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1 INTRODUCTION

This Standard applies to employees who become aware that something maybe seriously wrong in the way another employee has behaved in the course of their duties or in the way that Macquarie Generation is functioning. It is in the best interests of the Corporation that such situations are reported to someone who can assess the situation.

This Standard also applies to temporary or casual employees, consultants and individual contractors working for the organisation. The Standard may also apply to others who perform work for Macquarie Generation and their conduct and activities could be examined by an investigating authority.

In NSW, the Public Interest Disclosures Act 1994, (The Act), establishes a framework, by which people who work in the public sector, including State Owned Corporations, can come forward with important information, without fear of detrimental action.

The Act sets out certain requirements and where these are met, the Act provides protection against reprisals for employees and others who voluntarily report matters of corruption, maladministration or serious waste.

A disclosure is not covered by the Act if it:

- was made primarily to avoid dismissal or disciplinary action
- contains intentionally false statements or is intended to mislead or attempt to mislead the recipient; these are offences under the Act
- questions the merits of government policy

Designated Responsible Officers

Responsible officers for receiving or providing advice on protected disclosures are:

- Receiving a disclosure: the Chairman, the Chief Executive (R Skelton) or Chief Financial Officer and Company Secretary (D Ipkendanz)
- Advisory: protected disclosures Manager Human Resources (T Frazer)
- Protected disclosures Co-Ordinator – Risk and Compliance Analyst (H Imienionek)

2 CONDUCT COVERED BY THE ACT

Corruption – very broadly, corruption is intentional and deliberate conduct that involves a dishonest exercise of position functions, breach of public trust or misuse of information or material acquired in the course of official functions. Some examples of corrupt behaviour are: awarding a contract to a company in which the employee or official has a pecuniary or financial interest; soliciting a bribe from a contractor; providing confidential information to a company bidding for work.

In defining corrupt conduct it is important to determine that the act was intentional and deliberate. Mistakes or negligence may not be considered to be corrupt because they are not done intentionally.

Maladministration – is defined in the Act, as conduct that involves action or inaction of a **serious** nature that is:

- contrary to law, or
- unreasonable, unjust, oppressive or improperly discriminatory, or
- based wholly or partly on improper motives.

Examples of maladministration are: an undeclared or unmanaged conflict of interest; a breach of natural justice/procedural fairness; unauthorised disclosure of confidential information; a partial, unfair, inequitable or unconscionable decision or action; failing to apply the law.

Serious and substantial waste – in addressing a complaint in this category, the nature and materiality of the waste would need to be considered. Some examples are: misappropriation or misuse of property; purchase of unnecessary or inadequate goods and services.

Government Information Contravention – is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 and includes destroying, concealing or altering records to prevent them from being released; knowingly making decisions that are contrary to the legislation, or directing others to make a decision contrary to the legislation

Other Inappropriate Conduct -may include harassment or unlawful discrimination, reprisal action against a person who has made a report of wrongdoing or practices that endanger the health and safety of others.

3 MAKING A DISCLOSURE

For a report to be a protected disclosure, it must be made in accordance with this Standard.

If a situation arises which an employee considers to be of a serious nature, the following steps apply:

- seek advice from a responsible officer or the protected disclosure Co-ordinator (Risk and Compliance Analyst. H Imienionek)
- remain discreet, do not discuss intentions to report with anyone else
- do not threaten to make a report
- focus on the issues and not the person

Disclosures can be made directly or in writing to the Chairman (Chairman@macgen.com.au); the Chief Executive (CEO@macgen.com.au) or to the Chief Financial Officer and Company Secretary (CFO@macgen.com.au), who are the responsible officers for dealing with protected disclosure

Disclosures will be dealt with as quickly as possible and the employee or other person making the disclosure will be kept informed on progress.

Alternatively, a protected disclosure can be made to an external body:

- the Independent Commission Against Corruption (ICAC) if it is about corruption in accordance with the Independent Commission Against Corruption Act 1988;
- the NSW Ombudsman if it is about maladministration in accordance with the Ombudsman Act 1974 or
- the Auditor-General if it is about serious and substantial waste of public money in accordance with the Public Finance and Audit Act 1983.

4 CONFIDENTIALITY

The identity of the reporter making a disclosure will be kept confidential, unless:

- the reporter allows the information to be revealed;
- Firmness to other people requires the reporter's identity to be disclosed;
- it is necessary to disclose information identifying the reporter in order to investigate the matter; or
- it is in the public interest to reveal the employee making the disclosure.

While every effort will be made to keep the reporter's identity confidential, the reporter protected disclosure may be identified to other persons during the course of the investigation. In such circumstances, the reporter will be alerted before their identity or information that may identify them is revealed as part of the investigation process. A plan will be developed to support and protect the reporter from risks of reprisal

5 PROTECTION FROM DETRIMENTAL ACTION

The Act requires that all reasonable steps will be taken to protect the reporter who makes a valid disclosure from reprisals in the workplace. Detrimental action includes:

- dismissal or disciplinary action
- actions that cause injury, damage or loss
- intimidation or harassment
- discrimination against or disadvantage in employment

If a situation arises where detrimental action is experienced, the reporter must complain to the person to whom they made the disclosure, or to the person who is dealing with the protected disclosure.

Where the complaint is not dealt with to a satisfactory standard, a complaint can be made to the NSW Ombudsman or ICAC.

Other protections for protected disclosure provided by the Act are that no liability is incurred and the Act provides a legal defence to any action taken for defamation or breach of confidence. However, the Act does not provide protection if the law has been breached in any way, such as breaking into someone's office to obtain evidence to support allegations.

6 PROCESSING A DISCLOSURE

The responsible officer to whom the disclosure is made will:

- maintain the confidentiality of the reporter, where practical and appropriate
- assess the disclosure to determine how it should be dealt with
- advise the reporter of the action taken or proposed to be taken

In assessing the disclosure, the responsible officer will consider whether the matter falls under the Public Interest Disclosures Act or into another category that may be handled by other mechanisms such as grievance, discrimination or workplace health and safety procedures.

While protected disclosure reported internally will be dealt with as soon as practicable, the Act requires that the person or organisation to whom a disclosure is made must advise the individual making the disclosure within two working days of making the report:

- an acknowledgement that the disclosure has been received
- a timeframe for further updates and the name and contact details of the person who will provide updates.

After a decision has been made about how the report will be dealt with, the reporter will be provided with:

- information about proposed action
- likely timeframes for any investigation and the resources available to handle any concerns
- information about external agencies that are available for support.

This information will be provided within ten working days of making the report.

The reporter can notify NSW Ombudsman or ICAC about the Protected Disclosure – if:

- it has been decided that the allegations are not to be investigated, or
- the investigation was not completed within six months, or
- no recommendations were made for action to be taken despite an investigation.

7 MINIMISING THE RISK

Team Leaders and Managers are required to establish systems in their work area that will minimise the risks of corruption, maladministration and waste and keep their employees informed on correct processes and standards of conduct.

It is important that employees and contractors are aware that it is a criminal offence under the Act to wilfully make a false or misleading statement when reporting wrongdoing.

Corporate policies and procedures and other standing instructions provide clear guidelines for the way the business operates. These are supported by various systems and processes, including external audit reviews.

This Corporate Standard is to be read in conjunction with Corporate Standard CS003 – Code of Conduct.

8 REFERENCES AND RELATED DOCUMENTS

Legislation

- Public Interest Disclosures Act 1994 No 92
- Independent Commission Against Corruption Act 1988
- Ombudsman Act 1974
- Public Finance and Audit Act 1983

Internal Documents

- CS003 – Code of Conduct
- CS030 – Fraud and Corruption Framework
- CS031 – Investigation Procedure
- CS032 – Statement of Business Ethics

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