



## WHISTLEBLOWER'S POLICY

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## Mohawk Flooring Oceania Whistleblower's Policy

### 1. SCOPE

Mohawk Industries Inc ("Mohawk") is an organization with strong values of responsibility and integrity. Mohawk's Code of Conduct (GEN-P-050) applies to all subsidiaries of Mohawk throughout the world and contains general guidelines for conducting business with the highest standards of ethics.

In July 2002, the United States Congress passed the Sarbanes-Oxley Act of 2002 ("SOX"). SOX was adopted to assure stability of the financial markets and protection of legitimate interests of stakeholders by establishing rules to require appropriate corporate governance of US companies.

SOX requires the Audit Committee of Mohawk to ensure procedures are in place that will provide a confidential communication channel for employees to report concerns regarding questionable accounting, internal accounting, or auditing matters. Additionally, employees are also expected to report any suspected violations of laws governing the bribery of foreign public officials in internal business transactions.

Furthermore, in Australia, with the express intention of improving the compliance culture within Australian corporations, the Corporations Act 2001 (Cth) now provides for increased protections and remedies for officers, employers, suppliers and their employees and associates or their relatives or dependents of listed and large proprietary companies reporting general corporate misconduct and tax evasion including strengthening the right of anonymity, strengthening and broadening whistleblower immunities and prohibiting victimisation of whistleblowers and providing a broad range of remedies and protections for whistleblowers and other individuals who suffer detriment or the threat of detriment. These are all set out in Part 9.4AAA of the Corporations Act 2001.

The key objectives of this policy are to:

- (a) support our values and Mohawk's Code of Conduct (GEN-P-050) and our long term sustainability and reputation;
- (b) provide transparency around our framework for receiving, handling and investigating disclosures;
- (c) ensure individuals who disclose wrongdoing can do so safely, securely and with confidence that they will be protected and supported;
- (d) ensure disclosures are dealt with appropriately and on a timely basis;
- (e) encourage more disclosures of wrongdoing;
- (f) help deter wrongdoing; and
- (g) meet our legal and regulatory obligations and align with our governance standards (including without limitation SOX).

This policy outlines the procedures for the confidential submission and investigation of protected disclosures under the Corporations Act 2001 in respect to the operations of Mohawk's Australian and New Zealand subsidiaries (including Premium Floors Australia Pty Ltd, Godfrey Hirst Australia Pty Ltd and its subsidiaries, Floorscape Limited and Godfrey Hirst NZ Limited and its subsidiaries ("Mohawk Flooring Oceania", "we" and "us")) as well as any other disclosures by our employees of violations of our Code of Conduct, policies, procedures or legal requirements (not being protected disclosures).

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Such disclosures are a critical part of our risk management and corporate governance framework. This policy is a practical tool for helping us to identify wrongdoing that may not be uncovered unless there is a safe and secure means for individuals to disclose wrongdoing.

We are committed to an environment where open and honest communications are the expectation, not the exception. We want you to feel comfortable in approaching your supervisor or management in instances where you believe violations of our policies, procedures or standards have occurred. We seek at all times that our employees (and non-employees) who are aware of possible wrongdoing have the confidence to speak up.

In situations where you prefer to place an anonymous disclosure/report in confidence, you are encouraged to use the EthicsPoint hotline (details contained in this policy), hosted by a third-party hotline provider. You are encouraged to submit reports relating to violations stated in our Code of Conduct, as well as asking for guidance related to policies and procedure and providing positive suggestions and stories.

The information you provide to EthicsPoint will be sent to us by EthicsPoint on a totally confidential and anonymous basis if you should choose. You have our guarantee that your comments will be heard.

## 2. OCCUPATIONAL HEALTH & SAFETY

Refer to OHS Index page

We value the health and safety of all our employees, visitors and contractors highly, and as such, all accidents, incidents and breaches of Occupation Health and Safety policy and procedure should be dealt with and reported in accordance with the relevant incident reporting and/or OH&S investigation procedures, so as to enable us to continue to provide a safe working environment.

## 3. ENVIRONMENTAL MANAGEMENT

We are committed to minimising or eliminating all adverse impacts that our activities have on the environment, and as such, any violation of our environmental policy should also be reported. As such, any incident adversely impacting on the environment and/or potential breach of any environmental law should be dealt with and reported in accordance with the relevant incident reporting and/or environmental investigation procedures, so as to enable us to respond in a timely manner.

## 4. GENERAL INFORMATION

### 4.1 References

Mohawk Group Code of Conduct (GEN-P-050)  
Part 9.4AAA Corporations Act 2001 (Cth)

### 4.2 Definitions

**“discloser”** means any person set out in clause 4.3 who makes a disclosure under this policy

**“disclosure”** means all protected disclosures and any other disclosure, report, allegation, claim, complaint or other provision of information relating to any alleged violations or suspected violations of our Code of Conduct, policies, procedures or legal requirements made by any employee under this policy including without limitation:

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- (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.

**“eligible recipient”** means the persons listed in the Appendix A to this policy.

**“protected discloser”** means any person making a protected disclosure.

**“protected disclosure”** means a disclosure in respect to any Australian subsidiary of Mohawk (“Mohawk Flooring Australia”) which qualifies for protection under Part 9.4AAA of the Corporations Act as set out in section 1317AA of the Corporations Act. A full explanation of protected disclosures is set out in Schedule B, clauses 3 and 4.

**“Whistleblower Protection Officer”** means the company officer nominated from time to time as responsible for protection and safeguarding of disclosures and ensuring the integrity of the reporting mechanism and regular review and updating of this policy, processes and procedures and implementing/overseeing any changes.

### 4.3 Who does the policy apply to?

This policy applies to any individual who is or has been:

- (a) an officer or employee;
- (b) a supplier of services or goods to the entity (whether paid or unpaid), including their employees;
- (c) any of our associates (as defined in the Corporations Act 2001); and
- (d) a relative, dependant or spouse of any individual in (a) to (c) above.

This includes (without limitation):

- (e) current and former employees, including employees who are permanent, part time, casual, secondees, managers, and directors; and
- (f) current and former contractors, consultants, service providers, suppliers and business partners.

It is noted some disclosers (as set out in Appendix B, clause 1) may also qualify for protection under Part 9.4AAA of the Corporations Act 2001.

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### 4.4 Key Roles and Responsibilities

Role/Responsibility	Manager
Eligible Recipients/Managers responsible to receive disclosures	See Appendix A
Independent whistleblowing service provider	Ethicspoint – see Appendix A
Whistleblower Protection Officer	General Counsel
Whistleblower Investigation Officer	Internal Audit Manager – Flooring ROW
Owner of policy – Oversight and monitoring of the policy and approval of updates	President – Mohawk Flooring Oceania

### 4.5 Availability

This policy is available to all our employees on the company management system and a copy is available on the various company websites under the “Legal” page. Copies can also be obtained by contacting the Australian Legal Department or your local HR Manager. All employees will be informed about this policy by e-mail and notified whenever the policy has been updated.

## 5. RESPONSIBILITIES

### 5.1 Managers

Managers at all levels should set the appropriate tone by displaying the proper attitude toward complying with laws, rules, and regulations and are responsible for establishing and maintaining proper internal controls which will provide for the security and accountability of the resources entrusted to them. In addition, management should be cognizant of the risks and exposures inherent in their area of responsibility and be aware of the symptoms of such activities, should they occur.

Management at all levels must treat all disclosures received confidentially.

Other than with the prior written consent of any discloser (or as permitted under section 1317AAE(2) of the Corporations Act 2001), persons in receipt of a protected disclosure must never disclose to any other persons (including other managers) the identity of any protected disclosers or information that is likely to lead to the identification of a protected discloser.

### 5.2 Disclosers

#### 5.2.1 Reporting violations

All employees of Mohawk Flooring Oceania who become aware of or genuinely suspect any violations of our Code of Conduct, our policies, procedures or legal requirements must disclose these matters/behaviours as set out in this policy.

Making disclosures (both generally and protected disclosures) is not about airing grievances, but about reporting real or genuinely and reasonably perceived improprieties. Disclosures may damage the reputations and prospects of people referred to in the disclosure. Any employee making a

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disclosure not in good faith or being malicious, deliberately misleading or frivolous, may be subject to disciplinary action, including summary dismissal. Accordingly, any employee making a disclosure should ensure as far as possible, that disclosures are factually accurate, complete, from firsthand knowledge, presented in an unbiased fashion, and without material omission.

### 5.2.2 Protected disclosures

We like to identify and address wrongdoing as early as possible and encourage all disclosers of protected disclosures to make a disclosure to us under this policy in the first instance. For any employee, contractor or supplier wishing to avail themselves of the protections under the Corporations Act 2001, all protected disclosures should be made to one of the people set out in Appendix A (being the Mohawk Flooring Oceania senior managers and other persons authorised by us to receive disclosures that may qualify for protection under Part 9.4AAA of the Corporations Act 2001), our external auditors or you may use the EthicsPoint hotline. Reports to EthicsPoint can be made anonymously.

It is noted if you are making a protected disclosure you will qualify for protection from the time you make the disclosure, regardless of whether you or the recipient recognise that the disclosure qualifies for protection.

However, it is noted disclosers can, without prior disclosure to us directly, make a protected disclosure and qualify for protection under the Corporations Act 2001 to:

- ASIC, APRA or another Commonwealth body prescribed by legislation, or
- in the case of public interest or emergency disclosures - journalists or parliamentarians – full details see Schedule B clause 4

### 5.2.3 Other disclosures

In reporting any other suspected violations, we encourage you first to contact your immediate supervisor. If you are not comfortable doing so, you may contact your human resources representative, any person set out in the Appendix A to this policy or you may use the EthicsPoint hotline. Reports to EthicsPoint can be made anonymously.

### 5.2.4 Reports

When making a disclosure it is extremely important to provide as many details as possible. It has to be noted that, when information is submitted anonymously, there is no reasonable way that the discloser can be contacted later to secure further information. This could delay or require closure of the investigation if there is not enough information to proceed.

You should not, as such actions may compromise your safety and any ensuing investigation:

- (a) Contact or confront any other person involved in the disclosure in an effort to determine facts or demand restitution or personally conduct investigations or interview/interrogations; or
- (b) Discuss any aspect of the disclosure, facts, suspicions, or allegations with anyone (other than for the purposes of obtaining advice or in exercise of your rights in respect to the matters giving rise to the disclosure) unless specifically asked to do so by any officer investigating the matter on our behalf.

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### 5.2.5 Support for Whistleblowers

All disclosers may submit a disclosure under this policy without fear or dismissal, retaliation or detriment of any kind. We will not permit any retaliation against any discloser for reporting suspected violations in good faith.

Should you wish to obtain any confidential advice or information about how this policy works, what the policy cover and how a disclosure might be handled, you can contact the Whistleblower Protection Officer or your local Human Resources Manager.

If making a protected disclosure, other than with your prior written consent of any disclosure (or as permitted under section 1317AAE(2) of the Corporations Act 2001), we will seek to ensure that your identity or any information that is likely to lead to your identification is not made to any person other than the original person to whom you make the disclosure.

In respect to all other disclosures should you wish to remain anonymous, your identity will be kept confidential insofar as is permitted by law and we will act fairly and in good faith towards you in respect to reporting such conduct.

Should you believe your confidentiality has been breached, please advise the Whistleblower Protection Officer, your local Human Resources Manager or Internal Auditor. Alternatively, if you have made a protected disclosure, you may lodge a complaint with a regulator, such as ASIC, APRA, Companies Office (NZ) or FMA for investigation.

Employees will not be discriminated against or disadvantaged in their employment with us, or receive any reprisals, for making a protected disclosure to any eligible recipient under the Corporations Act 2001 or any other disclosure or report in accordance with this policy. We will take all reasonable steps to ensure that adequate and appropriate protection is being provided for those, who in good faith, make a report, regardless of whether the matter is proven, or reported to an external authority.

## 6. WHAT HAPPENS AFTER A REPORT IS MADE?

All disclosures under this policy will be investigated and where appropriate subject to this policy, feedback will be provided to the employee making the disclosure as to the outcome. Employees must maintain the confidentiality of all such reports and not disclose the same to any other person.

All disclosures under this policy will be reported to Internal Audit Manager - Flooring ROW who will investigate (often in consultation with departmental managers, HR, legal and other relevant people) the matter. In addition, subject to the consent of the discloser, the Whistleblower Protection Officer should also be notified to ensure mechanisms for protecting and safeguarding the discloser can commence as soon as possible.

In those instances where the investigation indicates criminal activity, the appropriate law enforcement agency (such as police authorities) may be notified. In the case of a protected disclosure, the matter will be investigated in accordance with confidentiality principles for the protected discloser set out above.

We will investigate disclosures impartially. The rules of natural justices will be observed in the investigation which will be thorough, objective, fair and independent and undertaken without bias. . We may engage external professionals to assist in any investigative process. As far as practicable:



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- (a) disclosures will be handled confidentially, when it is practical and appropriate in the circumstances;
- (b) each disclosure will be assessed and may be the subject of an investigation;
- (c) the objective of an investigation is to determine whether there is enough evidence to substantiate or refute the matters reported; and
- (d) an employee who is the subject of a disclosure will (unless there is a substantial risk that evidence will disappear or witnesses or potential witnesses be compromised or placed at risk of retribution):
  - (i) be advised about the subject matter of the disclosure (protecting as far as possible the identity of any disclosers (unless approved by the discloser/s)) as and when required by principles of natural justice and procedural fairness, and prior to any actions being taken—for example, if the disclosure is to be the subject of an investigation or if the disclosure is serious and needs to be referred to corporate or financial regulators or police authorities;
  - (ii) be provided an opportunity to respond; and
  - (iii) the outcome of the investigation (but they will not be provided with a copy of the investigation report).

All managers and company officers involved in the report and/or investigation are responsible to ensure:

- (a) all paper and electronic documents and other materials relating to disclosures are stored securely and all information relating to a disclosure can only be accessed by those directly involved in managing and investigating the disclosure;
- (b) only a restricted number of people who are directly involved in handling and investigating a disclosure are made aware of a discloser's identity or information that is likely to lead to the identification of the discloser;
- (c) communications and documents relating to the investigation of a disclosure are not sent to an email address or to a printer that can be accessed by other staff; and
- (d) each person who is involved in handling and investigating a disclosure should keep the identity of the discloser and the disclosure confidential and it is noted, in the case of a protected disclosure, an unauthorised disclosure of a discloser's identity may be a criminal offence.

Each disclosure will be assessed by Internal Audit Manager – Flooring ROW to determine whether follow up action is required. We are committed to implementing the findings and recommendations of investigations with a view to rectifying any wrongdoing as far as is practicable in the circumstances.

Investigation results will not be disclosed or discussed with anyone other than those who have a legitimate need to know. This is important in order to avoid damaging the reputations of persons

suspected but subsequently found innocent of wrongful conduct and to protect us from potential civil liability.

A summary of the disclosure and investigation will be made available to Mohawk's Board of Directors' Audit Committee for their review. If follow up action has been recommended by Internal Audit the result will be documented, filed and communicated to the Audit Committee quarterly or sooner if the circumstances warrant early reporting.

It may be that we decide to take a different course of action in relation to a disclosure than was expected by the discloser. This is because additional detail may come to light (whether that is through an investigation undertaken in response to the disclosure or simply because of senior management's knowledge). Disclosers should not expect, although it may form part of the considerations, that their preferred outcome in relation to the disclosure will be the course taken.

## **7. DISCIPLINARY ACTION**

If an investigation results in a recommendation that disciplinary action be considered (which may include termination) this will be handled in accordance with the disciplinary policies/procedures of the entity/site employing the relevant employee.

Making reports is not about airing grievances, but about reporting real or genuinely and reasonably perceived improprieties. Reports may damage the reputations and prospects of people subject to allegations. Any employee making a report not in good faith or being malicious, deliberately misleading or frivolous, may not be eligible for any regulatory whistleblower protection and/or may be subject to disciplinary action, including summary dismissal. Accordingly, any employee making a report should ensure as far as possible, that reports are factually accurate, complete, from firsthand knowledge, presented in an unbiased fashion, and without material omission.

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### APPENDIX A

Contact Details for reporting violations of our Code of Ethics, policies etc

EthicsPoint website - <https://secure.ethicspoint.com/domain/media/en/gui/55068/index.html>

Position	Current Incumbent	Phone Number	Email
VP – Internal Audit (Mohawk)	Carley J Ferguson	+1706 624-2206x42206	<a href="mailto:carley_ferguson@mohawkind.com">carley_ferguson@mohawkind.com</a>
Internal Audit Manager - Flooring ROW	Sarah Devos	+32 56 675694	<a href="mailto:sarah.devos@unilin.com">sarah.devos@unilin.com</a>
Internal Audit Manager – MFO	Kemp Vinson	+61 491 695 345	<a href="mailto:kemp.vinson@godfreyhirst.com">kemp.vinson@godfreyhirst.com</a>
President – Mohawk Flooring Oceania	Tania Pauling	+613 5225 0209	<a href="mailto:tania.pauling@godfreyhirst.com">tania.pauling@godfreyhirst.com</a>
Chief Financial Officer – Mohawk Flooring Oceania	Robert Bester	+613 5225 4556	<a href="mailto:robert.bester@godfreyhirst.com">robert.bester@godfreyhirst.com</a>
General Counsel – Mohawk Flooring Oceania	Susan Rechenberg-Dupe	+613 5225 0286	<a href="mailto:susan.dupe@godfreyhirst.com">susan.dupe@godfreyhirst.com</a>
Chief Operating Officer	Jane Fletcher	+613 5225 0266	<a href="mailto:jane.fletcher@godfreyhirst.com">jane.fletcher@godfreyhirst.com</a>
General Manager – Sales (Aust)	Ian Chadwick	+61 427 704 111	<a href="mailto:ian.chadwick@godfreyhirst.com">ian.chadwick@godfreyhirst.com</a>
General Manager – GHNZ	Andre May	+649 268 3302 (802)	<a href="mailto:andre.may@godfreyhirst.co.nz">andre.may@godfreyhirst.co.nz</a>
General Manager – Canterbury Spinners	Bruce Blair	+644 570 5188	<a href="mailto:bruce.blair@godfreyhirst.co.nz">bruce.blair@godfreyhirst.co.nz</a>
General Manager – Premium Floors/ Floorscape	Jamie Costello	+61 431 330 238	<a href="mailto:jamie.costello@premiumfloors.com.au">jamie.costello@premiumfloors.com.au</a>
EthicsPoint Hotline – Australia		1800-033-231	<a href="mailto:ethics_hotline@mohawkind.com">ethics_hotline@mohawkind.com</a>
EthicsPoint Hotline – New Zealand		TBA	<a href="mailto:ethics_hotline@mohawkind.com">ethics_hotline@mohawkind.com</a>
Letter		UNILIN Industries, BVBA Ethics Hotline – Internal Audit Ooigemstraat 3 8710 Wielsbeke Belgium	Godfrey Hirst Australia Pty Ltd Ethics Hotline PO Box 93 Geelong Vic 3220 Australia

## APPENDIX B

### Protected Disclosures Fact Sheet (Australia Only)

Set out below is more information relating to protected disclosures under Part XX of the Corporations Act 201 (Cth). All sections referred to below are of the Corporations Act 2001.

#### 1. Who are eligible whistleblowers?

An eligible whistleblower is an individual who is, or has been, any of the following in relation to the entity:

- (a) an officer or employee;
- (b) a supplier of services or goods to the entity (whether paid or unpaid), including their employees;
- (c) an associate of the entity; and
- (d) a relative, dependant or spouse of an individual in (a)– (c)<sup>1</sup>.

#### 2. Who Qualifies for Protection?

A discloser qualifies for protection as a whistleblower under the Corporations Act 2001 if they are an 'eligible whistleblower' in relation to the entity and:

- (a) they have made a disclosure of information relating to a 'disclosable matter' directly to an 'eligible recipient' or to ASIC, the Australian Prudential Regulation Authority (APRA) or another Commonwealth body prescribed by regulation;
- (b) they have made a disclosure to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act 2001; or
- (c) they have made an 'emergency disclosure' or 'public interest disclosure'<sup>2</sup>.

#### 3. What matters are "protected disclosures" and qualify for protection?

**"protected disclosure"** means a disclosure in respect to any Australian subsidiary of Mohawk ("Mohawk Flooring Australia") by an eligible whistleblower ("discloser") which qualifies for protection under Part 9.4AAA of the Corporations Act 2001 as set out in section 1317AA and includes disclosure of information which the discloser has **reasonable grounds to suspect** that the information indicates the entity or any of its officers or employees has engaged in:

- (a) Misconduct or an improper state of affairs or circumstances in relation to the entity or a related entity (which may not involve a contravention of a particular law). For example, 'misconduct or an improper state of affairs or circumstances' may not involve unlawful conduct in relation to the entity or a related body corporate of the entity but may indicate a systemic issue that the relevant regulator should know about to properly perform its

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<sup>1</sup> ss1317AAA

<sup>2</sup> ss1317AA, s1317AAA, s1317AAC and 1317AAD

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functions. It may also relate to dishonest or unethical behaviour and practices, conduct that may cause harm, or conduct prohibited by the entity's standards or code(s) of conduct)<sup>3</sup>;

- (b) Conduct that constitutes an offence against or a contravention of a provision of any of the following legislation of the Commonwealth of Australia (or any instruments under such legislation), being Corporations Act 2001; Australian Securities and Investments Commission Act 2001; Banking Act 1959; Financial Sector (Collection of Data) Act 2001; Insurance Act 1973; Life Insurance Act 1995; National Consumer Credit Protection Act 2009; and Superannuation Industry (Supervision) Act 1993;
- (c) Conduct that constitutes an offence against any other law of the Commonwealth of Australia that is punishable by imprisonment for a period of 12 months or more;
- (d) Conduct that represents a danger to the public or the financial system (even if it does not involve breach of a particular law)<sup>4</sup>.

A discloser of a protected disclosure can still qualify for protection under the Corporations Act 2001 even if their disclosure turns out to be incorrect. The term 'reasonable grounds to suspect' is based on the objective reasonableness of the reasons for the discloser's suspicion. It ensures that a discloser's motive for making a disclosure, or their personal opinion of the person(s) involved, does not prevent them from qualifying for protection. In practice, a mere allegation with no supporting information is not likely to be considered as having 'reasonable grounds to suspect'. However, a discloser does not need to prove their allegations.

A full list the protected disclosures is set out in section 1317AA (4) and (5). Should you have any query as to whether a particular disclosure falls within the definition of permitted disclosure, please contact the Australian or Flooring ROW legal department who will provide this advice on a confidential, anonymous basis. Note that if you seek advice on this basis you must expressly state that it is your intention not to make a disclosure (at that time) and that you are only seeking advice on whether your matter may constitute a protected disclosure. Where possible, to ensure you can be provided advice as opposed to facilitating a disclosure, you must ensure that your issue is anonymised as much as possible.

#### 4. What matters do not qualify for protection?

It is noted some of the disclosures below may be protected under other legislation (eg Fair Work Act 2009 (Cth)).

Disclosures that relate solely to **personal work-related grievances** of the discloser only, and do not have significant implications for the entity or relate to any conduct or alleged conduct which would be a permitted disclosure, do not qualify for protection under the Corporations Act 2001<sup>5</sup>.

Examples of grievances that may be personal work-related grievances include:

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<sup>3</sup> See s1317AA(4). The term 'misconduct' is defined in s9 of the Corporations Act 2001 to include 'fraud, negligence, default, breach of trust and breach of duty'. The phrase 'improper state of affairs or circumstances' is not defined and is intentionally broad.

<sup>4</sup> See s1317AA(5). The more specific categories of conduct set out in s1317AA(5) do not limit the range of misconduct covered by s1317AA(4), or vice versa. Rather, they make clear that certain forms of conduct qualify for protection.

<sup>5</sup> ss1317AADA(1); s1317AC

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- (a) an interpersonal conflict between the discloser and another employee; and
- (b) decisions that do not involve a breach of workplace laws:
  - (i) about the engagement, transfer or promotion of the discloser;
  - (ii) about the terms and conditions of engagement of the discloser; or
  - (iii) to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

It is noted some of these disclosures may be protected under other legislation (e.g. Fair Work Act 2009 (Cth)).

Grievances of this nature should be directed to your supervising officer/manager or the Human Resources Department. However, such grievances may still be a matter which can be disclosed under this policy or the reporting mechanism set out in any other company policy (e.g. EEO Policy).

In some situations a personal work-related grievance may still qualify for protection under the Corporations Act 2001. For example, if:

- (a) a personal work-related grievance includes information about misconduct, or information about misconduct includes or is accompanied by a personal work-related grievance (mixed report);
- (b) the entity has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the disclosure relates to information that suggests misconduct beyond the discloser's personal circumstances;
- (c) the discloser suffers from or is threatened with detriment for making a disclosure; or
- (d) the discloser seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act 2001.

## 5. Who can Provide Advice or Receive a Disclosure

### 5.1 Eligible Recipients

A discloser must make a disclosure directly to one of our **eligible recipients** to be able to qualify for protection as a whistleblower under the Corporations Act 2001. A discloser qualifies for protection from the time they make their disclosure, regardless of whether the discloser or recipient recognises that the disclosure qualifies for protection.

An eligible recipient includes:

- (a) an officer or senior manager of the entity or related body corporate;
- (b) the internal or external auditor (including a member of an audit team conducting an audit) or actuary of the entity or related body corporate; and

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(c) a person authorised by the entity to receive disclosures that may qualify for protection<sup>6</sup>.

Generally, an 'officer' includes a director or company secretary of an entity. A 'senior manager' is generally a senior executive within an entity, other than a director or company secretary, who makes or participates in making decisions that affect the whole, or a substantial part, of the business of the entity; or has the capacity to significantly affect the entity's financial standing. (s9)

Set out in Appendix A are details of those managers we believe to be senior managers and are authorised to receive disclosure that may qualify for protection.

### 5.2 Legal Practitioners

Disclosures to a legal practitioner for the purposes of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act 2001 are protected (even in the event the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter')<sup>7</sup>.

### 5.3 Regulatory bodies and other external parties

Disclosures of information relating to disclosable matters can be made to ASIC, APRA or another Commonwealth body prescribed by regulation and qualify for protection under the Corporations Act 2001<sup>8</sup>. Usually their websites will provide information as to how to report matters (e.g. ASIC Information Sheet 239 How ASIC handles whistleblower reports (INFO 239))

#### ***Journalists/Parliamentarians - public interest disclosures and emergency disclosures***

Disclosures can be made to a journalist or parliamentarian under certain circumstances and qualify for protection<sup>9</sup>.

A 'public interest disclosure' is the disclosure of information to a journalist or a parliamentarian, where:

- (A) at least 90 days have passed since the discloser made the disclosure to ASIC/APRA or another Commonwealth body prescribed by legislation;
- (B) the discloser does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
- (C) the discloser has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- (D) before making the public interest disclosure, the discloser has given written notice to the body in (a) (i.e. the body to which the previous disclosure was made) that:

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<sup>6</sup> 1317AAC(1)

<sup>7</sup> s1317AA(3)

<sup>8</sup> s1317AA(1)

<sup>9</sup> s1317AAD

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- (i) includes sufficient information to identify the previous disclosure; and
  - (ii) states that the discloser intends to make a public interest disclosure<sup>10</sup>.
- (ii) 'emergency disclosure' where:
- (a) the discloser has previously made the disclosure to ASIC/APRA or another Commonwealth body prescribed by legislation;
  - (b) the discloser 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) before making the emergency disclosure, the discloser has given written notice to the body in (a) (i.e. the body to which the previous disclosure was made) that:
    - (i) includes sufficient information to identify the previous disclosure; and
    - (ii) states that the discloser intends to make an emergency disclosure; and
  - (d) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger<sup>11</sup>.

If considering a public interest disclosure or emergency disclosure it is suggested you contact the Legal Department or an independent legal adviser to ensure you understand the criteria for making a public interest or emergency disclosure that qualifies for protection

### 6. Legal Protections for Disclosers

Under the Corporations Act 2001, the following protections are available to all disclosers of protected disclosures. These protections apply not only to internal disclosures, but to disclosures to legal practitioners, regulatory and other external bodies, and public interest and emergency disclosures that are made in accordance with the Corporations Act 2001.

#### 6.1 Identity protection (confidentiality)

We are legally obliged to protect the confidentiality of a discloser's identity.

Under the Corporations Act a person cannot disclose the identity of a discloser or information that is likely to lead to the identification of the discloser (which they have obtained directly or indirectly because the discloser made a disclosure that qualifies for protection) unless a person discloses the identity of the discloser:

- (a) to ASIC, APRA, or a member of the Australian Federal Police (within the meaning of the Australian Federal Police Act 1979);

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<sup>10</sup> s1317AAD(1)

<sup>11</sup> s1317AAD(2)



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- (b) to a legal practitioner (for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Corporations Act 2001);
- (c) to a person or body prescribed by regulations; or
- (d) with the consent of the discloser.

A person can disclose the information contained in a disclosure without the discloser's consent if:

- (a) the information does not include the discloser's identity;
- (b) the entity has taken all reasonable steps to reduce the risk that the discloser will be identified from the information; and
- (c) it is reasonably necessary for investigating the issues raised in the disclosure.

ASIC, APRA or the Australian Federal Police can disclose the identity of the discloser, 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<sup>12</sup>.

It is illegal for a person to identify a discloser, or disclose information that is likely to lead to the identification of the discloser, outside the exceptions above.

### 6.2 ***Protection from detrimental acts or omissions***

A person cannot engage in conduct that causes detriment to a discloser (or another person), in relation to a disclosure, if:

- (a) the person believes or suspects that the discloser (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
- (b) the belief or suspicion is the reason, or part of the reason, for the conduct.

In addition, a person cannot make a threat to cause detriment to a discloser (or another person) in relation to a disclosure. A threat may be express or implied, or 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<sup>13</sup>.

Examples of detrimental conduct (which is clearly prohibited for all our managers) include:

- (a) dismissal of an employee;
- (b) injury of an employee in his or her employment;
- (c) alteration of an employee's position or duties to his or her disadvantage;

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<sup>12</sup> s1317AAE

<sup>13</sup> s1317AC

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- (d) discrimination between an employee and other employees of the same employer;
- (e) harassment or intimidation of a person;
- (f) harm or injury to a person, including psychological harm;
- (g) damage to a person's property;
- (h) damage to a person's reputation;
- (i) damage to a person's business or financial position; or
- (j) any other damage to a person.<sup>14</sup>

In practice, administrative action that is reasonable to protect a discloser from detriment (e.g. when the disclosure relates to wrongdoing in the discloser's immediate work area) will not be considered as detrimental conduct. Protecting a discloser from detriment also does not prevent the entity from managing a discloser's unsatisfactory work performance, if the action is in line with the entity's performance management framework.

### 6.3 Compensation and other remedies

A discloser (or any other employee or person) can seek compensation and other remedies through the courts if:

- (a) they suffer loss, damage or injury because of a disclosure; and
- (b) the entity failed to prevent a person from causing the detriment.<sup>15</sup>

If disclosers believe they may have a right to compensation or any other remedy, they should seek independent legal advice.

#### *Civil, criminal and administrative liability protection*

Disclosers of protected disclosures are protected under the Corporations Act from any of the following in relation to their disclosure:

- (a) civil liability (e.g. any legal action against the discloser for breach of an employment contract, duty of confidentiality or another contractual obligation);
- (b) criminal liability (e.g. attempted prosecution of the discloser for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)); and
- (c) administrative liability (e.g. disciplinary action for making the disclosure).

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<sup>14</sup> s1317ADA

<sup>15</sup> s1317AD

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However, these protections do not grant immunity for any misconduct you have engaged in that is revealed in your disclosure.

### 7. Support and Practical Protection for Disclosers

Should you make a protected disclosure, we will be seeking to provide to you support and practical protections (in addition to the legal protections above) including:

- (a) *Identity protection (confidentiality)* - We are committed to protecting the confidentiality of your identity and will be undertaking the procedures set out in this policy however you should be aware that people may be able to guess your identity if:
  - (i) you have previously mentioned to other people that you are considering making a disclosure;
  - (ii) you are one of a very small number of people with access to the information; or
  - (ii) the disclosure relates to information that you have previously been told privately and in confidence.
- (b) *Protection from detrimental acts or omissions* - We will, in practice, protect disclosers from detriment, including without limitation:
  - (i) the Whistleblower Protection Officer is available to assist to protect your welfare and seek to ensure (if they are aware of your identity) that you are protected from any detrimental acts or omissions and will upon being aware of receipt of a protected disclosure, undertake an assessment of the risk of detriment against you and other persons (e.g. other staff who might be suspected to have made a disclosure);
  - (ii) strategies to help a discloser minimise and manage stress, time or performance impacts, or other challenges resulting from the disclosure or its investigation utilising our Employee Assistance Program;
  - (iii) if it is assessed there is a risk of detriment we will seek to undertake such strategies as may be necessary to minimise the risk which may include:
    - (A) allowing you to perform your duties from another location
    - (B) reassign you to another role at the same level
    - (C) make other modifications to your workplace or the way you perform your work duties, or
    - (D) reassignment or relocation of other staff involved in the disclosable matter);
  - (iv) the Whistleblower Protection Officer (if aware of your identity) will, while maintaining the confidentiality of your identity as set out in the Corporations Act, ensure that management are aware of their responsibilities to:
    - (A) maintain the confidentiality of a disclosure;

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- (B) address the risks of isolation or harassment;
  - (C) manage conflicts; and
  - (D) ensure fairness when managing your performance, or taking other management action relating to you;
- (v) should you believe you have suffered detriment you should lodge with the Whistleblower Protection Officer or human resources department. Upon receipt of a complaint the matter will be referred to the President – Mohawk Flooring Oceania, who will arrange for the investigation of the complaint as a separate matter by an officer who is not involved in dealing with disclosures and the investigation findings will be provided to the President – Mohawk Flooring Oceania; and
- (vi) if detriment has already occurred if practicable, we will seek to address the detrimental conduct which may include disciplinary action or adjustments within the workplace and/or consider other alternatives which may include:
- (A) allowing you to take extended leave;
  - (B) development of an alternative career development plan for you, including new training and career opportunities; or
  - (C) compensation or other remedies.

In addition, you may seek independent legal advice or contact regulatory bodies, such as ASIC or APRA, if you believe you have suffered detriment.