

WHISTLEBLOWER POLICY

Note: This policy does not displace, override or supplement the legislative protections afforded to whistleblowers. Parts of this policy **summarise** the relevant legislation applying to whistleblowers, which means that some legislative information may be absent. Therefore, a person considering a whistleblower disclosure should not rely on this policy alone to assess whether the disclosure would qualify for protection.

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OBJECTIVE

The objective of this policy is to make all employees and directors aware of their lawful rights to disclose any wrongdoing; and provide protection for employees who disclose any such information.

QUALIFYING FOR PROTECTION

The *Corporations Act 2001* (Cth) and other legislation provides special protections to people that disclose wrongdoing related to an organisation such as a club (whistleblowers). These protections prevent the organisation from subjecting the whistleblower to detriment, such as by dismissing, harassing or damaging the reputation of the whistleblower.

These legislative protections will apply to a person disclosing wrongdoing if three criteria are satisfied:

- the person making the disclosure is an **eligible whistleblower**; and
- the whistleblower suspects that the information being disclosed concerns wrongdoing in relation to Mittagong RSL Club Limited (a **disclosable matter**); and
- the information is disclosed to a prescribed person or body (a **prescribed recipient**).

At the end of this section (Qualifying for Protection), the Policy describes two other avenues to qualify for protection, besides satisfying the three criteria above.

Please see the Club's *Grievance Procedure* on how personal workplace or other matters that are not covered by this policy may be dealt with.

Eligible whistleblowers

A person is an eligible whistleblower if they are a current or former employee or director of Mittagong RSL Club Limited.

A current or former volunteer staff member is also an eligible whistleblower.

The following people are also eligible whistleblowers:

- a supplier to Mittagong RSL Club Limited, as well as the supplier's staff (including volunteer staff); and
- a relative or dependant of a current or former director, employee, volunteer staff member or supplier (including a dependant of the supplier's staff). A relative or dependant includes a spouse, parent, brother, sister, grandparent or grandchild.

Disclosable matters

This policy applies to the disclosure of information which a person has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances in relation to Mittagong RSL Club Limited. This may include:

- breaching Commonwealth, State or Territory legislation, or local authority by-laws;
- fraud or corruption;
- illegal activities or conduct (including theft, illicit drug sale/use, violence, threatened violence, or criminal damage against Mittagong RSL Club's assets or property);
- discrimination, vilification, sexual harassment, harassment, bullying and victimisation;
- unsafe work-practices.

As noted above, a disclosure is a *disclosable matter* if the person making the disclosure “has reasonable grounds to suspect” wrongdoing.

Therefore, if a person discloses information about possible wrongdoing, and the allegation is ultimately found to be incorrect (i.e. the club did not in fact engage in wrongdoing), the disclosure may still qualify for protection if the person had “reasonable grounds to suspect” that the information concerned wrongdoing. However, a person who maliciously or vexatiously makes disclosures or makes disclosures which they know are false is unlikely to qualify for protection.

Is your disclosure about tax?

Disclosures about tax wrongdoing are treated differently to other disclosures. For instance, the prescribed recipients are different depending on whether the disclosable matter relates to tax.

Tax disclosures refer to wrongdoing in relation to federal tax matters, such as tax avoidance or other breaches of tax legislation. Federal tax includes income tax (also known as corporate tax), capital gains tax (CGT), Goods and Services Tax (GST) and Fringe Benefits Tax (FBT).

Taxes that are regulated by state legislation must be treated as a non-tax matter for the purposes of whistleblower rules. Taxes regulated by state legislation include gaming tax, payroll tax and land tax.

For example, if an employee wishes to make a whistleblower disclosure because they suspect that a club is deliberately underpaying payroll tax or gaming tax, the employee should make the disclosure to a *prescribed recipient for non-tax matters* (described below) and not a *prescribed recipient for tax matters*.

Alternatively, if an employee wishes to make a whistleblower disclosure because they suspect that a club is deliberately underpaying corporate tax, the employee should make the disclosure to a *prescribed recipient for tax matters*.

Federal tax-related disclosures must satisfy an additional ground to be a *disclosable matter* (in addition to the description above), being that:

the person considers that the information may assist the recipient to perform their duties in relation to taxation.

Prescribed recipients for non-tax matters

The following bodies and people are prescribed recipients. Therefore, disclosing information about wrongdoing will qualify the person for whistleblower protections, as long as the other two criteria are met (the person is an eligible whistleblower and the information is a disclosable matter):

- an employee’s direct manager or supervisor;
- a director or senior manager of the Mittagong RSL Club Limited;
- Mittagong RSL Club’s internal or external auditor (or a member of the external audit team) and actuary;
- the Australian Securities and Investments Commission (ASIC); or the Australian Prudential Regulation Authority (APRA).

Prescribed recipients for tax matters

The following bodies and people are prescribed recipients for disclosures related to federal taxes:

- Commissioner of Taxation;
- an employee's direct manager or supervisor;
- Mittagong RSL Club's internal or external auditor (or a member of the external audit team);
- a registered tax agent or BAS agent who provides services to Mittagong RSL Club;
- a director or senior manager of Mittagong RSL Club; or
- any employee or director with tax-related responsibilities.

Other avenues to qualify for protection

Satisfying the three criteria above is one avenue for a prospective whistleblower to qualify for protection. There are two other avenues to qualify, as they may relate to Mittagong RSL Club:

1. the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the whistleblower matter;
2. the disclosure is an *emergency disclosure*, because it satisfies **each** of the below criteria (this avenue does not apply to a tax-related matter):
 - the person has previously made a disclosure qualifying for protection;
 - a reasonable period of time has since passed;
 - there is a risk to public health or safety if the information is not acted on immediately; and
 - the person notifies Mittagong RSL Club in writing that they intend to make an *emergency disclosure*; and
 - the disclosure is made to a State, Territory or Commonwealth member of Parliament or a journalist.

PROTECTIONS AVAILABLE TO WHISTLEBLOWERS

If a person discloses information which qualifies for whistleblower protection, the below legal protections will apply. These protections will apply to internal whistleblowers (such as employees, volunteer staff and directors) as well as external whistleblowers (such as suppliers or relatives of club staff). Given these legislative protections, Mittagong RSL Club Limited is legally obligated to ensure these protections:

- identity protection (confidentiality);
- protection from detriment;
- compensation and other remedies; and
- protection from legal liability.

Confidentiality

Mittagong RSL Club Limited recognises that maintaining appropriate confidentiality is crucial in ensuring that prospective whistleblowers come forward and make disclosures in an open and timely manner and without fear of reprisals being made against them.

It is illegal for Mittagong RSL Club or any other person to identify a discloser or distribute information likely to lead to the discloser being identified.

In the following instances, Mittagong RSL Club Limited may lawfully disclose the identity of the whistleblower:

- to ASIC, APRA or the Australian Federal Police;
- to a legal practitioner (to obtain legal assistance);
- if the prospective whistleblower consents.

Mittagong RSL Club Limited or a person investigating the whistleblower complaint may also disclose information about the complaint, which could lead to the person's identity being deciphered, if the person's name is redacted and the investigator has taken all reasonable steps to prevent the whistleblower's identification.

Note: Whistleblowers may complain to ASIC if their confidentiality has been breached.

In appropriate cases, disclosure of the identity of the whistleblower, or the allegation made by them, may be unavoidable, such as if court proceedings result from a disclosure pursuant to this policy.

Protection from detriment

The following types of detriment to a whistleblower are unlawful:

- terminating the whistleblower's employment;
- altering characteristics of the whistleblower's employment, such as their position or duties;
- harassing or intimidating the whistleblower;
- damaging the whistleblower's reputation, property or financial position;
- injuring or harming the whistleblower (including psychological harm).

Mittagong RSL Club Limited may take adverse action against a whistleblower if the disclosure reveals that the whistleblower engaged in misconduct.

If a disclosure qualifies for protection under the applicable legislation, the protection afforded to the discloser overrides any provision of their employment contract, including any confidentiality clause.

If the whistleblower was involved in the conduct which was the subject of the disclosure, the fact that the whistleblower has made the disclosure may be taken into account in determining the severity of the disciplinary measures, if any, that may eventually be taken against such whistleblower.]

Compensation and other remedies

A whistleblower is entitled to seek compensation and other relief through the courts if:

- they suffer detriment due to making the disclosure; and
- Mittagong RSL Club Limited failed to prevent the detriment.

Protection from legal liability

A whistleblower is protected from the following outcomes:

- legal action being commenced against the whistleblower, such as for breach of confidentiality or any other obligations in their employment contract or elsewhere;
- criminal prosecution, such as for unlawfully releasing information; and

- administrative action, for example, a BAS agent cannot be sanctioned or disciplined under the accounting profession's code of conduct due to making a whistleblower disclosure.

HOW THE CLUB WILL SUPPORT WHISTLEBLOWERS

How the Club will support confidentiality

As noted earlier in this Policy, Mittagong RSL Club Limited is legally obligated to take steps to maintain a whistleblower's confidentiality. Where necessary, Mittagong RSL Club Limited will take the following actions to protect a whistleblower's confidentiality:

- redact the whistleblower's name, personal information and information which could lead to the identification of the whistleblower, in any written material which describes the disclosure;
- the whistleblower will always be referred to in a gender-neutral context;
- where possible, Mittagong RSL Club Limited will contact the whistleblower to ascertain certain information which could cause another person to identify the whistleblower (for example, there may be unique characteristics about how and when the whistleblower discovered information about the wrongdoing, and if these characteristics are disclosed, it may cause another person to identify the whistleblower);
- documents or information relating to the investigation will not be sent to a printer or email address that can be accessed by other staff.

How the Club will prevent detriment

Mittagong RSL Club Limited will also take steps to prevent the whistleblower from experiencing any detriment, including:

- move the whistleblower to another team or position (with the whistleblower's consent);
- after a whistleblower complaint is made, senior managers and directors privy to the complaint, may meet to assess the risk of detriment to the whistleblower and actions to mitigate that risk;
- if detriment has already occurred – intervening to protect the whistleblower, such as by taking disciplinary action against a person responsible for the detriment.

Any reprisals against a whistleblower are a serious breach of this policy and may result in disciplinary action, including dismissal. Where the Club becomes aware of any reprisals against a whistleblower for complying with this policy or the legislation, the Club will take steps to either overturn, or deem void, the decision or action. This protection applies to anyone providing information related to an investigation pursuant to this policy.

HANDLING AND INVESTIGATING A DISCLOSURE

Reporting

Mittagong RSL Club Limited has several channels for reporting wrongdoing. In the first instance, any person who has reasonable grounds to suspect that a breach of a law or other standard of behaviour has occurred, is encouraged to report that suspicion to the Human Relations Supervisor or Operations Manager.

If this is considered inappropriate, the person should raise the concern with the Chief Executive Officer, by phone or email, or in writing. You may also raise the matter with any director or senior manager of Mittagong RSL Club Limited.

If neither of these channels are considered appropriate, disclosures may be made to the Club's auditor Kelly & Partners, via Daniel Kuchta

- email – Daniel.Kuchta@kellypartners.com.au
- PO Box 417, Campbelltown NSW 2560
- Telephone: 02 46257711

Where an allegation of wrongdoing relates to Mittagong RSL Club Limited's tax affairs, a person may qualify for protection by disclosing the allegation to other recipients; the Commissioner of Taxation or a registered tax agent or BAS agent (this may be Mittagong RSL Club Limited's accountant).

All disclosures should provide specific, adequate and pertinent information with respect to, among other things, dates, places, persons, witnesses, amounts, and other relevant information, in order to allow a reasonable investigation to be conducted.

If the whistleblower discloses his or her name, the person receiving the disclosure will acknowledge receipt of the disclosure and may initiate a follow-up meeting. However, if the disclosure is submitted on an anonymous basis, there will be no follow-up meeting regarding the disclosure and Mittagong RSL Club Limited will be unable to communicate with the whistleblower if more information is required, or if the matter is to be referred to external parties for further investigation.

All disclosures received will be dealt with on a confidential basis.

Handling a disclosure

A person who receives a disclosure cannot circulate your identity to other staff without your consent. For instance, if you lodge a whistleblower complaint to your direct manager, your manager will not circulate your identity to the secretary manager or any senior manager without your consent. If you do not consent, your manager may circulate the complaint to the secretary manager or other senior managers in such a way that maintains your confidentiality.

After receiving a disclosure, Mittagong RSL Club Limited will assess whether:

- the disclosure qualifies for protection; and
- a formal investigation is required.

In conducting this assessment, Mittagong RSL Club Limited may seek professional legal advice.

If a person makes a disclosure in good faith, and Mittagong RSL Club Limited subsequently concludes that the disclosure does not qualify for protection, the Club may choose to protect the discloser's confidentiality, and protect the discloser from detriment, despite the absence of legislative protections.

Investigating a disclosure

Any investigation in relation to a disclosure will be conducted promptly and fairly, with due regard for the nature of the allegation and the rights of the persons involved in the investigation. A disclosure will not be investigated by persons implicated in the wrongdoing.

The purpose of investigating the disclosure is to determine whether there is enough evidence to substantiate or refute the allegation. Accordingly, during the investigation, Mittagong RSL Club Limited may request additional information from a whistleblower, to attain sufficient evidence to make this assessment.

Investigating a disclosure may also require Mittagong RSL Club Limited to seek outside assistance of a technical, financial or legal nature.

Mittagong RSL Club Limited will ensure that, provided the disclosure was not made anonymously, the whistleblower is kept informed of the outcomes of the investigation of his or her allegations, subject to the considerations of privacy of those against whom allegations are made.

The findings resulting from an investigation will be documented and circulated to the board and senior managers, in accordance with Mittagong RSL Club Limited's obligation to maintain the whistleblower's confidentiality.

In addition to protecting the whistleblower's confidentiality, Mittagong RSL Club Limited may also choose not to circulate the findings of the investigation to persons implicated in the wrongdoing.

INDIVIDUALS MENTIONED IN A DISCLOSURE

Mittagong RSL Club Limited will take steps to ensure the fair treatment of individuals mentioned in a disclosure, including where those individuals are implicated in wrongdoing.

Mittagong RSL Club Limited will adhere to the principles of natural justice in taking any disciplinary action against persons implicated by a whistleblower disclosure. This means that the implicated person will be advised about the substance of the disclosure prior to any actions being taken.

Mittagong RSL Club Limited will also take reasonable steps to protect the confidentiality of persons implicated in a whistleblower disclosure.

HOW THE POLICY WILL BE MADE AVAILABLE

This policy will be given to all employees and directors of Mittagong RSL Club Limited when their employment or tenure commences.

This policy will also be made available via website/noticeboard

For further information about this policy please contact Craig Madsen, CEO, Mittagong RSL Club Limited.