless you have acted unreasonable, protection from any adverse costs-order in legal proceedings relating to the disclosure.

6 How will the McGrath Foundation handle and investigate disclosures?

6.1 How will your disclosure be handled initially?

Where you have made a disclosure internally, the Disclosure Officer will acknowledge your disclosure within a reasonable period (provided you can be contacted, even via anonymous channels) and report your disclosure directly to the following:

- (a) **Protection officer:** Who will assess the risk of detriment to you and those implicated by your disclosure and be responsible for your protection. The protection officer may be the CEO (if a team member is implicated), the Chairman (if the CEO or a Board member is implicated), the President (if the Chairman is implicated), as nominated on a case-by-case basis.
- (b) **Investigation officer:** Who will promptly conduct a preliminary review of your complaint to determine whether it qualifies for protection (see Part A) and whether a formal, in-depth investigation is required. The investigation officer may be the CEO (if a team member is implicated), the Chairman (if the CEO or a Board member is implicated), the President (if the Chairman is implicated) a member of the People and Culture Team or an external person, as nominated on a case-by-case basis.

McGrath Foundation is committed to ensuring that confidentiality is maintained during the handling and investigation process and will only communicate information relating to your disclosure with your consent or otherwise in accordance with McGrath Foundation' obligations of confidentiality (see Section 5.1).

6.2 How will your disclosure be investigated?

The process and timeframe involved in investigating your disclosure will vary depending upon the nature of the disclosure, however, generally the steps taken by the investigation officer in investigating a disclosure will be as follows (in order):

- (a) **Scoping:** If an investigation is required, the nature and scope of the investigation will be determined (i.e. who will lead the investigation, what third party advice may be required, what is the likely timeframe). The investigation officer will endeavour to finalise this scoping process within one month after receipt of your disclosure.
- (b) **Engagement:** If external assistance or specialist advice is required, third parties will be engaged. This may take approximately one month following finalisation of the scoping process.
- (c) **Investigation:** The investigation officer, along with any internal or external resources or advisers engaged to assist in the process, will investigate the disclosure to determine whether it reveals any Reportable Conduct. The investigation officer will use reasonable endeavours to finalise this process within six months following the engagement phase.
- (d) **Recording, reporting and review:** The Disclosure Officer(s) and any investigation officer(s) will keep appropriate records and documentation for each step throughout the disclosure handling and investigation process. Investigation findings, and suggestions for rectifying any identified issues, will be reported to the Chief Financial Officer who will, in turn, report periodically to McGrath Foundation' Risk, Insurance and Audit Committee (RIAC). This process may take between one to two months

following finalisation of the investigation, noting the method for documenting and reporting the findings will depend on the nature of the disclosure.

The above timeframes are indicative only, and McGrath Foundation cannot guarantee that any of these timeframes will be met despite its reasonable efforts. Timing will depend on a number of factors, including the nature and severity of the wrongdoing, whether you are readily contactable and the availability of third parties to assist with the investigation.

McGrath Foundation acknowledges that this process naturally contains some inherent limitations, for example the natural risk of human error and reliance on availability of resources and third parties over which McGrath Foundation does not have control, issues caused by any inability of McGrath Foundation to contact you and the need for McGrath Foundation to operate within the restraints of confidentiality.

McGrath Foundation will (provided you can be contacted, even via anonymous channels) provide you with regular progress updates and advise you of the outcome of the investigation to the extent reasonable and appropriate in the circumstances (noting there may be circumstances where it is not appropriate for McGrath Foundation to provide you with this information). McGrath Foundation may do so verbally or in writing, noting however that you will not be entitled to receive a copy of the investigation report. The frequency and nature of these updates will vary depending on the nature of the disclosure.

7 How will the McGrath Foundation ensure the fair treatment of employees mentioned in a disclosure?

McGrath Foundation will ensure the fair treatment of employees mentioned or implicated in a disclosure by maintaining confidentiality, keeping them reasonably informed about the progress of the disclosure (where practical and appropriate) and, when investigating the disclosure, doing so in a thorough, objective, fair and independent manner.

8 Breach of the Whistleblower Policy

Any breach of this Policy may result in disciplinary action which may include dismissal.

9 Accessing the Whistleblower policy

McGrath Foundation will ensure this policy is uploaded to Pulse and our external website.