



# Whistleblowing Policy International



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## **MMH WHISTLEBLOWING POLICY**

### **1. INTRODUCTION**

The South Africa Protected Disclosures Act, Act 26 of 2000 (PDA), as amended, aims to promote greater openness and transparency in the workplace and acknowledges the need to offer legal protection to whistleblowers. The Act in effect is commonly known as the Whistleblowing Act. The South African Constitution and the Labour Relations Act support the content of this Act.

The PDA protects employees against retribution such as dismissal or any prejudicial conduct if they disclose information to certain persons concerning, among other things, the commission of criminal offences, miscarriages of justice, unfair discrimination and conduct detrimental to health and safety or the environment.

### **2. WHY A MMH FRAUD AND ETHICS REPORTING FACILITY?**

With the new emphasis on corporate ethics in the aftermath of so many high-profile corporate financial scandals, formal whistleblower facilities represent an increasingly important communication tool for employees to report violations of the company's ethical standards, and of the law, without fear of retribution.

Employees are often in a good position to identify concerns regarding misconduct within and against MMH, however, they may not want to express their concerns because they are fearful of repercussions and that speaking up would be disloyal to their colleagues or MMH. In these circumstances it may be easier to ignore the concern rather than report what may just be an act of misconduct or malpractice.

This policy is intended to encourage and enable employees to raise serious concerns within MMH rather than overlooking the problem or "blowing the whistle" outside the company.

### **3. DEFINITION**

The term "whistleblowing" in this policy refers to the disclosure by employees or contract workers, both former and current of suspected or real malpractice as well as suspected or real illegal acts and omissions at work.

### **4. LEGAL BACKGROUND**

The PDA introduced protection against dismissal and other occupational detriments for those employees or workers who disclose information in the public interest, in prescribed circumstance, to prescribed persons.

The only provision is that the disclosure should be made in good faith.

The Act does not introduce a general right for "whistleblowers" to receive special protection, for example indemnity from criminal prosecution, should it be found that the "whistleblower" had been actively involved in a criminal activity, etc.

## 5. STATEMENT

MMH takes misconduct or malpractice very seriously. MMH has a “Zero Tolerance Policy” concerning all crimes and violations of the company’s ethical standards as contained in the MMH Code of Ethics and Standards of Conduct.

MMH is also committed to display the highest possible standards of openness, honesty and accountability.

In line with this commitment employees who have serious concerns on any aspect of MMH’s business are encouraged and expected to come forward and voice those concerns and are advised that they may do so without fear of victimisation, subsequent discrimination or disadvantage.

## 6. POLICY OBJECTIVES

This policy aims to

- Encourage individuals to feel confident in raising serious concerns and to question and act upon concerns about work practice;
- Ensure that individuals understand their responsibility for reporting misconduct or malpractice;
- Provide avenues for individuals to raise concerns and receive a response on any action taken;
- Allow individuals to take matters further if they are dissatisfied with management’s response;
- Reassure individuals that they will be protected from reprisals or victimisation, if they have reasonable belief that they have made any disclosure in good faith.

## 7. SCOPE

This policy applies to all employees of MMH including contract workers, temporary employees or persons considered to have the rights and privileges of employees or workers.

**IMPORTANT NOTE:** The whistleblowing policy is intended to cover concerns that fall outside the scope of other procedures and therefore does not replace a procedure that enable you to lodge a grievance relating to your own employment.

Any serious concerns on or about any aspect of MMH business or conduct of employees can thus be reported under this policy.

This may be about something that:

- Is unlawful, fraudulent, corrupt; or
- Is against, or fails to comply with MMH’s guidelines, procedures, values, policies, codes of conduct, legal obligations; or
- Falls below established standards of practice; or
- Amounts to improper conduct; or
- Constitutes sexual, physical or emotional abuse of clients/employees; or
- Endangers the health and safety of any individual; or
- Is a miscarriage of justice; or

- Is unfair discrimination as defined in the Employment Equity Act and Promotion of Equality and Prevention of Unfair Discrimination Act; or
- Is an attempt to cover up any of the above

## **8. OTHER RELEVANT POLICIES AND PROCEDURES**

This policy should be read in conjunction with MMH's Code of Ethics and Standards for Conduct and with future guidelines and procedures that may be developed from time to time and which will be brought to the notice of employees and others to whom this policy applies.

## **9. SAFEGUARDS**

MMH's management recognises that the decision to report a concern can be a difficult one to make. If an employee raises an allegation in good faith or provide information based on reasonable suspicion the employee should have nothing to fear as the employee will be doing his or her duty to the employer.

MMH will not tolerate harassment or victimisation of individuals, who have raised concerns, including informal pressures and such actions will be treated as a serious disciplinable offence, which will be dealt with under the MMH disciplinary code and procedures.

The PDA protects the whistleblower from the following occupational detriment due to the disclosure:

- Being subjected to any disciplinary action;
- Being dismissed, suspended, demoted, harassed or intimidated;
- Being transferred against his or her will;
- Being refused transfer or promotion;
- Being subjected to a term or condition of employment or retirement which is altered, or kept altered, to his or her disadvantage;
- Being refused a reference, or being provided with an adverse reference, from his or her employer;
- Being denied appointment to any employment, profession or office;
- Being subjected to a civil claim arising from their breach of any confidentiality requirement through the disclosure of a criminal act or of a planned or current failure to comply with a law;
- Being threatened with any of the actions mentioned above; or
- Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

Any investigation into allegations of malpractice will not influence or be influenced by any disciplinary or redundancy procedures that may already affect an employee but neither does it mean that any disciplinary action or redundancy procedures to which an employee is already a subject of be halted as a result of raising concerns.

Should an employee believe that he or she has been subjected to detriment or victimisation because of a disclosure, such an employee can follow the internal grievance policy or refer the matter to the Labour Court and/or CCMA.

## **10. HOW TO RAISE A CONCERN**

### **10.1. In person reporting**

If an employee has a concern he or she should not approach or accuse individuals directly or attempt to investigate the matter.

This policy encourages whistleblowers to submit allegations in writing and to identify them directly to one of the officers listed below.

All direct disclosures will be treated in confidence and every effort will be made not to reveal your identity if you so wish. It must be appreciated that the investigation process may reveal the source of the information and a statement by an employee may be required as part of the process of gathering evidence.

It is recommended that employees should raise concerns with their immediate management or;

- Head: Group Forensic Services and Anti-money Laundering Solutions  
Douw Lotter  
Tel 012-673 7569  
Fax 012-663 5735  
Cell 083 259 1428  
[E-mail: dlotter@mmltd.co.za](mailto:dlotter@mmltd.co.za)
  
- Executive: Chief Risk Officer  
Jan Lubbe  
Tel 012-684 4412  
Fax 012-671 8151  
Cell 071 624 5734  
E-mail: [jan.lubbe@mmltd.co.za](mailto:jan.lubbe@mmltd.co.za)

### **10.2. Anonymous reporting through the MMH reporting lines**

MMH had to consider the decision of “whistleblowers” that may wish to stay anonymous and have therefore established toll free [MMH ethics and fraud lines](#).

Why do employees not blow the whistle?

- While employees are usually the first to know of wrongdoing, many may feel that they stand to lose the most by speaking up.
- Those employees who genuinely suspect that something may be going seriously wrong in the workplace may face an acute dilemma. They can stay silent and look the other way or they can raise the matter with the employer.

- The fear of being labelled a “sneak/rat/impimpi” or the fear of “breaking rank” and appearing disloyal to colleagues and the fear of being required to provide irrefutable evidence are powerful incentives not to speak up.
- Those individuals who think they ought to resist the social pressure to look the other way and recognise that those in charge should investigate the matter must consider their own position. Usually, they fear that they may be disadvantaged, disciplined or even be dismissed for speaking up.
- In such circumstances, it is not surprising that most employees who find themselves in such a position speak only to friend or family, rather than to their employer, the person best able to investigate and deal with the issue.
- The result of this communication breakdown is that the employer loses a valuable opportunity to avert what might become a damaging crisis or to reassure employees that their concerns are mistaken, and the employer also loses access to a valuable pool of information.

MMH has therefore decided that the best practice is to also make a facility available to employees, where employees and other concerned persons can report violations in an **independent anonymous environment**, should they so wish.

### 10.3 Escalation protocol: Whistleblowing

As a point of departure, MMH affirms that it will always take all reasonable steps to ensure that whistleblowing takes place in a non-discriminatory and confidential manner. In this regard MMH has introduced a formal guidance note on the escalation of whistleblowing incidents.

The guidance note was compiled in view of the frequent inquiries from MMH employees and managers for guidance and information on the process and escalation protocol when dealing with complaints or when an employee blew the whistle, whether directly or anonymously. The guidance note also advises on the existence of and usage of whistleblowing facilities available to employees and other stakeholders.

The **MMH Escalation Protocol Guidance note** can be found in the Risk category under Policies and Procedures.

## 11. ALLEGATIONS

Employees are advised to set out the background and history of the concern, giving names, dates, and places where possible and the reason why you are particularly concerned about the situation. Include any proof that you may have to support the allegation (invoices, bank statements, purchase orders). If you are in possession or aware of any other evidence and where it can be found, please provide the detail to assist with the investigation. The earlier concerns are expressed, the easier it is to act.

Although employees are not expected to prove the truth of an allegation, employees will need to demonstrate that there are reasonable and sufficient grounds for the concern raised.

The Company Representative or the Ethics Report Line Consultant will also assist whistleblowers in this regard.

## 12. FALSE ALLEGATIONS

If an allegation is made in good faith, but not confirmed by the investigation the reporting facility has worked. However, an allegation made in frivolous or malicious manner or for personal gain will undermine the existence of reporting facilities and will discourage employees to make use of such facilities. Such allegations will also tie up resources and influence giving attention to real issues.

If a person is therefore identified at any stage after making such frivolous, malicious or for-personal-gain allegations, MMH will take strong action against such a person. The PDA also makes it an offence to provide false information intentionally and where this results in harm, a conviction may result in a fine, or imprisonment or both.

## 13. HOW MMH MANAGEMENT WILL RESPOND

Action taken by MMH management will depend on the nature of the concern that is raised and taking in account the MMH escalation protocol.

Any matter raised may be:

- Investigated internally,
- Referred to the South African Police Services or
- Form the subject of an independent inquiry

In order to protect individuals and MMH initial enquiries will be made to determine whether an investigation is appropriate and if so, what form the investigation should take. Some concerns may be resolved by agreed actions without the need for an investigation.

Within **twenty-one working days** of a concern being received, the relevant officer will write to the whistleblower, or to the Ethics Report Line Service Provider for onward transmission, to indicate the following to:

- Acknowledge that the concern has been received
- Indicate how the matter will be dealt with
- Whether the matter will be referred to another person or body to be dealt with more appropriately
- Give an estimate of how long it will take to provide a final response
- Tell the whistleblower whether any initial enquiries have been made, and
- Tell the whistleblower whether further investigations will take place, and if not, why not.

Should MMH not be in a position to make a decision within 21 days whether to investigate or refer the matter you will be informed that MMH is unable to do so and thereafter be advised on a regular basis (at intervals not more than two months at a time) that the decision is still pending. The whistleblower will be advised within six months from the time he or she has made the protected disclosure of the decision to investigate or not.

Whistleblowers will be given as much feedback as possible, but sometimes precise action will not be set out especially where this would infringe on a duty of confidence that MMH owes to someone else or if it is necessary to avoid prejudice to the prevention, detection or investigation of a criminal offence.



MMH may on occasion and after informing the whistleblower change the time limits referred to in this policy.

The amount of contact between the whistleblower and the representative of MMH who is considering the issues will depend upon the nature of the matters raised, the potential difficulties involved and the clarity of the information that was provided. If necessary, further information will be sought from you directly or through the Ethics Report Line Service Provider.

When any meeting is arranged, the whistleblower has the right, if so wished to be accompanied by a colleague or other representative who is not involved in the area of work to which the concern relates.

MMH will also take steps to minimise any difficulties that a whistleblower may or could experience as a result of raising a concern, for instance, if the person is required to give evidence in criminal or disciplinary proceeding, management will arrange for the whistleblower to receive advice on the process, etc.

It is accepted by MMH that whistleblowers need to be assured that the matter has been properly addressed. If a whistleblower is not satisfied with management's response to concerns that have been raised and have reasonable grounds to base their dissatisfaction on, MMH could arrange for an independent body (e.g., external auditors) to investigate a matter.

While management cannot guarantee that it will respond to all matters in the way that a whistleblower may wish for, MMH will endeavour to handle all matters fairly and properly. By abiding to this policy employees will assist management to achieve the objective of this policy.

#### **14. WHAT IS MMH'S ETHICS AND FRAUD REPORTING LINES?**

As stated, MMH has a "Zero Tolerance Policy" concerning all crimes and violations of the company's ethical standards as contained in the MMH Code of Ethics and Standards of Conduct.

MMH has created several reporting facilities to enable the reporting (anonymously or otherwise) of any such transgressions. Currently Deloitte Tip-offs Anonymous independently administers the [MMH ethics and fraud lines](#) as to ensure anonymity.

The facility is a 24-hour, seven-days-a-week, 365-days-a-year toll free phone line, fax line, e-mail and postal facility that professional operators employed by Deloitte Tip-offs Anonymous administer.

#### **15. WHAT DOES THE DELOITTE TIP-OFFS ANONYMOUS LINES DO ON BEHALF OF MMH?**

MMH has signed an agreement with Deloitte Tip-offs Anonymous. Deloitte Tip-offs Anonymous as a professional independent operator effectively creates a barrier between the caller/information supplier

and MMH, thereby ensuring the anonymity of the caller. Deloitte Tip-offs Anonymous guarantees all callers anonymity, in that no caller identification exists, although calls are recorded and stored for quality purposes.

Deloitte Tip-offs Anonymous has bound MMH contractually that no release of caller identification, including voice recordings, will be provided to MMH. Deloitte Tip-offs Anonymous will receive calls and correspondence on an anonymous basis, or where the caller/information supplier wants to be identified on that basis, with specific reference to obtain information relevant to reporting fraudulent and unethical behaviour of MMH employees, MMH management, service providers to MMH and intermediaries contracted to MMH.

## **16. WHEN TO USE THE MMH ETHICS REPORT LINE AND WHAT WILL DELOITTE TIP-OFFS ANONYMOUS DO?**

If you have a valid and reasonable concern and you feel that you do not want to report your concern to a representative of MMH directly employees are encouraged to make use of the reporting facility.

- Deloitte Tip-offs Anonymous can field calls/information supplied in nine major official Southern African languages.
- The operators at Deloitte Tip-offs Anonymous will use a client-specific format that would address the needs of MMH.
- Deloitte Tip-offs Anonymous telephone line operators will ask specific questions related to complaint or information provided.
- Deloitte Tip-offs Anonymous line operators will prepare a Hotline Memorandum detailing the information and provide it securely to MMH.

## **17. WHO WILL DEAL WITH YOUR INFORMATION AT MMH**

Under most circumstances the recipients of whistleblowing reports at MMH will be:

- The Head of Group Forensic Services and Anti-money Laundering Solutions, Douw Lotter.
- Alternatively, the responsible MMH Executive: Chief Risk Officer, Jan Lubbe and
- Dedicated business specific officers at areas with dedicated lines.

There is however a formal **MMH Escalation Protocol** that advises Deloitte Tip-offs Anonymous and employees on how information will be escalated based on specific circumstances. In this regard employees are referred to the MMH Escalation Protocol guidance note.