

## WHISTLEBLOWING POLICY

### APPLICATION

This policy applies to the entities and related entities of the FKG Group and their:

- (a) current and former officers, employees, subcontractors and suppliers;
- (b) current and former employees of the FKG Group's subcontractors and suppliers; and
- (c) their relatives (including dependants and spouses).

### DEFINITIONS

The meanings of the terms used in this policy are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ASIC</b>	Australian Securities and Investment Commission.
<b>Detriment</b>	includes dismissal, alteration of the person's employment position, discrimination, harassment, intimidation, harm (including psychological harm) and damage to the person's property, reputation, business or financial position.
<b>FKG Group</b>	FK Gardner and Sons Pty Ltd, FKG Civil Pty Ltd, NRG Electrical (Qld) Pty Ltd, Ezyquip Hire Pty Ltd, Total Hydraulic Services Pty Ltd, Australian Coil Services Pty Ltd and all associated and related entities.
<b>Whistleblower</b>	any person to whom this policy applies who seeks to report any misconduct, illegal or inappropriate behaviour or any improper state of affairs (examples of these are set out in paragraph 1.6).
<b>Whistleblower Law</b>	Part 9.4AAA of the <i>Corporations Act 2001</i> (Cth).

### OBJECTIVES

The FKG Group is committed to a culture of corporate compliance and high ethical behaviour. The FKG Group's ethical values are set out in the FKG Group Code of Conduct (**FKGCP10**).

This policy complements the Code of Conduct and deals with certain issues relating to misconduct, improper behaviour or the existence of an improper state of affairs at the FKG Group. It also ensures compliance with Whistleblower Law applicable to the FKG Group.

The objectives of this policy are to:

- (a) ensure that honesty and integrity are maintained at the FKG Group;
- (b) encourage the prompt disclosure of any misconduct, illegal behaviour or any improper state of affairs;
- (c) make Whistleblowers feel confident about raising concerns by offering a reporting mechanism that is confidential and objective, and that will not result in the Whistleblower suffering any reprisals or Detriment as a result of disclosures;
- (d) provide protection for Whistleblowers; and
- (e) ensure that all allegations are thoroughly investigated with suitable action taken, where necessary.

### LEGISLATIVE FRAMEWORK

The FKG Group's obligations in relation to Whistleblower protection are set out in Whistleblower Law.

### 1. POLICY

#### Whistleblower protection

1.2 Under Whistleblower Law, in certain circumstances, a Whistleblower is:

- (a) entitled to anonymity;
- (b) entitled to protection from detrimental acts or omissions;

- (c) entitled to protection from compensation and other remedies;
  - (d) not subject to any civil, criminal or administrative liability or contractual right or remedy; and
  - (e) entitled to these protections, even if the allegations prove to be incorrect or unsubstantiated.
- 1.3 The nature and extent of protection provided under Whistleblower Law is summarised in Schedule 1 of this policy.
- 1.4 Employees who participate, or assist, in an investigation will also be protected from suffering any adverse action as a result of that participation or assistance.

**Reportable conduct**

- 1.5 This policy provides a mechanism for the reporting of Disclosable Matters. Disclosable matters involve information that the discloser has reasonable grounds to suspect concerns misconduct, or an improper state of affairs or circumstances about the FKG Group.
- 1.6 Below are some examples of misconduct, or an improper state of affairs that may be reportable under this policy:
- (a) dishonesty;
  - (b) fraud;
  - (c) corruption;
  - (d) audit non-disclosure or manipulation of any audit process;
  - (e) illegal activities (including theft, drug sale/use, violence, threatened violence, or criminal damage against the FKG Group's assets/property);
  - (f) discrimination, vilification, sexual harassment, harassment, bullying and victimisation;
  - (g) acts or omissions in breach of commonwealth or state legislation or local authority by-laws such as:
    - (i) the *Corporations Act 2001* (Cth); and
    - (ii) the *Australian Securities and Investments Commission Act 2001* (Cth);
  - (h) unethical behaviour;
  - (i) breaches of consumer protection laws;
  - (j) other serious improper conduct (including gross mismanagement, serious and substantial waste of the FKG Group's resources, or repeated breaches of administrative procedures);
  - (k) unsafe work practices;
  - (l) any other conduct that may cause financial or non-financial loss to the FKG Group or be otherwise detrimental to the interests or reputation of the FKG Group; or
  - (m) the deliberate concealment of information tending to show any of the matters listed above.
- 1.7 This policy is not designed to deal with general employment grievances and complaints and such grievances and complaints will not be subject to protection under Whistleblower Law. These grievances and complaints should be dealt with under the FKG Group's *Complaint Handling Policy* and *Code of Conduct*. Examples of general employment grievances including:
- (a) Grievances about interpersonal conflict between the discloser and another employee;
  - (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 discipline the discloser.
- 1.8 However a disclosure about or including a work-related grievance will still qualify for protection if the grievance includes information about misconduct or information about misconduct that is included under this policy if suffering a detriment for making a disclosure covered by this policy.

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## 2. PROTECTION OF WHISTLEBLOWER

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### When protection will operate

- 2.1. This policy protects the Whistleblower against any reprisals if the Whistleblower has reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances and it reports that conduct to an Eligible Recipient.

### No reprisals

- 2.2. The FKG Group will not subject a Whistleblower who reports any suspected or actual misconduct, contravention or improper state of affairs or circumstances that meet the conditions set out in clause 2.1 to any Detriment because of that disclosure. Similarly, the FKG Group will not subject any person who provides information to an investigation pursuant to this policy to any Detriment as a result of the provision of that information.
- 2.3. The FKG Group considers any Detriment taken against or suffered by a Whistleblower to be a serious breach of this policy and likely to result in disciplinary measures, including dismissal.

### Whistleblower Protections Officer

- 2.4. Persons making a complaint under this policy will have access to the **Whistleblower Protections Officer**. The Whistleblower Protections Officer appointed will safeguard the interests of the Whistleblower in terms of this policy and any applicable legislation and standards and provide support to them on the reporting process.
- 2.5. The Whistleblower Protection Officer will be readily accessible by all staff and will have direct, unfettered access to independent financial, legal and operational advisers as required.
- 2.6. The appointed Whistleblower Protections Officer can be contacted by the following means:

**Name:** Matt Ahlberg, Leadership and Development Manager

**Email:** [matt.ahlberg@fkg.com.au](mailto:matt.ahlberg@fkg.com.au)

**Phone:** 0439 212 504

**In person:** FKG Windsor Office (106 Newmarket Road, Windsor)

### Other protections

- 2.7. Other strategies may also be put in place, as considered appropriate in the circumstances to provide adequate protections for a person making a complaint. These could include:
- (a) Allowing the discloser the ability to perform their duties from another location;
  - (b) Reassigning the discloser to another role at the same level if possible; or
  - (c) Making other modifications at the discloser's workplace or to the way that they perform their work duties.
- 2.8. The Whistleblower Protections Officer will work with the discloser to implement the necessary protections.

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## 3. CONFIDENTIALITY

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- 3.1. To the extent it is required to do so by Whistleblower Law, the FKG Group will protect the identity of the Whistleblower and the confidentiality of disclosures made.
- 3.2. Anonymous disclosures can be made in writing to one of the authorised representatives outlined at 4.1 below.
- 3.3. To ensure confidentiality the FKG Group will ensure that:
- (a) All documents relating to the disclosure are stored securely;
  - (b) All information relating to the disclosure can only be accessed by those directly managing or investigating the disclosure;
  - (c) Only send communication to the person making the disclosure to an email address that is only accessed by that person; and
  - (d) By reminding each person involved in the handling and investigating the disclosure regarding the requirement of confidentiality.
- 3.4. If the Whistleblower's identity or the disclosure made by the Whistleblower are not protected by Whistleblower Law, the FKG Group will use its best endeavours to comply with any request by the Whistleblower to maintain confidentiality or anonymity. However, disclosure may be unavoidable (e.g. if court proceedings result from a disclosure or if disclosure is required by commonwealth or state legislation).
- 3.5. The disclosers identity may also be made by the company to its legal advisers for the purpose of obtaining legal advice or legal representation about the Whistleblower provisions in the Corporations Act.

- 3.6 If a discloser is concerned that there has been a breach of these confidentiality provisions, they should lodge a complaint with the **Group Manager – Corporate Services** or if relevant ASIC or APRA.

#### **4. REPORTING PROCEDURES**

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- 4.1 Any person who has reasonable grounds to suspect that misconduct or any improper state of affairs is or may be occurring is encouraged to report that suspicion to any of the following:
- (a) A Business Unit Manager;
  - (b) Group Manager – Corporate Services, Hayley Hubbard
  - (c) Managing Director, Nick Gardner; or
  - (d) Executive Chairman, Gary Gardner.
- 4.2 Reports can also be made to any of the other eligible recipients identified in the schedule. It is important to note that the protections under the Whistleblower laws only apply when a disclosure is made to an eligible recipient.
- 4.3 If this is considered inappropriate, they should raise the concern with **Group Manager – Corporate Services** by phone or email, or in writing. The Group Manager – Corporate Services is nominated by the FKG Group as a person authorised by the FKG Group to receive protected disclosures under Whistleblower Laws.
- 4.4 All claims of misconduct, illegal or inappropriate behaviour or any improper state of affairs should, to the extent possible, provide specific, adequate and pertinent information with respect to, among other things, dates, places, persons, witnesses, amounts, and other relevant information, in order to allow a reasonable investigation to be conducted.
- 4.5 Disclosures made to a relevant regulatory authority (such as ASIC or the Australian Federal Police) or to any other person in accordance with any relevant law or requirement are also protected under this law.

#### **5. PROCEDURES FOLLOWING DISCLOSURE**

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- 5.1 Once a report of misconduct, or any improper state of affairs or circumstances has been received from a Whistleblower, the FKG Group will ensure that the report is properly investigated by the person nominated by the FKG Group as the **Whistleblower Investigation Officer**. As part of an investigation, the FKG Group aims to afford procedural fairness to all parties including any person who is the subject of protected disclosure.
- 5.2 The Whistleblower Investigation Officer will be independent of the Whistleblower and anyone who is or may be implicated in the misconduct, or any improper state of affairs.
- 5.3 In appropriate cases, the FKG Group may appoint an internal or external specialist as the Whistleblower Investigation Officer.
- 5.4 The investigation process that is undertaken may vary, depending on the nature of the allegations made and the conduct being investigated. The purpose of any investigation is to determine whether or not the concerns raised by the Whistleblower are well-founded, so that the FKG Group can, to the extent that this is possible, remedy any misconduct or improper state of affairs.
- 5.5 The Whistleblower Investigation Officer will:
- (a) conduct the investigation with regard for procedural fairness, timeliness, privacy and the health and safety of all involved in the investigation, including any person who is the subject of a protected disclosure; and
  - (b) hold all evidence, including any materials, documents or records securely.
- 5.6 To the extent that it is practical, the Whistleblower will be kept apprised of the investigation and the results of the investigation.

#### **6. REPORTING**

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- 6.1 After concluding any investigation, the Whistleblower Investigation Officer will prepare a report of the findings for the Managing Director. If the report indicates that misconduct or inappropriate behaviour has occurred, the final report will include recommendations for steps to be taken to prevent the misconduct or behaviour from occurring in the future. The report will also outline any action that should be taken to remedy any harm or loss arising from the misconduct or behaviour.
- 6.2 Reports on the number and type of breaches and other disclosures reported under this policy, together with the results of investigations conducted will be provided to the Executive Management Team by the Group Manager – Corporate Services on a regular basis.
- 6.3 In general, these reports will be on a 'no names basis', provide a summary of disclosure and any investigative reports, identify any trends and patterns of conduct and make recommendations.

**7. TRAINING**

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- 7.1 The FKG Group will provide a copy of this policy to all employees:
- (a) on the FKG Group website;
  - (b) on the FKG Group intranet; and
  - (c) during induction training.
- 7.2 All team members will be trained in relation to their rights and obligations under this policy. Officers and managers who may receive protected disclosures from Whistleblowers will receive training in how to respond to such disclosures.

**8. POLICY AMENDMENT, REVIEW AND PUBLICATION**

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- 8.1 This policy cannot be amended without approval of the Managing Director.
- 8.2 The Managing Director will review this policy and related procedures from time to time to ensure that any Whistleblower reports are appropriately recorded, investigated and responded to and in order to ensure that this policy and any related procedures are effective and meet best practice standards.



Nicholas Gardner  
**Managing Director**

SCHEDULE

**1. WHO IS A WHISTLEBLOWER ELIGIBLE FOR PROTECTION UNDER WHISTLEBLOWER LAW?**

Whistleblowers eligible for protection under Whistleblower Law are:

- current officers, employees and suppliers of the FKG Group;
- former officers, employees and suppliers of the FKG Group; and
- a relative, dependant or spouse of any person who falls within one of these categories.

**2. WHAT DISCLOSURES ARE PROTECTED BY LAW?**

- A Whistleblower’s disclosures will be protected if they have reasonable grounds to suspect misconduct, a contravention or an improper state of affairs or circumstances in relation to the FKG Group.<sup>1</sup>
- Certain personal work related ‘grievances’ are excluded from the category of protected disclosures, although there are some circumstances in which such disclosures may still attract protection<sup>2</sup>. Examples of work grievances that may not be protected include:
  - an interpersonal conflict between the discloser and another employee;
  - a decision relating to the engagement, transfer or promotion of the discloser;
  - a decision relating to the terms and conditions of engagement of the discloser;
  - a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.<sup>3</sup>

**3. WHAT IS THE EFFECT OF MAKING A PROTECTED DISCLOSURE?**

A Whistleblower who qualifies for protection is not subject to any civil, criminal or administrative liability or contractual right or remedy as a result of making a protected disclosure. In addition, the information is not admissible against the Whistleblower in criminal or civil proceedings, other than for proceedings with respect to the falsity of the information.<sup>4</sup>

**4. TO WHOM MAY A PROTECTED DISCLOSURE BE MADE?**

Protected disclosure may be made to:

- officers of the FKG Group;
- FKG Group’s auditors;
- a senior manager, being a person who ‘makes or participates in making decisions that affect the whole, or a substantial part’ of the FKG Group’s business or who ‘has the capacity to affect significantly’ the FKG Group’s financial standing;<sup>5</sup>
- a person authorised by the FKG Group to receive protected disclosures. The FKG Group nominates the Group Manager – Corporate Services for this purpose;
- a lawyer for the purposes of obtaining legal advice or representation on the operation of the new Whistleblower regime;<sup>6</sup>
- ASIC, APRA, or other Commonwealth body prescribed by regulation.<sup>7</sup>

**5. WHAT IS AN EMERGENCY OR PUBLIC INTEREST DISCLOSURE?**

The legislation recognises that ‘in some situations, wrong doing may be of such gravity and urgency that disclosure to the media or a parliamentarian is justified’. If this is the case, a public interest disclosure or emergency disclosure may be made to a member of parliament or ‘a person working in a professional capacity as a journalist’.<sup>8</sup>

**6. WHEN IS A DISCLOSURE IN THE PUBLIC INTEREST PROTECTED?**

<sup>1</sup> Section 1317AA of the *Corporations Act* and section 14ZZT of the *Tax Administration Act 1953*

<sup>2</sup> Section 1317AA(5)(c), (d), (e) and (f), and 1317AADA(2)(b) of the *Corporations Act*

<sup>3</sup> Section 1317AADA of the *Corporations Act*

<sup>4</sup> Section 1317AB(1) of the *Corporations Act*

<sup>5</sup> Section 9 of the *Corporations Act*

<sup>6</sup> Section 1317AA(3) of the *Corporations Act*

<sup>7</sup> Section 1317AA(1)(c) of the *Corporations Act*

<sup>8</sup> Section 1317AAD (3) of the *Corporations Act*

A disclosure to a parliamentarian or a journalist will be protected where:

- a protected disclosure has previously been made to a regulatory body;
- 90 days have passed since the disclosure and the Whistleblower does not have reasonable grounds to believe that action has been taken or is being taken to address the matters raised;
- the Whistleblower has reasonable grounds to believe that making a further disclosure of the information to a journalist or Member of Parliament would be in the public interest;
- the Whistleblower has first informed the regulatory body that they intend to make a public interest disclosure; and
- the extent of the information disclosed is no greater than is necessary to inform the recipient of the misconduct or improper state of affairs to which the previous disclosure related.

**7. WHEN IS AN EMERGENCY DISCLOSURE PROTECTED?**

A disclosure to a parliamentarian or a journalist will be protected where:

- a protected disclosure has previously been made to a regulatory body;
- 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;
- the Whistleblower has informed the regulatory body that they intend to make an emergency disclosure; and
- no more information is disclosed than is reasonably necessary to inform the recipient of the substantial and imminent danger.

**8. MAY A DISCLOSURE BE MADE ANONYMOUSLY?**

Whistleblower Law permits anonymous disclosure and further protects the Whistleblower’s identity through:

- prohibiting the publication of the Whistleblower or victim’s name in court proceedings;
- prohibiting a person from being required to disclose both the Whistleblower’s identity and any documents that would identify the Whistleblower;
- imposing confidentiality restrictions on recipients of information.<sup>9</sup>

While the identity of Whistleblowers must remain anonymous, it is not unlawful to disclose information relating to the disclosure to the extent it is reasonably necessary to investigate the disclosure and provided all reasonable steps are taken to reduce the risk that the Whistleblower will be identified as a result.<sup>10</sup>

There are also exemptions allowing disclosure:

- of the identity of a Whistleblower, or information likely to lead to their identification to (or between) ASIC, APRA and the AFP<sup>11</sup>; and
- a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of the Whistleblower Laws.<sup>12</sup>

**9. WHAT ARE THE WHISTLEBLOWER’S RIGHTS AFTER DISCLOSURE?**

Whistleblowers have the right:

- not to have their identity revealed, except as outlined above;
- not to suffer any detriment as a result (either real or threatened); and
- to receive compensation if they suffer detriment as a result of the disclosure.

‘Detriment’ is broadly defined and includes dismissal, alteration of the person’s employment position, discrimination, harassment, intimidation, harm (including psychological harm) and damage to the person’s property, reputation, business or financial position.<sup>13</sup>

A person may bring civil proceedings for compensation or other remedial order, or for a breach of the victimisation provisions, even if no prosecution for victimisation has been brought or if such a prosecution cannot be brought.<sup>14</sup>

9. Section 1317AAE of the *Corporations Act*  
 10. Section 1317AAE of the *Corporations Act*  
 11. Section 1317AAE(2)(a),(b) and (c) of the *Corporations Act*  
 12. Section 1317AAE of the *Corporations Act*  
 13. Section 1317 ADA of the *Corporations Act*  
 14. Section 1317AF of the *Corporations Act*