



Whistleblower Policy

Version 2.0
Updated: December 2019

**smart
group**
corporation

1 Overview

This is the Whistleblower policy of Smartgroup Corporation Ltd (the company).

The company is committed to promoting and supporting a culture of corporate compliance, honest and ethical behaviour, and good corporate governance.

Employees of the company may report concerns regarding potentially unethical, unlawful or improper practices or behaviours, and will be protected from reprisal when their reporting is made in good faith.

Some terms used in this policy have a special meaning, usually shown by the use of Capitalised Letters. The Definition section of this policy defines terms used in this policy which have a special meaning.

2 Purpose

The purpose of this policy is to set out information about the following matters:

- the types of disclosures that qualify for protection;
- the protections available to Whistleblowers under the Legislation and the company's policies;
- the persons to whom disclosures that qualify for protection under the Legislation and company's policies may be made, and how they may be made;
- how the company will support Whistleblowers and protect them from detriment;
- how the company will investigate disclosures that qualify for protection;
- how the company will ensure fair treatment of employees of who are mentioned in disclosures that qualify for protection, or to whom such disclosures relate; and
- information about how this policy is to be made available to officers and employees of the company.

A copy of this policy is accessible on the company intranet and can be obtained from the People & Culture team.

3 Definitions

In this policy the following defined terms have been used:

Company Persons means individuals who are, or have been, any of the following in relation to the company:

- a) directors and other officers of the company;
- b) employees (e.g. current and former employees who are permanent, part-time, fixed-term or temporary);
- c) suppliers (whether paid or unpaid) and employees of suppliers (e.g. current and former consultants, service providers and business partners);
- d) consultants and employees of consultants;
- e) associates;
- f) a relative or spouse of any person referred to in paragraphs (a) to (e);

- g) a dependent of any person referred to in paragraphs (a) to (e) or of such person's spouse;
- h) trustees;
- i) panel members;
- j) secondees;
- k) contractors and employees of contractors;
- l) trainees;
- m) interns;
- n) work experience students;
- o) volunteers;
- p) in-country partners receiving funds from the company;
- q) if the company is a trustee of a Registrable Superannuation Entity (**RSE**):
 - i. an investment manager;
 - ii. an officer of a custodian or investment manager; and
 - iii. an employee of an investment manager,
appointed by the company in relation to the RSE; and
- r) an individual that is prescribed by the regulations as outlined in the Legislation.

Eligible Recipient has the meaning given in paragraph 6.1.

Journalist means a person who is working in a professional capacity as a journalist for any of the following:

- a) a newspaper or magazine;
- b) a radio or television broadcasting service;
- c) an electronic service (including a service provided through the internet) that is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the Broadcasting Services Act 1992); and
- d) is similar to a newspaper, magazine or radio or television broadcast.

Legislation means Part 9.4AAA of the *Corporations Act* (Cth) and Part IVD of the *Tax Administration Act 1953* (Cth).

Reportable Conduct means:

- a) misconduct or an improper state of affairs or circumstances in relation to the company; or
- b) where the company, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against, or a contravention of:
 - i. *Corporations Act 2001* (Cth);
 - ii. *Australian Securities and Investments Commission Act 2001* (Cth);
 - iii. *Banking Act 1959*;
 - iv. *Financial Sector (Collection of Data) Act 2001*;
 - v. *Insurance Act 1973*;

- vi. *Life Insurance Act 1995*;
 - vii. *National Consumer Credit Protection Act 2009*;
 - viii. *Superannuation Industry (Supervision) Act 1993*; and
 - ix. any instrument made under these Acts;
- c) where the company or one of its officers or employees has engaged in conduct that constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- d) where the company or one of its officers or employees has engaged in conduct that represents a danger to the public or the financial system;
- e) where the company or one of its officers or employees has engaged in conduct that is prescribed by regulation for these purposes.

Relevant Regulatory Body means the Australian Securities and Investments Commission (**ASIC**), the Australian Prudential Regulation Authority (**APRA**) and any other Commonwealth authority that is prescribed for purposes of section 1317AA of the Corporations Act.

Whistleblower means a Company Person who makes, attempts to make or wishes to make a report (whether anonymously or not) in accordance with this policy in connection with Reportable Conduct.

Whistleblower Protection Officer means a person or persons nominated by the company whose key responsibilities include safeguarding the interests of Whistleblowers and ensuring the integrity of the reporting mechanism.

4 Application

The company has appointed the following Whistleblower Protection Officers.

Sophie MacIntosh – Chief Legal Officer	sophie.macintosh@smartgroup.com.au	0407 486 823
Bijal Desai – Chief Risk Officer	bijal.desai@smartgroup.com.au	0405 040 969

If you wish to make a disclosure as outlined in this policy the company encourages you to initially contact the Whistleblower Protection Officer.

5 What types of disclosures qualify for protection?

5.1 Who the policy applies to

A disclosure will qualify for protection under the Legislation if:

- a) it is a disclosure by a Company Person to:
 - i. ASIC, APRA, the Commissioner of Taxation (in relation to tax matter), a prescribed Commonwealth authority or a legal practitioner (to obtain legal advice or legal representation about the operation of the Legislation); or
 - ii. an Eligible Recipient; and
- b) the Company Person has 'reasonable grounds' to 'suspect' that the disclosed information concerns Reportable Conduct.

Public interest disclosures and emergency disclosures also qualify for protection. These are described further in paragraph 8.4 of this policy.

A Company Person who makes a qualifying report under this policy is a Whistleblower.

Failure to raise issues that should be reported under this policy may result in disciplinary action.

5.2 Reportable Conduct under this policy

A Company Person will only qualify for protection under the Legislation if the disclosed conduct concerns Reportable Conduct.

Examples of Reportable Conduct include, but are not limited to, conduct engaged by the company (or its officers or employees) that:

- a) breaches any law or regulatory requirement, or is a failure to comply with any legal obligation;
- b) is unethical or breaches the company's policies, protocols or codes of conduct;
- c) is dishonest (or involves deception that is intended to mislead), fraudulent or corrupt;
- d) is coercion, harassment, victimisation or discrimination;
- e) is misleading or deceptive conduct of any kind (including conduct or representations which amount to improper or misleading accounting or financial reporting practices either by, or affecting, the company);
- f) is potentially damaging to the company, a Company Person or a third party, including unsafe work practices, environmental damage, health risks or substantial wasting of corporate resources;
- g) may cause actual or potential financial or non-financial loss to the company or damage its reputation, or be otherwise detrimental to the company or its interests;
- h) represents a danger to the public or the financial system;
- i) involves any other serious impropriety; and
- j) is prescribed by the regulations as an additional offence or contravention of the regulations for the purposes of section 1317AA of the *Corporations Act*.

Reportable Conduct does 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 Regulatory Body should know about to properly perform its functions. It may also relate to business behaviour and practices that may cause consumer harm. 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.

For a Whistleblower to qualify for protection under the Legislation, they must have reasonable grounds to suspect the concerns that are the subject of the disclosure. Even if a disclosure turns out to be incorrect, the protections will still apply, provided the Whistleblower had such reasonable grounds to suspect.

Disclosures that are not about Reportable Conduct are not covered by this policy and do not qualify for protection under the Legislation. However, such disclosures may be protected under other legislation, such as the *Fair Work Act 2009* (Cth), for example, personal work-related grievances.

5.3 Clarifying if a matter is reportable

If a Company Person is unsure whether conduct constitutes Reportable Conduct, he or she should seek guidance from a Whistleblower Protection Officer.

5.4 Deliberate false reports not tolerated

The company will treat all disclosures of Reportable Conduct seriously and endeavour to protect staff who raise concerns in good faith. However, while protection is provided to Whistleblowers under this policy, deliberate false reports will not be tolerated.

Anyone found making a deliberate false claim or report will be subject to disciplinary action, which could include dismissal.

5.5 Personal work-related grievances do not qualify for protection

A disclosure may not be made, and will not constitute Reportable Conduct, to the extent that the information disclosed concerns a personal work-related grievance of the individual making the disclosure.

For the purposes of this Policy, a disclosure is a '*personal work-related grievance*' if:

- a) the information concerns a grievance about any matter in relation to the individual making the disclosures employment, or former employment, having (or tending to have) implications for the individual personally; and
- b) the information:
 - i. does not have significant implications the company, or another regulated entity, that do not relate to the discloser; and
 - ii. does not concern conduct, or alleged conduct, as outlined in this Policy.

However, a personal work-related grievance may still qualify for protection if:

- it relates to Reportable Conduct and a personal work related grievance (i.e., it is a mixed disclosure); or
- the Company Person seeks legal advice or legal representation about the operation of the whistleblower protections under the Legislation.

The company retains the ability to raise with a Whistleblower matters that arise in the ordinary course of their employment or engagement, including performance or misconduct issues.

6 Who should a report be given to?

6.1 Report to a senior manager or a Whistleblower Protection Officer

For protections under the Legislation to apply, a disclosure must be made directly to an 'Eligible Recipient'. A Whistleblower's disclosure qualifies for protection from the time it is made to an Eligible Recipient, regardless of whether the Whistleblower or the Eligible Recipient recognises that the disclosure qualifies for protection at that time.

Eligible Recipients within the company

The Company encourages a Company Person to report an actual or potential instance(s) of Reportable Conduct directly:

- to their immediate supervising manager in accordance with normal day-to-day escalation processes; or
- if the Company Person feels unable to raise the Reportable Conduct with their supervising manager or, if preferred, to a Whistleblower Protection Officer, by email or phone.

These persons are referred to as 'Eligible Recipients' under this policy.

If a Company Person does not feel comfortable raising their disclosure with one of the individuals listed above, they could also raise it with any of the following:

- an officer or senior manager of the company; or
- the internal or external auditors or actuaries of the company (including a member of an audit team conducting an audit).

6.2 Anonymity

A Company Person may report Reportable Conduct anonymously and still be protected under the Legislation. A Company Person may choose to remain anonymous over the course of the investigation and after the investigation is finalized. They may refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations.

Reporting anonymously may hinder the company's ability to fully investigate a reported matter (particularly if the Whistleblower Protection Officer is not able to disclose the identity of the Company Person, in the absence of consent, in any engagement with the board of directors and internal functions within the company, such as legal, risk and company secretarial). Further, in certain circumstances reporting anonymously may prevent a Whistleblower from accessing additional protection at law.

Even though a Company Person may wish to remain anonymous, there are exceptions that permit the disclosure of a Whistleblower's identity to:

- a Relevant Regulatory Body;
- a member of the Australian Federal Police; or
- a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Legislation.

6.3 Making disclosure to persons outside of the company

While a Company Person should make disclosure to the company's Whistleblower Protection Officer, a Company Person can also qualify for protection under the Legislation if they report an actual or potential instance(s) of Reportable Conduct directly to:

- the company's auditor, or a member of the audit team;
- a legal practitioner, but only for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Legislation; or
- a Relevant Regulatory Body in respect of conduct concerning the actions of the Australian arm of the company.

The company will take all reasonable steps to ensure that it does not constrain, impede, restrict or discourage (whether by confidentiality clauses, policies or other means) any person from disclosing information or providing documents to, or discussing issues with, any recipient.

7 Investigation and use of qualifying disclosures

7.1 Handling of reports

All bona fide reports of Reportable Conduct will be investigated by a Whistleblower Protection Officer on a timely basis for the purposes of seeking evidence that either substantiates or refutes the claims made by the Whistleblower. Appropriate corrective action will be taken as warranted by the investigation.

The Whistleblower Protection Officer is responsible for:

- conducting or coordinating the investigation into any report received from a Whistleblower;
- documenting and handling all matters in relation to the report and investigation; and
- finalising all investigations.

The Whistleblower Protection Officer will, at all times:

- act impartially, fairly and objectively without any pre-conceived opinion on the Whistleblower or the subject matter, or any conflicts of interest; and
- have direct and unrestricted access to reasonable financial, legal and operational assistance when it is required for any investigation.

Any investigative activities required with respect to the Reportable Conduct will be conducted without regard to the suspected wrongdoer's length of service, position, title or relationship with or to the company.

The Whistleblower will be provided with regular updates on the progress of action taken in respect of their report and of the outcome of the investigation, if the Whistleblower can be contacted.

7.2 Findings and next steps

The Whistleblower Protection Officer (or other investigator) will provide to the Risk Committee, on a timely basis, a report setting out the findings on the allegations raised by the Whistleblower and a summary of evidence. Specific timeframes will vary on a case-by-case basis.

If the allegations relate to an individual member or members of the Risk Committee, that member or members must be excluded from the investigation. If the allegations relate to misconduct on the part of the whole Risk Committee, the allegations must not be investigated by Risk Committee and must be referred instead to the Chair of the Audit and Risk Committee to coordinate the investigation.

The findings may be that an allegation has been fully substantiated, partially substantiated, is not able to be substantiated or is disproven. The Whistleblower Protection Officer will inform the Whistleblower of the findings, however they will not receive a copy of the investigation report.

Subject to any confidentiality restrictions, at the conclusion of the investigation, the Human Resources function of the company will be engaged to consider appropriate next steps in relation to

any substantiated allegations. Any findings that relate to possible criminal activity will be reported to police and/or relevant regulatory bodies.

7.3 Consent to further disclosure of Reportable Conduct

Unless prevented by Legislation or other applicable laws, a person who is the subject of an investigation is entitled to be:

- informed as to the allegations being made against them and the substance of any adverse comment that may be included in a report or other document arising out of the investigation; and
- given a right to respond to the allegations or put their case to the Whistleblower Protection Officer who is investigating the report. A decision regarding the report should not be made until the person has been given the opportunity to be heard.

The company and each person investigating notified Reportable Conduct may make disclosure of any reported matter (but not the identity of a Whistleblower) as is considered reasonably necessary for the purpose of investigating the matter. Such disclosure may be made without consent of the Whistleblower, provided that all reasonable steps have been taken to reduce the risk that the Whistleblower will be identified in the disclosure.

7.4 Divulging the identity of the Whistleblower

The company and/or any person receiving the reported matter on behalf of the company will take reasonable steps to reduce the risk and protect the identity of the Whistleblower. All files and records created from an investigation will be retained under security.

It is against the law for a person to disclose the identity of a Whistleblower, or any information that may lead to their identification. Subject to Legislation, the company and any persons receiving reports will not disclose particulars of reported matters that would suggest the identity of the Whistleblower without obtaining the Whistleblower's prior consent (preferably in writing). Any such disclosure to which the Whistleblower consents will be made on a confidential basis.

Nothing in this policy prevents the company from divulging the identity of a Whistleblower to a Relevant Regulatory Body, the Australian Federal Police, a legal practitioner for the purposes of obtaining legal advice or representation and to any other individual or entity where not prohibited by Legislation.

A Whistleblower's identity may also be disclosed by the company with the consent of the Whistleblower.

The company takes the protection of an eligible whistleblower's identity seriously. Steps it will take to help achieve this may include:

- maintaining mechanisms to reduce the risk that the eligible whistleblower will be identified from the information contained in a disclosure (such as redactions or referring to the person in gender neutral terms);
- maintaining mechanisms for secure record-keeping and information-sharing processes and limiting access to records and information;

- reminding each person (as appropriate) who is involved in handling and investigating a disclosure about the confidentiality requirements, including that an unauthorised disclosure of an eligible whistleblower's identity may be a criminal offence.

7.5 Unauthorised release of information

Subject to this policy, Legislation and applicable laws, unauthorised release of information about Reportable Conduct without a Whistleblower's consent to any person not involved in the investigation is a breach of this policy and will be the subject of disciplinary action, which could include dismissal.

8 Limited protections for Whistleblowers

8.1 Protection from detrimental acts or omissions

The company will take reasonable steps to protect Whistleblowers who report Reportable Conduct in good faith under this policy from detriment as a direct result of making the report. It is unlawful for a person to engage in conduct 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.

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.

The meaning of 'detriment' is very broad and includes:

- dismissal;
- harm or injury, including psychological harm;
- alteration of position or duties to their disadvantage, including demotion;
- any form of harassment, intimidation or victimisation;
- discrimination;
- damage to their property, reputation, or business or financial position
- current or future bias; or
- threats of any of the above.

Any such action which is reprisal as a direct result of making the report will be treated as serious misconduct and will result in disciplinary action, which could include dismissal.

The company and Whistleblower Protection Officer will conduct their activities in accordance with the requirements of the Legislation.

The company may also consider a range of other matters to protect an eligible whistleblower from the risk of suffering detriment and to ensure fair treatment of individuals mentioned in a disclosure.

Steps it may take to help achieve this include:

- assessing whether anyone may have a motive to cause detriment—information could be gathered from an eligible whistleblower about e.g. the risk of their identity becoming known and who they fear might cause detriment to them;

- developing and implementing strategies to prevent or contain the risks such as, for anonymous disclosures, assessing whether the discloser's identity can be readily identified or may become apparent during an investigation;
- monitoring and reassessing the risk of detriment where required—the risk of detriment may increase or change as an investigation progresses, and even after an investigation is finalised; and
- taking steps to ensure that:
 - disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
 - each disclosure will be assessed and may be the subject of an investigation;
 - the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters disclosed;
 - when an investigation needs to be undertaken, the process will be objective, fair and independent;
- assisting the eligible whistleblower by providing appropriate support services;
- where necessary, undertaking specific interventions to protect an eligible whistleblower where detriment has already occurred including disciplinary action, extended leave for the eligible whistleblower and alternative career development and training.

8.2 Compensation and other remedies

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 Legislation. The company encourages eligible whistleblowers to seek independent legal advice in regards to seeking compensation or other remedies.

8.3 Civil or criminal liability for Reportable Conduct may be unaffected

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

A Whistleblower may not be protected from civil or criminal liability for any of his or her conduct which may be revealed by a report. This is the case whether the Whistleblower reports the conduct or not.

Where a Whistleblower reports conduct and actively cooperates in an investigation in which he or she may be implicated, in some cases that may be a mitigating factor when determining penalty or other actions to be taken against them. **However, the company cannot and does not give any assurance that this will be the position in any reported matter.**

8.4 Limited disclosure to external parties

Legislative protections exist for certain disclosures to external parties in accordance with the Legislation. Note that the statutory protections may not extend to anonymous reports.

Unlawful, improper or unethical behaviour may be disclosed to Relevant Regulatory Bodies and to a legal practitioner for the express purpose of obtaining legal advice or legal representation about the liability of the Whistleblower in respect of a reported matter.

Public interest disclosures

Public interest disclosure may be made by a Whistleblower if and only if all the following criteria are satisfied:

- a) the Whistleblower has disclosed Reportable Conduct to a Relevant Regulatory Body and at least 90 days has passed since that disclosure was made;
- b) the Whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters previously disclosed;
- c) the Whistleblower has reasonable grounds to believe that making a further disclosure would be in the public interest;
- d) after 90 days has passed, the Whistleblower notifies the body to which the qualifying disclosure was originally made by a written notification that includes sufficient information to identify the previous disclosure and states that they intend to make a public interest disclosure; and
- e) the public interest disclosure is being made to a member of Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a Journalist.

Public interest disclosure may be made only to the extent that the information disclosed in the public interest is no greater than is necessary to inform the recipient of the misconduct or the improper state of affairs.

The company is not responsible for a Whistleblower making a public interest disclosure that is greater than necessary to inform the recipient of the misconduct or improper state of affairs public. Civil or criminal liability may be incurred by a reporting person in such circumstances. Eligible whistleblowers should obtain independent legal advice prior to making any disclosure.

Emergency disclosures

An emergency disclosure by a Whistleblower may be made if and only if all the following criteria are satisfied:

- a) the Whistleblower has disclosed Reportable Conduct to a Relevant Regulatory Body
- b) the Whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- c) the Whistleblower notifies the body to which the previous disclosure was made by a written notification that includes sufficient information to identify the previous disclosure and states that they intend to make an emergency disclosure; and
- d) the emergency disclosure is made to a member of Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory or a Journalist.

Emergency disclosure may be made only to the extent that the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient of the recipient of the substantial and imminent danger.

The company is not responsible for a Whistleblower making an emergency disclosure that is greater than necessary to inform the recipient of the substantial or imminent danger. Civil or criminal liability may be incurred by a reporting person in such circumstances. Eligible whistleblowers should obtain independent legal advice prior to making any disclosure.

9 Access to policy

This policy will be made available to the company's employees and officers via the company's intranet.

8. DOCUMENT CONTROL

Version	Date	Author	Reason
1.0	26 June 2019	Chief Legal Officer	Creation of the new Policy
2.0	19 December 2019	Chief Legal Officer	Updating of the Policy