



Australia and New Zealand

## Policy – Whistleblower Protection Policy

**INTRODUCTION AND PURPOSE** Kmart is committed to the highest standards of conduct and ethical behaviour in all of our business activities and to promoting and supporting a culture of honest and ethical behaviour, corporate compliance and good corporate governance.

This Policy is intended to encourage the reporting of any instances of suspected unethical, illegal, fraudulent or undesirable conduct involving Kmart and provides protections and measures so that those persons who make a report may do so confidentially and without fear of intimidation, disadvantage or reprisal.

You may make a report under this Policy if you have reasonable grounds to suspect that a director, officer, manager, team member, contractor, supplier, tenderer or other person who has business dealings with Kmart has engaged in **Reportable Conduct**, as defined below.

This Policy is made available to team members on KIT, the Kmart App and Kmart’s website.

This Policy does not apply to customer complaints or concerns regarding product or service which should be referred to the relevant store in the first instance or can be made on-line at [www.kmart.com.au](http://www.kmart.com.au)

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**POLICY APPLICATION** This Policy applies to all team members and officers of Kmart and other eligible whistleblowers including suppliers and contractors. This Policy also has application to the additional persons who are eligible whistleblowers who have special protections under the Corporations Act and Tax Act as set out in Schedule A and Schedule B of this Policy.

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**COUNTRY APPLICATION** Australia

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**POLICY** **What is Reportable Conduct?**

“Reportable Conduct” is conduct that is:

- dishonest, fraudulent or corrupt, including bribery or other activity in breach of the Kmart’s Anti-bribery Policy Statement or Gifts and Entertainment Policy;
  - illegal activity (such as theft, violence, harassment or intimidation, criminal damage to property or other breaches of state or federal law);
  - unethical or in breach of Kmart’s policies, (such as dishonestly altering company records or data, adopting questionable accounting practices or wilfully breaching Kmart’s Code of Conduct or other policies or procedures);
  - potentially damaging to Kmart, a Kmart team member or a third party, such as unsafe work practices, environmental damage, health risks or substantial wasting of Kmart’s property or resources;
  - amounts to an abuse of authority;
  - may cause financial loss to Kmart or damage its reputation or be otherwise detrimental to Kmart’s interests;
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- involves any other kind of misconduct or improper state of affairs or circumstances as defined in the Corporations Act or Tax Act;
- constitutes an offense against any law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- represents a danger to the public or the financial system; or
- involves threats (expressly or impliedly) to cause a detriment or actually causes any detriment to another person, where such action is taken against that person because they have made or may make a disclosure that qualifies for protection under this Policy; detriment includes any victimisation, bullying, discrimination or harassment.

Personal work-related grievances such as interpersonal conflict, decisions about transfer or promotion, that relate to terms and conditions of employment or disciplinary matters as defined the Corporations Act are generally not reportable conduct under this Policy. Complaints about such matters can be made through the normal channels open to team members at Kmart to raise such issues, including the Let's Talk Line.

See also **Schedule A** of this Policy which describes the special protections for whistleblowers who disclose information concerning misconduct or an improper state of affairs or circumstances under the Corporations Act and **Schedule B** of this Policy which describes special protections for tax whistleblowers.

## Who can I make a report to?

Kmart has the several channels for making a report if you become aware of any issue or behaviour which you consider to be Reportable Conduct:

### 1. Reports to Kmart

For the purposes of this Policy to ensure appropriate escalation and timely investigation, we request that reports be made to any one of our Protected Disclosure Officers listed below:

The Kmart Protected Disclosure Officers are:

Protected Disclosure Officer	E-mail	Phone
Chief people and Capability Officer <b>Tristram Gray</b>	<a href="mailto:Tristram.Gray-Whistleblower@kmart.com.au">Tristram.Gray-Whistleblower@kmart.com.au</a>	03 9902 3099
Chief Financial Officer <b>Colin Pavlovich</b>	<a href="mailto:Colin.Pavlovich-Whistleblower@kmart.com.au">Colin.Pavlovich-Whistleblower@kmart.com.au</a>	03 9902 3466
Chief Operating Officer <b>John Gualtieri</b>	<a href="mailto:John.Gualtieri-Whistleblower@kmart.com.au">John.Gualtieri-Whistleblower@kmart.com.au</a>	03 9902 2865
Legal Counsel <b>Cris D'Intini</b>	<a href="mailto:Cris.D'Intini-Whistleblower@kmart.com.au">Cris.D'Intini-Whistleblower@kmart.com.au</a>	03 9902 2436

You may make a report by writing to one of the Protected Disclosure Officers c/o 690 Springvale Road Mulgrave Vic 3170.

Reports can also be made with an "officer or "senior manager" of Kmart. This includes a director, or a senior manager at Kmart who makes or participates in making decisions that affect the whole, or a substantial part of, Kmart or who has the capacity to significantly affect Kmart's financial standing.



You may also make a report by contacting **Kmart's Let's Talk Hotline**:

Method	Australia	New Zealand
Telephone	1800 525 587	0800 525 587
Mail	Attention: Kmart Let's Talk Reply Paid 12628 A Beckett Street, Melbourne Victoria 8006	Attention: Kmart Let's Talk PO Box 912028 Victoria Street West Auckland 1142
OnLine	<a href="http://www.kmartletstalk.deloitte.com.au">www.kmartletstalk.deloitte.com.au</a> Username: Kmart Password: letstalk	<a href="http://www.kmartletstalk.deloitte.com.au">www.kmartletstalk.deloitte.com.au</a> Username: Kmart Password: letstalk

Let's Talk is a confidential service provided by an external provider, Deloitte, who will raise the matter with a Protected Disclosure Officer, in accordance with the protocols regarding confidentiality set out in this Policy.

## 2. Reports to Wesfarmers

You may also make a report direct to Wesfarmers by contacting a Wesfarmers Protected Disclosure Officer. The Wesfarmers Protected Disclosure officers are:

Protected Disclosure Officer	E-mail	Phone
Chief Human Resources Officer <b>Jenny Bryant</b>	<a href="mailto:jbryant@wesfarmers.com.au">jbryant@wesfarmers.com.au</a>	03 9608 7400
Group General Counsel <b>Maya vanden Driesen</b>	<a href="mailto:mvandendriesen@wesfarmers.com.au">mvandendriesen@wesfarmers.com.au</a>	08 9327 4229
Company Secretary <b>Aleks Spaseska</b>	<a href="mailto:aspaseska@wesfarmers.com.au">aspaseska@wesfarmers.com.au</a>	08 9327 4337
Chief Financial Officer <b>Anthony Gianotti</b>	<a href="mailto:ogianottit@wesfarmers.com.au">ogianottit@wesfarmers.com.au</a>	08 9327 4301

Wesfarmers Protected Disclosure Officers at Wesfarmers Limited Level 14 Brookfield Place Tower 2, 123 St Georges Terrace, Perth, Western Australia, Australia, 6000.

Alternatively, a report may be made via the Wesfarmers FairCall Service which is a free external hotline and reporting service independently monitored by KPMG.

Method	
Telephone	1800 500 965
Mail	Attention: The FairCall Manager KPMG Forensic PO Box H67 Australia Square Sydney, NSW, 1213
OnLine	<a href="mailto:faircall@kpmg.com.au">faircall@kpmg.com.au</a> web-based access: <a href="http://faircall.kpmg.com.au/">http://faircall.kpmg.com.au/</a>
Fax	02 9335 7466.



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After receiving a report through the Kmart Let's Talk hotline or Wesfarmers FairCall hotline the operator will provide the details of the report to an appropriate Protected Disclosure Officer at Kmart (or Wesfarmers if the report is made via a Wesfarmers channel). Where a whistleblower provides their contact details, those contact details will not be provided to the Protected Disclosure Officer without the whistleblower's consent.

A report may be submitted anonymously if you do not wish to disclose your identity to the Protected Disclosure Officer, officer, senior manager or the Let's Talk or FairCall Operator.

## **Investigations**

It will usually be appropriate for the Protected Disclosure Officer to refer a report to a person that has experience in the field of the alleged Reportable Conduct (for example Asset Protection, People and Capability, Finance, Safety or Compliance) to conduct an investigation of the matter. The appropriate person may also be determined to be an external investigator. Your written consent to disclose your identity or information that may lead to your identity to the investigator/s will be sought by the Protected Disclosure Officer before this occurs. If consent is provided, the investigator will contact the whistleblower to discuss the investigation process.

Where a report is submitted anonymously (or consent to disclose the identity of the whistleblower to the investigator has not been given), an investigation and enquires made by Kmart will be to the extent possible on the information provided. In these circumstances all reasonable steps will be taken to reduce the risk that the whistleblower can be identified from the information in the report.

Any investigation will occur as soon as practicable after a report has been made and feedback regarding the progress and the outcome of the matter will be provided to a whistleblower (subject to considerations of privacy for those against whom allegations have been made).

Investigations will be conducted in an objective, timely and fair manner and as is reasonable in the circumstances of the matter concerned.

## **Protection of whistleblowers**

Kmart is committed to ensuring confidentiality in respect of all matters raised under this Policy, and that those who make a report are treated fairly and do not suffer detriment as a result of making a report or because they may make a report.

## **Protections against detrimental conduct and fair treatment**

Detrimental treatment includes dismissal, demotion, injury of a team member in their employment, alteration of a team member's position or duties to their disadvantage, harassment, intimidation, discrimination, disciplinary action, bias, threats, harm, injury to a person (including psychological harm), damage to a person's property or reputation, or their business or financial position or any other damage to a person connected with making a report.

If you believe that you have been subjected to detrimental treatment or are threatened with any detrimental treatment, as a result of making a report or because you may make a report under this Policy, you should inform a Protected Disclosure Officer, officer or senior manager **immediately** or make a separate report about the



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threatened or actual detrimental treatment under one of the options for the making of reports under this Policy.

Kmart will not tolerate whistleblowers suffering threats of any detriment or actual detriment as a result of making a disclosure or report or because they may make a disclosure or report under this Policy and any such actions taken may result in disciplinary action up to and including termination of employment.

If any detriment is found to have been suffered by a whistleblower, the Protected Disclosure Officer, officer or senior manager must act to the extent possible to ensure that whistleblower receives fair treatment.

### **Protection of identity and confidentiality**

Subject to compliance with legal requirements, upon receiving a report under this Policy, Kmart will only share your identity (or information likely to reveal your identity) if:

- you consent;
- a disclosure is made to the Australian Securities Investment Commission (ASIC) or the Australian Prudential Regulation Authority (APRA), the Tax Commissioner or the Australian Federal Police (AFP);
- a disclosure is made to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the operation of the whistleblower laws under the Corporations Act 2001 (Part 9.4AAA);

Any disclosures of your identity or information likely to reveal your identity will be made on a strictly confidential basis.

If a report requires investigation and to do so a disclosure of information is reasonably necessary, and this disclosure could lead to your identity being revealed, all reasonable steps to reduce that risk will be taken by the person making the disclosure.

### **Protection of files and records**

All files and records created from an investigation will be retained securely.

Unauthorized release of information to someone not involved in an investigation without your consent as a whistleblower will be a breach of this Policy. Disciplinary action, up to and including termination of employment may be taken under this Policy for any unauthorized release of information in breach of this Policy. A release of the outcome of an investigation to senior managers or directors may be necessary to facilitate appropriate action being taken following the outcome of an investigation. Such release will not include the identity of the whistleblower, or information likely to lead to the identity of the whistleblower unless consent has been provided.

### **Access to additional support**

Any team member who makes a report or disclosure under this Policy is able to access Kmart's Employee Assistance Program (EAP). Converge is Kmart's confidential EAP provider and can be contacted on 1300 687 327. Counselling assistance for up to 4 sessions is provided under self-referral. More information about this service is available on KIT. Any information a team member provides to Converge under EAP, including your identity, if provided, is not disclosed to Kmart.



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## Duties of team member whistleblowers in relation to reportable conduct

Kmart relies on team members to help the Kmart achieve its commitment to a culture of honest and ethical behaviour, corporate compliance and good corporate governance and it is therefore expected that a team member who becomes aware of known, suspected, or potential cases of Reportable Conduct will make a report under this Policy.

## Reporting procedures

In addition to the existing compliance reporting programme obligations, Kmart and Protected Disclosure Officers (as appropriate) will report to the Kmart Board on whistleblower incident reports annually to enable Wesfarmers to address any issues at a Divisional and/or Group level. These reports will be made on a 'no names' basis and will not include information that could lead to the identity of a whistleblower, maintaining the confidentiality of matters raised under this Policy. In general, these reports will:

- provide a summary of Reportable Conduct incident reports made that relate to
- Kmart on a no names basis, their status and action being taken;
- identify any patterns of conduct, including for example, patterns within or across the division; and
- make recommendations, as appropriate, including in relation to allocation of resources or areas requiring further attention.

The Wesfarmers Audit Committee will receive a copy of the Kmart whistleblower report, and whistleblower reports from Protected Disclosure Officers (as appropriate). In addition, serious and/or material Reportable Conduct will be considered by the Protected Disclosure Officers for immediate referral to the Chairman of the Audit Committee.

## Guidelines for managing whistleblower reports under the whistleblower laws

The Kmart Whistleblower Policy sets out a summary of Kmart's commitment to the protection of whistleblowers. This Policy applies to support and protect persons who become aware of, or suspect cases of Reportable Conduct.

1. A Protected Disclosure Officer or senior manager who receives a whistleblower report should:
  - a. Provide the whistleblower with a copy of this Policy and a copy of the Acknowledgment and Consent to Disclosure for Investigation and Reporting Purposes ("**Consent**") (on page 8 of this Policy).
  - b. If the whistleblower signs the Consent, refer the matter to one of the Authorised Persons referred to in the Consent for the matter to be investigated.
  - c. If the whistleblower is unwilling to sign the consent or the report is anonymous, you may disclose the substance of the report to an appointed investigator, provided that **any identifying information** about the whistleblower is **removed or redacted**, so that the report as referred to does not disclose the identity of the whistleblower or information that is likely to lead to the



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identification of the whistleblower (except where reasonably necessary for the purposes of investigating the matter and provided that all reasonable steps have been taken to reduce the risk that the whistleblower will be identified).

2. Attached is a form of consent (Appendix A) to enable reports to be disclosed to an Authorised Person for proper investigation.
3. Whistleblower laws protect a whistleblowers' confidentiality and against detrimental conduct towards them for making a report. It is therefore critical that such reports are treated with the upmost confidentiality and addressed according to this guideline.
4. Severe penalties may apply where a whistleblower's identity is revealed in breach of whistleblower laws or they are subjected to detrimental conduct, including in relation to their employment, as a result of making a report under this Policy.

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**RELATED RESOURCES, TOOLS AND LINKS**

None

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**SECURITY CLASSIFICATION**

Medium – Low Business (MBLI)

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**POLICY OWNER**

Employee Relations Manager

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**VERSION**

4.0

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**IMPLEMENTATION DATE**

1 July 2018

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**LAST AMENDED**

1 July 2019

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**PROPOSED REVIEW DATE**

1 July 2020

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**APPROVED BY**

Tristram Gray

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# Appendix A

## Kmart Australia Limited Whistleblower Policy

### Acknowledgement and Consent to Disclosure for Investigation and Reporting Purposes

**CONFIDENTIAL**

1. I have made a disclosure of information to the following person:  
.....  
Name Title
2. I have reasonable grounds to suspect that the information concerns Reportable Conduct.
3. I have received a copy of the **Kmart Whistleblower Policy**. I understand that information about my report that is unlikely to reveal my identity can be disclosed without my consent.
4. I understand that if my report is captured under whistleblower protections set out in whistleblower laws, my identity and information that is likely to lead to my identity cannot be disclosed unless authorized by law in the following circumstances:
  - a. my consent has been given; or
  - b. is disclosed to a legal practitioner for the purpose of obtaining advice and representation in relation to whistleblower laws; or
  - c. is reasonably necessary for the purpose of investigation of the matter and all reasonable steps to reduce the risk that I will be identified have been taken; or
  - d. is disclosed to Australian Securities Investment Commission (ASIC), the Australian Prudential Regulation Authority (APRA), the Tax Commissioner (if a tax matter) or the Australian Federal Police (AFP).
5. I hereby give my consent to the disclosure of this information, under conditions of confidentiality, and for the purpose of investigation and reporting as set out in this Policy to the following persons:  
.....  
.....

.....  
Name of reporting person [print]

.....  
Signature of reporting person

.....  
Date





## Schedule A: Special Protections under the Corporations Act

The Corporations Act gives special protection to disclosures about any misconduct or improper state of affairs relating to Kmart if the following conditions are satisfied:

- 1 the whistleblower is or has been an officer or team member of Kmart, an individual who supplies goods or services to Kmart or an employee of a person who supplies goods or services to Kmart, an individual who is an associate of Kmart or a relative, dependent or dependent of the spouse of any individual of such persons.
- 2 the report is made to a Protected Disclosure Officer, an officer or senior manager of Kmart, Kmart's external auditor (or a member of that audit team)<sup>1</sup> an Auditor of a related body-corporate, an actuary of Kmart<sup>2</sup>, ASIC, APRA or a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the Corporations Act.
- 3 the whistleblower has reasonable grounds to suspect that the information being disclosed concerns misconduct, or an improper state of affairs or circumstances in relation to Kmart. This may include a breach of legislation including the Corporations Act, an offence against the Commonwealth punishable by imprisonment for 12 months or more, or conduct that represents a danger to the public or financial system.

**Examples of conduct which may amount to a breach of the Corporations Act include:** insider trading, insolvent trading, breach of the continuous disclosure rules, failure to keep accurate financial records, falsification of accounts, failure of a director or other officer of the Group to act with the care and diligence that a reasonable person would exercise, or to act in good faith in the best interests of the corporation or failure of a director to give notice of any material personal interest in a matter relating to the affairs of the company.

The protections given by the Corporations Act when these conditions are met are:

- 1 the whistleblower is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
- 2 no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the whistleblower for making the report;
- 3 in some circumstances, the reported information is not admissible against the whistleblower in criminal proceedings or in proceedings for the imposition of a penalty;<sup>3</sup>
- 4 anyone who causes or threatens to cause detriment to a whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and may be liable for damages;
- 5 a whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary; and
- 6 the person receiving the report commits an offence if they disclose the substance of the report or the whistleblower's identity, without the whistleblower's consent, to anyone except ASIC, APRA, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

### Confidentiality

If a report is made, the identity of the whistleblower must be kept confidential unless the whistleblower consents to the disclosure of their identity, the disclosure of details that might reveal the whistleblower's identity is reasonably necessary for the effective investigation of the matter, the concern is reported to ASIC, APRA, or the AFP or the concern is raised with a lawyer for the purpose of obtaining legal advice or representation.

<sup>1</sup> Kmart's external auditor in May 2019 was Ernst and Young, lead partner Tony Morse, and lead partner for Wesfarmers, Darren Lewson

<sup>2</sup> Wesfarmers' actuary as at May 2019 is Finity Consulting Pty Ltd.

<sup>3</sup> Such as where the disclosure has been made to ASIC or APRA, or where the disclosure qualifies as a public interest or emergency disclosure.

## Schedule B: Special Protections under the Taxation Administration Act

The Taxation Administration Act gives special protection to disclosures about a breach of any Australian tax law by Kmart or misconduct in relation to Kmart's tax affairs if the following conditions are satisfied:

1. the whistleblower is or has been an officer or team member of Kmart, an individual who supplies goods or services to Kmart or an employee of a person who supplies goods or services to Kmart, an individual who is an associate of Kmart or a spouse, child, dependent or dependent of the spouse of any of these individuals.
2. the report is made to a Protected Disclosure Officer, a director, secretary or senior manager of Kmart, any Kmart external auditor (or a member of that audit team)<sup>4</sup>, a registered tax agent or BAS agent who provides tax or BAS services to Kmart<sup>5</sup>, any other team member or officer of Kmart who has functions or duties relating to tax affairs of the company (e.g. an internal accountant) ("**Kmart recipients**"), the Commissioner of Taxation; or a lawyer for the purpose of obtaining legal advice or representation in relation to a report; and
3. if the report is made to a Kmart recipient, the whistleblower:
  - a. has reasonable grounds to suspect that the information indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of Kmart or an associate of that company; and
  - b. considers that the information may assist the Kmart recipient to perform functions or duties in relation to the tax affairs of a Wesfarmers Group Company or an associate of the company; and
4. if the report is made to the Commissioner of Taxation, the whistleblower considers that the information may assist the Kmart recipient to perform functions or duties in relation to the tax affairs of Kmart or an associate of the company.

The protections given by the Taxation Administration Act when these conditions are met are:

1. the whistleblower is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the disclosure;
2. no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the whistleblower for making the report;
3. where the disclosure was made to the Commissioner of Taxation, the reported information is not admissible against the whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, except where the proceedings are concerned with whether the information is false;
4. unless the whistleblower has acted unreasonably, a whistleblower cannot be ordered to pay costs in any legal proceedings in relation to a report;
5. anyone who causes or threatens to cause detriment to a whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and liable to pay damages;
6. a whistleblower's identity cannot be disclosed to a Court or tribunal except where considered necessary;
7. the person receiving the report commits an offence if they disclose the substance of the report or the whistleblower's identity, without the whistleblower's consent, to anyone except the Commissioner of Taxation, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report; and

### Confidentiality

If a report is made, the identity of the whistleblower will be kept confidential unless one of the following exceptions applies: the whistleblower consents to the disclosure of their identity, disclosure of details that might reveal their identity is reasonably necessary for the effective investigation of the allegations, the concern is reported to the Commissioner of Taxation or the AFP, or the concern is raised with a lawyer for the purpose of obtaining legal advice or representation.

<sup>4</sup> Kmart's external auditor as at May 2019 was Ernst and Young, lead partner Tony Morse, and lead partner for Wesfarmers, Darren Lewson

<sup>5</sup> Kmart's tax agent as at May 2019 is Ernst and Young.