

WHISTLEBLOWER POLICY

1 PURPOSE

The purpose of this Whistleblower Policy (**Policy**) is to:

1. encourage Disclosers to report an issue if they reasonably believe someone has engaged in serious wrongdoing;
2. outline how MGSM will deal with whistleblowing reports;
3. clarify when a whistleblowing report will fall under this Policy, and when it will fall under the *Reporting Wrongdoing – Public Interest Disclosures* policy and procedure of Macquarie University; and
4. set out the avenues available to Disclosers to report serious wrongdoing to MGSM under this Policy. While it is generally expected that these issues will be raised through the normal channels of line management, reporting by other avenues may be appropriate or necessary in certain situations.

2 BACKGROUND

MGSM is committed to promoting and supporting a culture of integrity.

As a regulated entity under the *Corporations Act 2001* (Cth) (the **Corporations Act**) MGSM is subject to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (the **Whistleblower Protection Law**), which requires MGSM to have a whistleblower policy that complies with the Section 1317AI of the Corporations Act. The Whistleblower Protection Law deals with reporting of suspected misconduct, or an improper state of affairs or circumstances of the regulated entity or information that indicates the regulated entity (including their employees or officers) have engaged in conduct that constitutes a breach of the Corporations Act (amongst other statutes), an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more, or represents a danger to the public or the financial system.

MGSM is a controlled entity of Macquarie University (the **University**). As part of the University group, MGSM is also subject to the *Public Interest Disclosures Act 1994* (NSW) (the **PID Act**). The PID Act deals with the disclosure of corrupt conduct, maladministration, serious and substantial waste, government information contravention and local government pecuniary interest contravention, that is in the public interest.

This Policy is one of a number of the University's policies that promote an ethical and accountable culture. This Policy should be read in conjunction with other University policies, in particular the *Reporting Wrongdoing – Public Interest Disclosures Policy and Procedure* (**PID Policy and Procedure**), which sets out the University's internal system for receiving, assessing and dealing with internal reports of suspected wrongdoing which are public interest disclosures under the **PID Act**.

3 SCOPE

3.1 Who this Policy applies to

This Policy applies to **Disclosers** which means any individual who is, or has been, any of the following with respect to MGSM, and who qualify as a whistleblower under the Corporations Act:

- employees, directors and officers;
- volunteers;
- consultants and contractors, including their employees;
- suppliers, including their employees, and
- relatives, dependents, spouses or dependents of a spouse of any of the above.

3.2 Matters this Policy applies to

This Policy applies only in connection with Reportable Conduct (as defined in Section 4) regarding MGSM's activities.

If the Reportable Conduct qualifies as a wrongdoing that can be dealt with under the PID Act as a public interest disclosure, the Discloser will need to consider if the disclosure should be made under the PID Policy and Procedure or this Policy. A disclosure that can be made under either policy may only be made under one, not both, of the policies.

This Policy does not apply to a Personal Work-Related Grievance or any complaint of injustice in the assessment of any employee's performance or disciplinary procedures. A Personal Work-Related Grievance must be dealt with under the University's *Complaint Management Procedure for Staff*. Disclosures relating to Personal Work-Related Grievances do not qualify for protection under the Corporations Act.

A disclosure of information by a Discloser, who is acting honestly and reasonably, qualifies for protection under the Corporations Act and is protected under this Policy if the Discloser has reasonable grounds to suspect the Reportable Conduct in relation to MGSM and the disclosure is made in accordance with this Policy (**Protected Disclosure**).

4 DEFINITIONS

Discloser has the meaning given to that word in Section 3.1 of this Policy.

Eligible Recipient means:

- (a) an officer or senior manager of MGSM;
- (b) an auditor or member of an audit team conducting an audit of MGSM; or

- (c) the designated Whistleblower Protection Officer, as listed in Section 8 of this Policy.

MGSM means MGSM Limited ABN 83 153 973 481, a company limited by guarantee, that is a controlled entity of Macquarie University ABN 90 952 801 237.

Protected Disclosure has the meaning given to that word in Section 3.2 of this Policy.

Personal work-related grievance means a grievance about any matter in relation to the Discloser's employment, or former employment, having (or tending to have) implications for the person and does not have significant implications for MGSM. For example:

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

Reportable Conduct means serious breaches of the corporation laws or other reportable conduct such as information concerning misconduct or an improper state of affairs or circumstances by MGSM, or an officer or employee of MGSM, including but not limited to:

- (a) illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- (b) fraud, money laundering or misappropriation of funds;
- (c) offering or accepting a bribe;
- (d) financial irregularities;
- (e) failure to comply with, or breach of, legal or regulatory requirements; and
- (f) 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.

5 POLICY STATEMENT

MGSM encourages the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving MGSM, and will ensure that those persons who make a report can do so without fear of intimidation, disadvantage or reprisal.

6 PROCEDURE

6.1 How to make a disclosure

A Discloser can report a suspected Reportable Conduct in writing or verbally. Disclosers are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. If a report is made verbally, a record will be made of the report.

6.2 Persons to Whom Reports of Wrongdoing Should Be Made

Disclosers are encouraged to report a suspected Reportable Conduct within MGSM, in the first instance. Where the Discloser believes this is not appropriate, an alternative reporting mechanism is available.

Reporting a suspected Reportable Conduct can be made to:

1. any Manager of MGSM;
2. a Whistleblower Protection Officer as listed in Section 8, or any other Eligible Recipient; or
3. the University's Disclosure Coordinator.

Disclosers can also make a Protected Disclosure at any time directly to a statutory body or government department, such as ASIC or the Australian Federal Police.

6.3 Handling and investigating a Reportable Conduct

If a Discloser reports a Reportable Conduct to a Manager of MGSM or anyone else other than the Whistleblower Protection Officer, the recipient of the information must then report the information disclosed to a Whistleblower Protection Officer, within 5 working days of receipt of the report and in accordance with the confidentiality protocols detailed in this Policy.

There may be occasions when it would be appropriate for some person other than the Whistleblower Protection Officer to have responsibility for dealing with the report. If the report relates to a Whistleblower Protection Officer, the matter may be referred to the University's Disclosure Coordinator, who will then have the role of the Whistleblower Protection Officer under this Policy in respect of the report.

Whistleblower Protection Officers are responsible for receiving, forwarding and acting upon disclosures made under this Policy.

The Whistleblower Protection Officer will:

1. Where possible, within 5 working days after receipt of a report of Reportable Conduct, explain to the Discloser what will happen in relation to the information received;

2. When requested, make arrangements for the report to be made discreetly and, if possible, away from the workplace;
3. Reduce to writing and date any report received orally;
4. Determine whether or not the report is a public interest disclosure under the PID Act and if the report is considered to be a public interest disclosure under the PID Act, inform the Discloser of the PID Policy and Procedure and refer the Discloser to the University's Disclosure Coordinator;
5. Conduct an initial assessment of the risk of reprisals and develop strategies to deal with those risks and provide support to Disclosers, to the extent possible;
6. Determine the appropriate action to be taken in relation to a disclosure, including determining whether:
 - (i.) the facts claimed in the report are in dispute and if they are, determine how best to investigate them;
 - (ii.) any other investigation is appropriate in relation to any aspect(s) of the report, which may include appointing an external independent party to undertake an investigation; and/or
 - (iii.) it is appropriate to refer the report to the police (if a criminal matter);
7. Seek legal advice from the University's Office of the General Counsel, as appropriate;
8. Take all necessary and reasonable steps to ensure that the identity of persons who make disclosures and the subjects of disclosures are kept confidential; and
9. Report the findings of an investigation and recommended action to the Board of MGSM and otherwise, keep them informed.

6.4 Notification of action taken or proposed

A Discloser who makes a report of Reportable Conduct under this Policy will be notified, within 90 days of the report being made, of:

- the action taken or proposed to be taken in respect of the report; or
- that the matter has been investigated and is not complete, together with the reason why it is not complete.

The notification should contain, as appropriate, sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the Reportable Conduct and include a sufficient statement of the reasons for the action taken or proposed to be taken in response to the report.

The notification should also include sufficient information to enable the individual to make an assessment as to whether:

- a decision was made not to investigate the matter; or
- a decision was made to investigate the matter, but the investigation has not been completed within 90 days of the original decision being made; or
- the matter was investigated but no recommendation was made for the taking of any action in respect of the matter.

6.5 Support for individuals who are the subject of a report

MGSM is committed to ensuring staff who are the subject of a Reportable Conduct are treated fairly and reasonably. They will be:

- treated fairly and impartially;
- told their rights and obligations under the MGSM's policies and procedures;
- kept informed during any investigation as appropriate;
- given the opportunity to respond to any allegation made against them; and
- informed of the result of any investigation as appropriate.

The identity of any individual subject to a report of Reportable Conduct will be protected where it is reasonable and possible to do so.

7 PROTECTIONS FOR DISCLOSERS

7.1 Confidentiality

Anonymous reports of Reportable Conduct are accepted under this Policy. However, anonymous reports may have significant limitations that inhibit proper and appropriate inquiry or investigation. These limitations may include the inability of MGSM to take reasonable steps to provide the Discloser with the necessary support and protection from reprisals, as well as provide feedback on the progress or outcome and/or to gather additional particulars to assist the inquiry/investigation.

If a Discloser chooses to disclose a Reportable Conduct anonymously, MGSM will comply with this request and will endeavour to investigate the disclosure.

Information contained in a Protected Disclosure can be disclosed with or without the Discloser's consent if:

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

Subject to this Policy, the Corporations Act and applicable laws, unauthorised disclosure of the identity or information that is likely to lead to the identification of the Discloser who has made a Protected Disclosure to any person not involved in the investigation without the consent of the Discloser is a breach of this Policy and will be subject to disciplinary action.

7.2 Protection against reprisals

MGSM will take all reasonable steps to provide the Discloser with the necessary support and protection from reprisals, including:

- injury, damage or loss;

- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceedings.

In assessing and dealing with reports of Reportable Conduct, MGSM will consider the possibility of reprisal action and seek to minimise its occurrence.

If a Discloser is concerned about the possibility of reprisal action, they should raise the matter with the Whistleblower Protection Officer.

7.3 Protection against actions

If a Discloser makes a report of a Reportable Conduct, they will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure. They will not have breached any confidentiality obligations and they will have the defence of absolute privilege in defamation.

A Discloser is however not protected from civil or criminal liability for any of his or her conduct which may be revealed by a report.

The protections in this Policy will also apply to a Discloser who has made a disclosure of information relating to MGSM to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to whistleblowing protection laws.

Disclosures that are found to be deliberately false or have been made maliciously do not qualify for protection under the Corporations Act and will be deemed to be a breach of this Policy.

8 WHISTLEBLOWER POLICY CONTACTS

Whistleblower Protection Officers

MGSM's Whistleblowing Protection Officers are the following individuals who, from time to time, occupy and act in the designated position:

Executive Director	Pete Boyle +61 2 9850 6580 pete.boyle@mq.edu.au
Company Secretary	Edelvine Rigato +61 2 9850 7448 edelvine.rigato@mq.edu.au

University's Disclosure Coordinator

The University's Disclosure Coordinator is the individual who, from time to time, occupies or acts in the position of:

Vice-President, People and Services	Nicole Gower +61 2 9850 9769 nicole.gower@mq.edu.au
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9 GENERAL

9.1 Access to this Policy

This Policy will be made available to officers and employees of MGSM and will be accessible from the [Macquarie University's Policy Central](#).

9.2 Breach of this Policy

A breach of this Policy may be regarded as misconduct which may lead to disciplinary action (including dismissal, termination of service or cessation of a service or client relationship).

Any breach of confidentiality of the identity of a Discloser and any retaliation (or threatened retaliation) against the Discloser will be taken seriously and if appropriate will be investigated separately.

9.3 Review of this Policy

The Board of MGSM shall periodically review this Policy and related procedures to:

- ensure that whistleblower reports are being recorded and dealt with appropriately; and
- consider whether any changes are required to the Policy or procedures.

9.4 Relevant legislation

Corporations Act 2001 (Cth)
Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019
Public Interest Disclosures Act 1994 (NSW)

9.5 Key Related Documents

Other University policies that should be read in conjunction with this Policy include:

[Complaint Management Procedure for Staff](#)
[Fraud and Corruption Prevention Policy](#)
[Reporting Wrongdoing: Public Interest Disclosures Policy and Procedure](#)
[Staff Code of Conduct](#)

10 NOTES

10.1	Contact Officer	MGSM HR Manager
10.2	Implementation Officer	MGSM HR Manager
10.3	Approval Authority / Authorities	MGSM Limited Board
10.4	Date Approved	30 July 2020
10.5	Date of Commencement	30 July 2020
10.6	Date for Review	December 2023
10.7	Documents Superseded by this Policy	-
10.8	Amendment History	-