

Whistleblower Protection Policy

Last update	January 2024
Due for review	January 2025
Reviewer	People & Culture Subcommittee, CEO
Owner	Minus18 Board
Visibility	<i>A PDF of this policy must be accessible by the public on our website. Please ensure all updates to this document are reflected online.</i>

1 Overview

1.1 What this policy deals with

- (a) Minus18 Foundation Limited (**Minus18**) recognises the value in fostering a culture where unacceptable conduct is reported and where whistleblowers are protected.
- (b) This policy (particularly part 2) is a guide for current and former employees, volunteers and directors at Minus18 (and other **eligible whistleblowers**) who want to 'blow the whistle' on serious misconduct like fraud, corruption or illegality at Minus18. This policy explains how you will be protected by Minus18 and the law if your disclosure meets certain criteria, who to disclose to, and what they will do with your disclosure.
- (c) This policy (particularly part 5) is also a guide on how to respond if an **eligible whistleblower** discloses misconduct to you if you are an **eligible recipient**.
- (d) This policy, including the obligations outlined in part 3, applies to all Minus18 employees, volunteers and officers.

1.2 What this policy doesn't deal with

Interpersonal grievances, bullying and harassment, and performance and conduct issues are not dealt with under this policy. The Employee Handbook sets out Minus18's policies for dealing with these matters.

1.3 How to read this policy

Some words in **bold** in this policy have a special legal meaning. They are defined in Schedule 1 at the end of this policy.

Minus18 is legally required to have this policy under the *Corporations Act 2001* (Cth). This means some of the language may be tricky to understand. Please contact your manager or the Chair of the Board if you require assistance.

This policy will be made available to all employees, volunteers and officers of Minus18 on Minus18's website and via Google Drive.

2 If you want to disclose a disclosable matter

2.1 Does this policy protect you?

This policy protects you if you are an **eligible whistleblower**. An **eligible whistleblower** means a current or former:

- (a) officer of Minus18;
- (b) employee of Minus18;
- (c) individual (including volunteers) who supplies services or goods to Minus18;
- (d) employee of an individual (including volunteers) that supplies services or goods to Minus18;
- (e) **associate** of Minus18 (within the meaning of the *Corporations Act 2001* (Cth)); or
- (f) relative, dependant or spouse of someone listed above.

In part 2 of this policy, 'you' and 'your' refers to **eligible whistleblowers**.

2.2 What things should you disclose under this policy?

- (a) Minus18 encourages **eligible whistleblowers** to disclose **disclosable matters** to an **eligible recipient** in accordance with this policy.
- (b) **Disclosable matters** include misconduct, serious unlawful conduct or an improper state of affairs or circumstances in relation to Minus18, such as fraud, corruption, and conduct that endangers the public or the financial system. A full definition of **disclosable matters** is in Schedule 1 of this policy.

2.3 What things should you disclose under other policies?

- (a) Some types of disclosure will be dealt with under other Minus18 policies (as set out in the Employee Handbook), rather than this policy. This is because this policy sets out a specific process for dealing with matters that are protected by the *Corporations Act 2001* (Cth).
- (b) The types of disclosures that don't qualify for protection under this policy or the *Corporations Act 2001* (Cth) are:

- (i) Disclosures that do not meet the definition of a **disclosable matter** (such as less serious concerns or complaints);
- (ii) Disclosures of **personal work-related grievances**, such as bullying, harassment or interpersonal issues that don't have implications for Minus18 that extend beyond you personally. A full definition of **personal work-related grievances** is available in Schedule 1 of this policy;
- (iii) Malicious and false disclosures. If you make a malicious and false disclosure, you may be subject to disciplinary action up to and including termination of your employment or engagement with Minus18.

2.4 How should you disclose a disclosable matter?

- (a) You can disclose a **disclosable matter** in person, by phone or in writing to any **eligible recipient**. A full list of **eligible recipients** is available in Schedule 1 of this policy.
- (b) Our preferred channel for disclosing a **disclosable matter** is by phone or email to the following **eligible recipients**:
 - (i) the Chair of the Board; or if that is not appropriate/possible,
 - (ii) the Deputy Chair of the Board; or if that is not appropriate/possible,
 - (iii) the CEO; or if that is not appropriate/possible,
 - (iv) the Operations Manager.

Their contact details are available on the Minus18 website.
- (c) You can make a disclosure anonymously and still be protected under the *Corporations Act 2001* (Cth). However, if Minus18 is not able to contact you or ask you about your disclosure, Minus18's ability to investigate the disclosure may be limited.
- (d) In certain circumstances, you can make an **emergency disclosure** or **public interest disclosure**. Details are set out in Schedule 1 of this policy.
- (e) Before formally making a disclosure under this policy, you may wish to seek additional information from an **eligible recipient**, or seek independent legal advice.

2.5 What happens after you disclose a disclosable matter to an eligible recipient?

- (a) When Minus18 becomes aware that you have made a disclosure in accordance with part 2.4 of this policy, Minus18 will facilitate an investigation into the disclosure in accordance with part 5 of this policy.
- (b) During and after the investigation, if Minus18 reasonably believes that you made a **protected disclosure** (ie that you are an eligible whistleblower who disclosed a disclosable matter to an eligible whistleblower), Minus18 will provide the protections set out in part 3 of this policy.

3 How eligible whistleblowers who make protected disclosures will be protected

3.1 Protection of identity

- (a) An **eligible whistleblower** who makes a **protected disclosure** is not required to identify themselves to Minus18 or anyone else in order to be protected under this policy or the law.
- (b) If a person obtains information as a result of a **protected disclosure** that identifies or is likely to identify the **eligible whistleblower**, that person must not disclose that information to any person, except:
 - (i) with the **eligible whistleblower's** consent; or
 - (ii) as permitted by part 5.1(b) of this policy; or
 - (iii) to a legal practitioner for the purpose of obtaining legal advice or legal representation about the operation of relevant whistleblower protection legislation; or
 - (iv) to ASIC, APRA, or the AFP (or if the **protected disclosure** relates to **tax affairs**, to the Commissioner of Taxation. **Tax affairs** are defined in Schedule 1 of this policy).
- (c) Minus18 may protect an **eligible whistleblower's** identity by redacting information from certain documents, referring to the **eligible whistleblower** using language that does not identify their gender, age or role, and securely storing all materials relating to the **protected disclosure**.

3.2 Protection from certain liability

- (a) An **eligible whistleblower** will not be subject to any civil, criminal or administrative liability for making a **protected disclosure**.
- (b) However, this does not prevent an **eligible whistleblower** from being subject to any civil, criminal or administrative liability for their own misconduct that is revealed by the **protected disclosure**.
- (c) Minus18 will not exercise any contractual right, or seek any contractual remedy, against an eligible whistleblower (such as termination of employment or engagement) on the basis that the **eligible whistleblower** made the **protected disclosure**.
- (d) Information contained in a **protected disclosure** made to the Commissioner of Taxation, a **public interest disclosure**, or an **emergency disclosure** is not admissible in evidence against the **eligible whistleblower** in criminal proceedings or in proceedings for the imposition of a penalty.

3.3 Protection from detriment

- (a) An **eligible whistleblower** must not suffer **detriment** or disadvantage in reprisal for making a **protected disclosure**. **Detriment** is defined in Schedule 1 of this policy.

- (b) No one may cause or threaten to cause **detriment** to another person because they believe or suspect that someone may have made, proposes to make, or could make a **protected disclosure**.
- (c) Minus18 will take all reasonable steps to protect **eligible whistleblowers** who make protected disclosures from suffering **detriment**, including by:
 - (i) ensuring all **eligible recipients** who are employees or officers of Minus18 are aware of behaviour that may cause **detriment**; and
 - (ii) ensuring that all employees and officers of Minus18 are made aware of this policy and the right to make a **protected disclosure** without suffering **detriment**.

3.4 Availability of compensation

A person may seek compensation and other remedies through the courts if they suffer loss, damage or injury because of **detriment**, if Minus18 failed to take reasonable precautions and exercise due diligence to prevent that **detriment**.

4 What happens if you don't provide an eligible whistleblower with the protections set out in part 3?

- (a) If any employee or officer of Minus18 fails to comply with part 3 of this policy, they may be subject to disciplinary action up to and including termination of employment or engagement.
- (b) Such a person may also be in breach of the law, which may result in civil liability to pay compensation, damages and/or a penalty; and/or criminal liability to pay penalties and/or a maximum of two years' imprisonment.

5 If someone discloses a disclosable matter to you

Part 5 of this policy provides guidance to **eligible recipients** who receive a disclosure of a **disclosable matter**. In Part 5, 'you' and 'your' refers to an **eligible recipient**.

5.1 What to do straight away if someone discloses a disclosable matter to you

- (a) As soon as reasonably practicable after you become aware of the disclosure, you must:
 - (i) attempt to confirm whether the discloser is an **eligible whistleblower** (defined in Schedule 1 of this policy). If the discloser is not an **eligible whistleblower**, the disclosure should be dealt with outside of this policy;
 - (ii) ask the discloser if they consent to their identity, or information that may identify them, being disclosed to any other person(s) (for example, the Chair of the Board, the CEO, or other persons who will investigate the **disclosable matter**);
 - (iii) inform the Chair, Deputy Chair and/or CEO (as appropriate) of the nature and

substance of the disclosure, without revealing the discloser's identity or information that may identify them; and

- (iv) provide the discloser with the protections set out in part 3 of this policy on an interim basis until the investigation is finalised.
- (b) At law, you may disclose at any time information contained in a disclosure without the discloser's consent:
- (i) if reasonably necessary for the purposes of investigating a matter relevant to the disclosure; and
 - (ii) if you take all reasonable steps to reduce the risk that the **eligible whistleblower** will be identified as a result; and
 - (iii) the information is not the actual identity of the discloser.

5.2 What happens next?

- (a) After you complete the steps in part 5.1 of this policy, Minus18 will facilitate an investigation into:
- (i) whether the disclosure is in fact a **protected disclosure**; and
 - (ii) whether the **disclosable matter** in question is substantiated, partly substantiated, or unsubstantiated.
- (b) The investigation:
- (i) may be undertaken internally or through the engagement of an external investigator;
 - (ii) where appropriate, may be undertaken under client legal privilege;
 - (iii) where appropriate, may involve regular updates to the discloser;
 - (iv) will be undertaken with the purpose of gathering all relevant evidence and in accordance with the rules of natural justice; and
 - (v) will be undertaken in a confidential manner, including compliance with the confidentiality requirements in part 3.1 of this policy.
- (c) Where the investigation determines that a **protected disclosure** was made, Minus18 must provide the discloser with the protections in part 3 of this policy on an ongoing basis.

6 If someone makes a protected disclosure that implicates you

If you are an employee or officer mentioned or implicated in a protected disclosure, Minus18 will ensure you are treated fairly (where appropriate, and to the extent possible given the requirements in part 3 of this policy) by:

- (a) making you aware of the nature of the relevant allegations;

- (b) updating you on the progress of the relevant parts of the investigation;
- (c) giving you an opportunity to respond to the relevant allegations; and
- (d) making you aware of support services available.

7 Review and amendment

This policy will be periodically reviewed (and, if necessary, amended) by Minus18 to ensure it is operating efficiently and complies with applicable legislation.

Schedule 1 - Definitions

These definitions reflect the *Corporations Act 2001* (Cth). Minus18 is required by law to use these definitions. If you have any difficulty understanding these definitions, please contact your manager or the Chair of the Board for assistance.

- (a) **Detriment** includes (but is not limited to):
 - (i) dismissal of an employee;
 - (ii) injury of an employee in their employment;
 - (iii) alteration of an employee's position or duties to their disadvantage;
 - (iv) discrimination between an employee and other employees;
 - (v) harassment or intimidation of a person;
 - (vi) harm or injury to a person, including psychological harm;
 - (vii) damage to a person's property;
 - (viii) damage to a person's reputation;
 - (ix) damage to a person's business or financial position; and
 - (x) any other damage to a person.
- (b) **Disclosable matter** means information disclosed by an **eligible whistleblower** where the **eligible whistleblower** has reasonable grounds to suspect that the information:
 - (i) concerns misconduct or an improper state of affairs or circumstances (including but not limited to dishonest conduct, unlawful conduct, corruption or fraud) in relation to Minus18; or
 - (ii) indicates that Minus18, or its officers or employees, has engaged in conduct that:

- (A) represents a danger to the public or the financial system; or
 - (B) contravenes the Corporations Act 2001, ASIC 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, Superannuation Industry (Supervision) Act 1993, or an instrument or regulation made under any of those Acts; or
 - (C) contravenes any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
- (iii) indicates misconduct, or an improper state of affairs or circumstances, in relation to the **tax affairs** of Minus18 or an **associate**, where the **eligible whistleblower** considers the information may assist the **eligible recipient** to perform functions or duties in relation to the **tax affairs** of Minus18 or an **associate**.
- (c) **Eligible whistleblower** means:
- (i) an individual who is a current or former:
 - (A) officer of Minus18;
 - (B) employee of Minus18;
 - (C) individual (paid or unpaid) who supplies services or goods to Minus18, including volunteers;
 - (D) employee of an individual (paid or unpaid) that supplies services or goods to Minus18;
 - (E) an individual who is an **associate** of Minus18 (within the meaning of the *Corporations Act 2001* (Cth)); or
 - (ii) a relative, dependant or spouse of an individual referred to above.
- (d) **Eligible recipient** means:
- (i) a senior manager or an officer of Minus18, for the avoidance of doubt, includes Minus18's Chief Executive Officer, Chair and directors;
 - (ii) a person authorised by Minus18 to receive **protected disclosures**;
 - (iii) an auditor, or a member of an audit team conducting an audit, of Minus18;
 - (iv) an actuary of Minus18;
 - (v) the Australian Securities and Investments Commission;
 - (vi) the Australian Prudential Regulation Authority;
 - (vii) a prescribed Commonwealth authority;
 - (viii) where the **eligible whistleblower** is disclosing for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant

whistleblower legislation – a legal practitioner;

- (ix) in addition to the above, where the **disclosable matter** is in relation to **tax affairs**:
- (A) any employee or officer of Minus18 who has functions or duties that relate to the **tax affairs** of Minus18;
 - (B) a registered tax agent or BAS agent who provides tax agent or BAS services to Minus18; or
 - (C) the Commissioner of Taxation.

(e) **Emergency disclosure** means a disclosure of a **disclosable matter** by an **eligible whistleblower** to a Member of Parliament or a journalist where:

- (i) the **eligible whistleblower** has already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority; and
- (ii) they have reasonable grounds to believe that the **protected disclosure** concerns a substantial and imminent danger to the health or safety of one or more persons or the natural environment; and
- (iii) they have notified the entity to which they made the **protected disclosure** that they intend to make an **emergency disclosure**; and
- (iv) the extent of the information disclosed in the **emergency disclosure** is no greater than necessary to inform the recipient of the substantial and imminent danger.

(f) **Personal work-related grievance** means a grievance about any matter in relation to the **eligible whistleblower's** employment, or former employment, which:

- (i) has (or tends to have) implications for the **eligible whistleblower** personally;
- (ii) does not have significant implications for Minus18 (or another organisation regulated by whistleblower protection laws) that are unrelated to the **eligible whistleblower**; and
- (iii) does not relate to conduct (or alleged conduct) set out in Schedule 1(b)(ii).

For example, this includes (but is not limited to):

- interpersonal conflicts;
- decisions relating to the engagement, transfer or promotion of the **eligible whistleblower**;
- decisions relating to the terms and conditions of the **eligible whistleblower's** engagement;
- decisions to suspend, discipline or dismiss the **eligible whistleblower**; and/or

- conduct (or alleged conduct) in respect of workplace bullying, harassment, sexual harassment or discrimination.

A **personal work-related grievance** is not a **disclosable matter**, except to the extent that it concerns **detriment** to the **eligible whistleblower** in contravention of part 3.3 of this policy.

- (g) **Protected disclosure** means a disclosure by an **eligible whistleblower** to an **eligible recipient** of a **disclosable matter**.
- (h) **Public interest disclosure** means a disclosure of a **disclosable matter** by an **eligible whistleblower** to a Member of Parliament or a journalist where:
- (i) the **eligible whistleblower** has already made a **protected disclosure** to ASIC, APRA or a Commonwealth authority;
 - (ii) at least 90 days have passed since they made the **protected disclosure**;
 - (iii) they do not have reasonable grounds to believe that action has been or is being taken to address the matters to which the **protected disclosure** related;
 - (iv) they have reasonable grounds to believe that making the **public interest disclosure** would be in the public interest;
 - (v) after the period referred to in Schedule 1(h)(i), they have notified the entity to which they made the **protected disclosure** that they intend to make a **public interest disclosure**; and
 - (vi) the extent of the information disclosed in the **public interest disclosure** is no greater than necessary to inform the recipient of the **disclosable matter**.
- (i) **Tax affairs** means affairs of Minus18 or its **associates** (within the meaning of the *Income Tax Assessment Act 1936*) relating to any tax imposed, assessed or collected by or under a law administered by the Commissioner of Taxation.

Attachments

Direct Questions to the CEO Micah Scott
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Related Files
