



MINERALS COUNCIL OF AUSTRALIA

WHISTLEBLOWER POLICY

DECEMBER 2019

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1. INTRODUCTION

1.1. Aim

As stated in the *MCA code of conduct*, the MCA is committed to transparency and to building an environment in which people feel free to raise legitimate issues relating to the MCA's operations. The MCA encourages anyone who is aware of wrong doing to speak up and will protect whistleblowers from detriment.

Box: Extract from the *MCA code of conduct*

MCA employees are also guided by the core values of:

- Respect
- Integrity
- Trust
- Accountability
- Inclusiveness
- Continuous improvement
- Leadership

The MCA expects all employees to:

- Behave in a responsible and professional manner
- Be fair and honest
- Treat others with courtesy and respect recognising and responding appropriately to the differing views and concerns of others
- Ensure fitness for duty, and the safety, health and welfare of everyone in the workplace
- Ensure private conduct maintains the integrity of the MCA.

MCA employees and members endorse the principles of [Enduring Value](#), the industry's framework for sustainable development. *Enduring Value* enshrines a number of fundamental principles, including:

- Developing and implementing company statements of ethical business principles
- Implementing policies and practices that seek to prevent bribery and corruption
- Complying with or exceeding the requirements of host country laws and regulation.

The MCA will support employees who report genuine concerns of wrongdoing and manage any reports of suspected wrongdoing in a fair, transparent and consistent manner.

Source: MCA code of conduct, 17 September 2018 pp. 2 and 4

1.2. Purpose

The *Corporations Act 2001 (Cth)* and the *Tax Administration Act 1953 (Cth)* provide protections for whistleblowers.

The purpose of this policy is to set out information relating to this federal whistleblower protection scheme so that individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported. It includes information about:

- (a) The types of disclosures that qualify for protection
- (b) The protections available to whistleblowers

- (c) Who disclosures can be made to and how they can be made
- (d) How the MCA will support whistleblowers and protect them from detriment
- (e) How the MCA will investigate disclosures
- (f) How the MCA will ensure fair treatment of employees who are the subject of or are mentioned in disclosures
- (g) How this policy is to be made available to officers and employees of the MCA.

Note: Disclosures that are not about 'disclosable matters' do not qualify for protection under the Corporations Act. The MCA strongly discourages false and/or vexatious reports – see Section 8.

Note: This policy concerns the disclosure of issues relating **only** to the MCA. For information on how to make a protected disclosure about misconduct at another entity, please consult that company's whistleblower policy.

2. SCOPE OF THE WHISTLEBLOWER PROTECTION SCHEME

2.1. What disclosures are protected?

A disclosure will 'qualify' for protection under the whistleblower protection scheme if:

- (a) It is a disclosure by an 'eligible whistleblower' to:
 - (i) ASIC, the Commissioner of Taxation (in relation to tax matters), a prescribed Commonwealth authority or a legal practitioner or
 - (ii) An 'eligible recipient' and
- (b) The discloser has 'reasonable grounds' to 'suspect' that the disclosed information concerns a disclosable matter.

Public interest and emergency disclosures also qualify for protection – see Sections 4.4 and 4.5 for more detail.

2.2. Who is an 'eligible whistleblower'?

The following people are capable of being 'eligible whistleblowers':

- (a) An officer of the MCA
- (b) An employee of the MCA
- (c) An individual who is an associate of the MCA (including employees of members and associate member companies)
- (d) An individual who supplies goods or services to the MCA (whether paid or unpaid) or an employee of a supplier
- (e) An individual who previously held any of the above positions or functions
- (f) A relative of any of the individuals set out above or a dependent of one of those individuals or of the spouse of such an individual.

3. WHAT INFORMATION WILL BE A DISCLOSABLE MATTER?

3.1. What is a 'disclosable matter'?

A disclosable matter is information that concerns:

- (a) Misconduct or an improper state of affairs or circumstances in relation to the MCA or one of its related bodies corporate or
- (b) Conduct that constitutes an offence against, or a contravention of, the:
 - (i) *Corporations Act 2001 (Cth)*
 - (ii) *Australian Securities and Investments Commission Act 2001 (Cth)*and any instrument made under these Acts by the MCA, a related body corporate or one of its or their officers or employees
- (c) An offence against or a contravention of any other law of the Commonwealth that is punishable by imprisonment for 12 months or more or
- (d) A danger to the public or the financial system.

The misconduct or an improper state of affairs can also be in respect of tax affairs.

Disclosable matters do not necessarily involve a contravention of a law. For example, 'misconduct or an improper state of affairs or circumstances' could involve conduct that, whilst not unlawful, indicates a systemic issue of concern that the relevant regulator should know about to properly perform its functions. Also, information that indicates a significant risk to public safety or the stability of, or confidence in, the financial system is a disclosable matter, even if it does not involve a breach of a particular law.

Examples of disclosable matters include:

- (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) Insider trading
- (d) Offering or accepting a bribe
- (e) Failure to comply with, or breach of, legal or regulatory requirements including but not limited to the Australian Government Lobbying Code of Conduct
- (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.

An eligible whistleblower who makes a disclosure must have 'reasonable grounds to suspect' the information to qualify for protection. This means that even if a disclosure turns out to be incorrect, the protections will still apply provided the eligible whistleblower had 'reasonable grounds to suspect'.

Disclosures that are not about a disclosable matter are not covered by this policy and do not qualify for protection under the whistleblower protection scheme. However, such disclosures may be protected under other legislation, such as the *Fair Work Act 2009 (Cth)*, for example, personal work-related grievances (set out below).

3.2. Personal work-related grievances

A disclosure does not qualify for protection under the whistleblower protection scheme to the extent that the information disclosed:

- (a) Concerns a personal work-related grievance of the eligible whistleblower and

- (b) Does not concern a contravention, or an alleged contravention of the detriment provisions referred to in Section 6.3 of this policy.

A disclosure is a 'personal work-related grievance' if:

- (a) The information concerns a grievance about a matter relating to the eligible whistleblower's employment, or former employment, having (or tending to have) implications for the eligible whistleblower personally and
- (b) The information:
 - (i) Does not have significant implications for the MCA, or another regulated entity, that do not relate to the discloser and
 - (ii) Does not concern conduct, or alleged conduct, referred to in points 3.1(b), 3.1(c), or 3.1(d) above.

Examples of personal work-related grievance include:

- (a) An interpersonal conflict between the discloser and another employee
- (b) A decision relating to the employment, transfer or promotion of the discloser
- (c) A decision relating to the terms and conditions of employment of the discloser
- (d) A decision to suspend or terminate the employment of the discloser, or otherwise to discipline the discloser.

Disclosures about personal work-related grievances should be raised under the MCA's existing grievance policy which can be found in the *MCA code of conduct*.

3.3. What information should be provided?

Disclosers are requested to provide as much information as possible and any known details about the events underlying the report.

This might include the date, time, location, name of person[s] involved, possible witnesses to the events, evidence of the events (e.g. documents, emails) and steps the discloser may have already taken to report the matter elsewhere or to try to resolve the concern.

4. WHO CAN RECEIVE A DISCLOSURE?

For the protections under the whistleblower protection scheme to apply, a disclosure must be made directly to an 'eligible recipient'. These people are detailed below. If you are an eligible whistleblower your disclosure qualifies for protection from the time it is made to an eligible recipient, regardless of whether you or the recipient recognises that the disclosure qualifies for protection at that time.

4.1. Eligible recipients within the MCA

The MCA encourages you to make a disclosure internally to the individuals set out below (referred to as authorised recipients) each of whom has relevant experience to deal with such matters.

Disclosures may be made in person, by telephone, by email or by post to PO Box 4497, Kingston ACT 2604.

The authorised recipients in the MCA are:

- (a) Chief Executive Officer
- (b) Company Secretary
- (c) General Manager Safety, Workforce & Innovation
- (d) General Manager Strategy, State & Territory Relationships

If the disclosure relates to the CEO or a director of the MCA, it should be raised directly with the Company Secretary.

If you do not feel comfortable raising your disclosure with an authorised recipient, you could also raise it with the MCA's auditors (including a member of an audit team conducting an audit).

The MCA's auditor is PwC Australia. The lead partner is David who may be contacted via GPO Box 447, Canberra ACT 2601.

4.2. Disclosure to external regulatory bodies

While it is the MCA's preference for disclosures to be made internally – to give the MCA the opportunity to investigate and deal with them – an eligible whistleblower may choose to raise disclosable matters outside of the MCA with:

- (a) ASIC (<https://asic.gov.au/about-asic/contact-us/how-to-complain/report-misconduct-to-asic/>)
or
- (b) A Commonwealth authority prescribed in the corporations regulations.

4.3. Disclosure to a legal practitioner

A report of a disclosable matter will also be protected if it is to a qualified legal practitioner for the purpose of taking legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act (even in the event that the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').

4.4. Public interest disclosures

There is an additional category of disclosures called 'public interest disclosures' that qualify for protection. These can be made to journalists and Members of Parliament but only if the eligible whistleblower complies with the following strict requirements:

- (a) The eligible whistleblower must have first made a qualifying disclosure to ASIC or a prescribed Commonwealth authority
- (b) At least 90 days must have passed since the qualifying disclosure was made

- (c) The eligible whistleblower must 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 whistleblower must have reasonable grounds to believe that making a public interest disclosure would be in the public interest
- (e) After 90 days must have passed, the eligible whistleblower 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 whistleblower 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 whistleblower protection scheme.

4.5. Emergency disclosures

There is an additional category of disclosures called 'emergency disclosures' that qualify for protection. These can be made to journalists and members of Parliament but only if the discloser complies with the following strict requirements:

- (a) The discloser must have first made a qualifying disclosure to ASIC or a prescribed Commonwealth authority
- (b) The discloser must have 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 discloser must have given notice to the body to which the qualifying disclosure was made that states:
 - (i) That they intend to make an emergency disclosure and
 - (ii) Have included sufficient information to identify the qualifying disclosure and
- (d) The extent of the information disclosed in the emergency disclosure must not be more than is necessary to inform the journalist or Member of Parliament of the substantial and imminent danger.

5. ANONYMOUS DISCLOSURES

Eligible whistleblowers can choose to make a disclosure anonymously.

Anonymous disclosures are still capable of being protected under the whistleblower protection scheme.

A whistleblower may be concerned about their identity becoming known. If such concerns exist, eligible whistleblowers may prefer to adopt a pseudonym for the purposes of their disclosure and make a disclosure to an MCA authorised recipient by creating and using an anonymous Gmail account or by submitting the disclosure by post to GPO Box 447, Canberra ACT 2601.

In some cases, it may be more difficult for the MCA to investigate an anonymous disclosure. However, it may be possible to address this if the whistleblower provides a means of contact for any follow up questions (e.g. via an anonymous email address).

6. PROTECTIONS

Important protections relating to confidentiality and detriment apply to eligible whistleblowers who report disclosable matters in accordance with the whistleblower protection scheme outlined in this policy.

The MCA takes contraventions of these protections very seriously and may take disciplinary action against anyone for doing so. If you have any particular concerns about this, you can raise them with an authorised recipient.

Civil and criminal sanctions also apply for breaches of these protections.

6.1. Confidentiality

Unless the eligible whistleblower consents, it is illegal for a person to disclose an eligible whistleblower's identity or any information that may lead to their identification (subject to the exceptions set out below).

Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the whistleblower protection scheme.

The MCA will take the following measures to protect the confidentiality of a discloser's identity (where applicable):

- (a) All personal information or reference to the discloser witnessing an event will be redacted
- (b) The discloser will be referred to in a gender-neutral context
- (c) Where possible, the location of the discloser will be referred to only as the generic 'MCA office'
- (d) Disclosures will be handled and investigated by qualified staff
- (e) Only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to the discloser's consent) or information that is likely to lead to the identification of the discloser. Access to all information relating to a disclosure will be limited to those directly involved in managing and investigating the disclosure
- (f) Each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence
- (g) All paper and electronic documents and other materials relating to disclosures will be stored securely
- (h) Communications and documents relating to the investigation of a disclosure will not be sent to an email address or to a printer that can be accessed by other staff
- (i) Where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them.

Whistleblowers should consider that in practice, people may be able to guess a discloser's identity if:

- (a) The discloser has previously mentioned to other people that they are considering making a disclosure
- (b) The discloser is one of a very small number of people with access to the information
- (c) The disclosure relates to information that a discloser has previously been told privately and in confidence.

6.2. Consent to disclose identity

It is likely that the MCA will ask eligible whistleblowers to consent to the disclosure of their identity – or information that may lead to their identification. This consent may be needed to appropriately investigate and resolve the matter and/or prevent the disclosable matter occurring again.

If an eligible whistleblower does not consent to their identity being disclosed, it will still be lawful to disclose their identity to:

- (a) ASIC, the AFP or the Commissioner of Taxation (in relation to tax matters)
- (b) A legal practitioner for the purposes of obtaining legal advice or legal representation about the disclosure or
- (c) A body prescribed by the corporations regulations.

It will also be lawful to disclose information that may lead to the identification of the individual if this is reasonably necessary for the purpose of investigating the disclosure (provided the MCA takes all reasonable steps to reduce the risk that the eligible whistleblower will be identified as a result of the disclosure).

ASIC or the AFP can disclose the identity of an eligible whistleblower, or information that is likely to lead to the identification of the discloser, to a Commonwealth, state or territory authority to help the authority in the performance of its functions or duties.

If there is a breach of confidentiality, an eligible whistleblower can lodge a complaint with an authorised recipient or a regulator such as ASIC for investigation.

If your disclosure qualifies for protection set out in this policy, it is likely you will be asked to provide consent to the disclosure of your identity or information that is likely to lead to your 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.

6.3. The MCA cannot pursue action against the discloser

An eligible whistleblower is protected from any civil liability, criminal liability, administrative liability (including disciplinary action) for making a qualifying disclosure in accordance with the whistleblower protection scheme, and no contractual or other remedy may be enforced or exercised, against the eligible whistleblower on the basis of a qualifying disclosure.

However, the protections do not grant immunity for any misconduct a discloser has engaged in that is revealed in their disclosure.

6.4. Detriments and threats of detriment prohibited

The protections also make it unlawful 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.

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
- (h) Any other damage to a person.

Threats of detriments will also be unlawful if the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out.

Threats may be express or implied, conditional or unconditional. A discloser (or another person) who has been threatened in relation to a disclosure does not have to actually fear that the threat will be carried out.

The MCA will assess and mitigate the risk of detriment as soon as possible after receiving a disclosure. The will ensure management is aware of its responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of a discloser. Other measures to protect disclosers from detriment may include:

- (a) Providing additional support from the MCA's employee assistance program provider
- (b) Implementing strategies to help minimise and manage stress, performance impacts or other challenges resulting from the disclosure or its investigation
- (c) Reassigning or relocating staff involved in the disclosable matter.

If detriment has already occurred, the MCA will separately investigate and address the detrimental conduct. Measures may include:

- (a) Allowing the discloser to take extended leave
- (b) Developing a career development plan for the discloser that includes new training and career opportunities
- (c) Compensation or other remedies.

Reasonable administrative action to protect an eligible whistleblower from detriment (e.g. changing the whistleblower's reporting line if the disclosure relates to a manager) will not be detrimental conduct. Should this be necessary, the MCA will be mindful of the implications of identifying and/or isolating the whistleblower.

A disclosure will also not prohibit the MCA from managing (in the ordinary way) any separate performance issues that may affect the work of an eligible whistleblower.

A whistleblower may be subject to disciplinary action if, in the course of investigating a disclosure, the MCA determines that the eligible whistleblower was complicit in the misconduct or improper state of affairs or has otherwise acted in an improper way.

If an eligible whistleblower believes they have suffered detriment they can lodge a complaint with an authorised recipient or a regulator such as ASIC for investigation. An eligible whistleblower can also seek their own independent legal advice.

6.5. Court orders

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. Civil and criminal sanctions also apply to breaches of the whistleblower protection scheme.

6.6. Are there any other protections that are available?

Disclosures may also amount to the exercise of a workplace right by an employee or contractor. The MCA and its employees are prohibited under the *Fair Work Act 2009 (Cth)* from taking adverse action against employees or contractors because they exercised or propose to exercise any workplace rights.

7. FURTHER STEPS AND INVESTIGATION OF DISCLOSURES

7.1. Handling and investigating a disclosure

The MCA will acknowledge receipt of a disclosure within a reasonable period, assuming the 'eligible whistleblower' can be contacted (including through anonymous channels).

For the purposes of this policy, 'a reasonable period' shall be within 48 hours of the MCA authorised recipient receiving the disclosure (i.e. within 48 hours of the conversation; of opening the email; or of receiving the correspondence.)

The MCA will assess disclosures to determine whether:

- (a) They qualify for protection under the whistleblower protection scheme and
- (b) A formal, in-depth investigation is required.

If the disclosure is made internally, this assessment will be conducted by **two** MCA authorised recipients.

The threshold for determining whether an investigation is necessary shall be an objective test requiring 'that a discloser has reasonable grounds to suspect' the misconduct or improper state of affairs.

Generally, if an investigation is required, the MCA will determine:

- (a) The nature and scope of the investigation including consideration of any previous allegations/investigations
- (b) Who should lead the investigation – including whether an external investigation is appropriate
- (c) The nature of any technical, financial or legal advice that may be required to support the investigation
- (d) The anticipated timeframe for the investigation
- (e) If and how progress and the outcome is communicated.

7.2. Keeping a discloser informed

Where practicable, the MCA will keep the eligible whistleblower informed of the steps taken or to be taken (or if no action is to be taken, the reason for this), and will provide appropriate updates at key stages such as:

- (a) When the investigation process has begun
- (b) While the investigation is in progress
- (c) After the investigation has been finalised.

There may be circumstances where it may not be appropriate to provide details of the outcome to the discloser. The extent of the information provided, or whether it will be provided at all, will be subject to applicable confidentiality considerations, legal obligations and any other factors the MCA considers relevant in the particular situation.

The MCA may not be able to undertake an investigation, or provide information about the process etc. if it is not able to contact the discloser, for example, if a disclosure is made anonymously and has not provided a means of contact.

7.3. Documentation and reporting

The method for documenting and reporting the findings will depend on the nature of the disclosure.

The findings from an investigation will be documented by the authorised recipient and reported to the CEO (or, if the disclosure relates to the CEO, to the Chair.)

The documentation will be archived in the MCA's Content Manager in a manner that it can only be accessed by the CEO (or, if the disclosure relates to the CEO, to the Company Secretary on behalf of the Chair.)

8. SUPPORT AND FAIR TREATMENT

8.1. Support for the whistleblower

The MCA is committed to transparency and to building an environment in which people feel free to raise legitimate issues relating to the MCA's operations. The MCA is also committed to protecting eligible whistleblowers from detriment.

When a qualifying disclosure under the whistleblower protection scheme is made, the MCA will reiterate the requirements of this policy to relevant individuals to ensure the protections are not undermined.

Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against a whistleblower.

In addition, the MCA's employee assistance program services will be available to all whistleblowers and other employees affected by the disclosure should they require that support.

8.2. Fair treatment

If the disclosure mentions or relates to employees of the MCA other than the eligible whistleblower, the MCA will take steps to ensure that those individuals are treated fairly.

These steps will typically include:

- (a) Handling disclosures confidentially when it is practical and appropriate in the circumstances
- (b) Conducting objective, fair and independent investigations
- (c) Ensuring the individual has access to the MCA's employee assistance program
- (d) Advising the individual about the subject matter of the disclosure as and when required by principles of natural justice and procedural fairness
- (e) Giving the individual an opportunity to respond to the subject matter of the disclosure before making any adverse finding against them
- (f) Taking action against such a person only if there is cogent evidence of wrongdoing.

8.3. Vexatious disclosures

A 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 the whistleblower protection scheme.

The protections under the whistleblower protection scheme will not extend to vexatious complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for the MCA to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

9. SUMMARY

9.1. Steps in making a disclosure



9.2. Seeking advice before making a disclosure

ASIC's [website](#) also provides information for whistleblowers. It extends the following advice:

If you believe you may be a whistleblower or are unsure about what protections or rights to compensation may apply to you, it is important to seek legal advice. We are not able to give personal legal advice and can only provide general information on these issues.

Only a properly accredited legal practitioner who understands your circumstances can give you legal advice. This is especially important if you are thinking of acting on the rights the whistleblower protections give you.

This policy will be made available to employees and officers via email, the MCA's intranet and during the induction process for new employees. A version without the specific names and contact details of staff will also be published on the MCA's website.

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 the MCA.

This policy shall be reviewed at least every two years.