



# Whistleblower Policy

March 2023



# Contents

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1.	Purpose	3
2.	Application	3
3.	Objectives	3
4.	Definitions	3
5.	Whistleblower Officer	5
6.	Reporting	5
7.	Investigations	6
8.	Whistleblower Protections under the Corporations Act	8
9.	General Protections from ESR Australia	11
10.	Communications to the Eligible Whistleblower	12
11.	Recordkeeping, Accessibility and Reviews	12
12.	Further Information and Advice	12
13.	Review Process	12

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## 1. Purpose

- 1.1 ESR Group is committed to maintaining high standards of business ethics.
- 1.2 ESR Group encourages ESR Australia, its employees, officers, services providers and their associates to report concerns about improprieties relating to the Group.
- 1.3 This policy deals with issues relating to the reporting of dishonest, fraudulent, corrupt, unethical and illegal conduct to ensure compliance with the laws and regulations, particularly the relevant whistleblower protection provisions under the Corporations Act applicable to ESR Australia and its employees, officers, service providers and their associates. It should be noted that protections are also provided in the tax whistleblower regime under the Taxation Act.
- 1.4 Whistleblowing is considered by ESR Group as an early warning system that allows an individual to raise a genuine concern about Reportable Conduct, and not as a tool for work-related complaints or grievances.

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## 2. Application

- 2.1 This policy applies to all employees and officers of ESR Australia and any other person who satisfies the definition of Eligible Whistleblower in paragraph 4.5.
- 2.2 The reporting mechanisms under this policy apply to:
  - a) allegations of Reportable Conduct as defined in paragraph 4.11;
  - b) allegations that ESR Australia has caused or contributed to adverse impacts of modern slavery, in accordance with the Modern Slavery Act or has otherwise breached ESR Australia's Modern Slavery Policy; or
  - c) concerns about serious breaches of ESR Group or ESR Australia policies that could amount to Reportable Conduct.
- 2.3 All other concerns should be referred to ESR Australia Human Resources, or the ESR Australia or ESR Group Compliance Team as appropriate.

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## 3. Objectives

- 3.1 The objectives of this policy are to:
  - a) encourage Eligible Whistleblowers to disclose any Reportable Conduct of which they become aware;
  - b) provide protection for Eligible Whistleblowers who report allegations of Reportable Conduct;
  - c) provide remediation processes in accordance with the Modern Slavery Act; and
  - d) ensure that all allegations of Reportable Conduct are thoroughly investigated with suitable action taken, where necessary.

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## 4. Definitions

- 4.1 **ASIC** means Australian Securities and Investments Commission.
- 4.2 **Compliance Platform** means Complysci.
- 4.3 **Corporations Act** means the *Corporations Act 2001* (Cth).



**4.4 Detrimental Conduct** means:

- a) harassment or intimidation;
- b) harm or injury, including psychological harm;
- c) damage to property, reputation, business or financial position, or any other type of damage;
- d) for Eligible Whistleblower who are employees:
  - i) dismissal;
  - ii) injury in employment;
  - iii) alteration of an employee's position or duties to his or her disadvantage; or
  - iv) discrimination between the employee and other employees of the same employer.

**4.5 Eligible Whistleblower** means an individual who is, or has been, any of the following in relation to an ESR Australia entity:

- a) an officer;
- b) an employee;
- c) an individual who supplies services or goods to an ESR Australia entity (whether paid or unpaid);
- d) an employee of a person that supplies services or goods to an ESR Australia entity (whether paid or unpaid);
- e) an individual who is an associate;
- f) a relative of an individual referred to in paragraphs (a) - (e) above; and
- g) a dependent of an individual referred to in paragraphs (a) - (e) above, or of such an individual's spouse.

**4.6 Emergency Report** refers to the disclosure of information to a journalist or parliamentarian, where:

- a) the Eligible Whistleblower has previously reported to ASIC, APRA or another Commonwealth body prescribed by Corporations Act;
- b) the Eligible 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;
- c) before making the Emergency Report, the Eligible Whistleblower has given written notice to the body to which the previous report was made that:
  - i) includes sufficient information to identify the previous report; and
  - ii) states that the Eligible Whistleblower intends to make an Emergency Report, and
- d) the extent of the information disclosed in the Emergency Report is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

**4.7 ESR Australia** refers to, as the case requires, the Australian based subsidiaries of ESR Group and their controlled entities.

**4.8 ESR Group** refers to ESR Group Limited and its subsidiaries.



**4.9 Modern Slavery Act** means the *Modern Slavery Act 2018 (Cth)*.

**4.10 Public Interest Report** refers to the disclosure of information to a journalist or a parliamentarian, where:

- a) the Eligible Whistleblower has previously reported to ASIC, APRA or another Commonwealth body prescribed by the Corporations Act;
- b) at least 90 days have passed since the disclosure to ASIC, APRA or other Commonwealth body prescribed by the Corporations Act;
- c) the Eligible Whistleblower does not have reasonable grounds to believe that action is being, or has been taken, to address the matters to which the previous disclosure related;
- d) the Eligible Whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- e) before making the Public Interest Report, the Eligible Whistleblower has given written notice to the body to which the previous report was made that:
  - i) includes sufficient information to identify the previous report; and
  - ii) states that the Eligible Whistleblower intends to make a Public Interest Report.

**4.11 Reportable Conduct** includes but is not limited to conduct by ESR Australia, or an officer or employee of ESR Australia, which an Eligible Whistleblower has reasonable grounds to suspect:

- a) is dishonest, fraudulent, corrupt, unethical or constitutes other serious improper conduct, such as bribery;
- b) is illegal (including theft, drug sale/use, violence or threatened violence and criminal damage against property);
- c) constitutes an offence against, or a contravention of a provision of any Commonwealth or state legislation, particularly the Corporations Act or Taxation Act; or
- d) is a deliberate concealment of information that evidences any of the above.

Reportable Conduct can also include the conduct outlined above engaged in by an external party who has an association with ESR Australia where the conduct could have legal implications for ESR Australia or materially impact its reputation.

**4.12 Taxation Act** means the or *Taxation Administration Act 1953 (Cth)*.

**4.13 Whistleblower Officer** means the person nominated in clause 5.2 of this policy.

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## 5. Whistleblower Officer

**5.1** ESR Australia will nominate an individual as the Whistleblower Officer, who will:

- a) receive reports in the first instance, if possible;
- b) review and investigate reports; and
- c) ensure the Eligible Whistleblower receives the protections to which he or she is entitled.

**5.2** The current Whistleblower Officer is the General Counsel of ESR Australia.

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## 6. Reporting



## 6.1 Internal Reporting

A person who is an Eligible Whistleblower is encouraged to report Reportable Conduct to the Whistleblower Officer, in the first instance.

6.2 If reporting to the Whistleblower Officer is not possible or uncomfortable, the Eligible Whistleblower can alternatively report to one of the following:

- a) the CEO; or
- b) the Chief Financial Officer; or
- c) the Company Secretary.

6.3 In cases where a report implicates the Whistleblower Officer, or a person with whom the Whistleblower Officer has a close relationship, the Chief Financial Officer will act as the alternate Whistleblower Officer and conduct the necessary investigation into the report.

6.4 Reports can be made by phone, email or in writing. All reports should 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 for a reasonable investigation to be conducted.

The **Whistleblowing Report Form** can be used as a template for reporting purposes. The Whistleblowing Report can be downloaded from the ESR Australia corporate webpage and once completed emailed to [whistleblowing@esr.com](mailto:whistleblowing@esr.com).

6.5 If the Eligible Whistleblower discloses his or her name, the person receiving the report will acknowledge having received the complaint and may initiate a follow-up meeting.

6.6 Employees can also make a report through the Compliance Platform, which will be received by ESR Group Compliance and the Group General Counsel, and referred to the Whistleblower Officer. The Compliance Platform offers the ability to report anonymously. It should be noted that anonymous reporting may hinder ESR Australia's ability to investigate the Reportable Conduct.

6.7 All reports concerning Reportable Conduct are treated on a confidential basis. Eligible Whistleblowers are encouraged to disclose their identity so that clarification of the reports made or further appropriate information can be obtained directly as required.

## 6.8 External Reporting

Whilst it is strongly encouraged for reports to be made internally in the first instance, Eligible Whistleblowers are entitled to report to the following external bodies:

- a) ASIC or another prescribed body under the regulations (either anonymously or non-anonymously);
- b) an auditor or a member of an audit team conducting an audit on an ESR Australia entity; and
- c) a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the whistleblower provisions in the Corporations Act.

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# 7. Investigations

## 7.1 Step 1: Initial Assessment

Upon receipt of a report, the Whistleblower Officer will assess:

- a) whether the report qualifies for protection under the Corporations Act;
- b) whether the report relates to the Modern Slavery Act; and

- c) whether a formal, in-depth investigation is required,  
**(Initial Assessment).**

## 7.2 Timeframe for Step 1

The Initial Assessment step must be completed within 2 weeks after receiving the report.

## 7.3 **Step 2: Commence Investigation**

If the Whistleblower Officer assesses that the report requires a formal, in-depth investigation, the Whistleblower Officer must commence an investigation as soon as practicable.

7.4 Investigations will be conducted promptly and in a fair and independent manner with due regard for the nature of the allegation and the rights of the persons involved in the investigation. Evidence, including any materials, documents or records shall be securely retained by the Whistleblower Officer and any investigator with access restricted.

7.5 The Whistleblower Officer will determine the appropriate method for the investigation. In appropriate cases, the Whistleblower Officer may ask for the assistance of an internal or an external accounting or legal specialist, as deemed necessary.

7.6 During the investigation, the Whistleblower Officer will have access to all of the relevant materials, documents, and records. The directors, officers, employees and agents of ESR Australia must cooperate fully with the investigator. During the investigation, the Whistleblower Officer will only disclose information about the report that is reasonably necessary for investigation and will use all reasonable means to protect the identity of the Eligible Whistleblower.

7.7 Unless there are extenuating circumstances, the investigation must take no longer than 3 months from its commencement. Extenuating circumstances that may delay completion of the investigation include, but are not limited to:

- a) where the investigation leads to the discovery of further misconduct that requires additional investigation time; or
- b) where an event occurs that leads to the activation of ESR Australia's Disaster Recovery and Business Continuity Plan.

## 7.8 Timeframe for Step 2

The Whistleblower Officer must commence the investigation as soon as practicable and no later than 1 week after completing the Initial Assessment.

## 7.9 **Step 3: Final Report**

At the conclusion of the investigation, the Whistleblower Officer will prepare a report of the findings (**Final Report**) to be presented to:

- a) the CEO, provided that the CEO is not involved in the alleged misconduct. Alternatively, the Final Report must be presented to the ESR Australia Head of Human Resources or the Chief Financial Officer; and
- b) where the Final Report concludes that the alleged misconduct or contravention has occurred, as appropriate, ESR Group Compliance, ESR Australia Head of Human Resources, ESR Group Head of Human Resources, and the ESR Group General Counsel.

7.10 Where the Final Report concludes that the alleged misconduct or contravention has occurred:

- a) the Final Report will contain recommendations for steps to be taken to prevent the misconduct or contravention from occurring in the future;

- b) the Final Report will include any action that should be taken to remedy any harm or loss arising from the misconduct or contravention, including disciplinary proceedings against the person responsible for the conduct;
- c) the matter will be referred to appropriate authorities and regulatory bodies such as AUSTRAC, ASIC, APRA or the AFP, as is deemed necessary by the Whistleblower Officer; and
- d) the Final Report will provide reasonable timeframes for the implementation of any recommendations.

**7.11** Where the Final Report concludes that the alleged misconduct or contravention did not occur, the Final Report will be filed and kept confidentially by the Whistleblower Officer.

**7.12** Timeframe for Step 3

The Final Report must be finalised in accordance with clause 7.9 no more than 1 month after completion of the investigation.

**7.13 Step 4: Implementation of Recommendations**

The Whistleblower Officer must implement the recommendations in the Final Report in accordance with the reasonable timeframes provided in the Final Report.

## 8. Whistleblower Protections under the Corporations Act

**8.1** In order to be protected as an Eligible Whistleblower under the Corporations Act, the following criteria must be met:

Criteria	Requirement
<b>Role</b>	<p>The person reporting conduct must be an Eligible Whistleblower as defined in paragraph 4.5.</p> <p><u>Anonymous Reports</u></p> <p>Reports made anonymously still qualify for protection under the Corporations Act. An Eligible Whistleblower can choose to remain anonymous while making a report, over the course of the investigation and after the investigation is finalised.</p>
<b>Who the report is made to</b>	<p>Reports must be made to an Eligible Recipient, being:</p> <ul style="list-style-type: none"> <li>a) an officer or senior manager of ESR Australia;</li> <li>b) a person authorised by ESR Australia to receive whistleblower reports;</li> <li>c) ASIC, APRA or another Commonwealth prescribed body;</li> <li>d) an auditor or a member of an audit team conducting an audit on an ESR Australia entity;</li> <li>e) a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to whistleblower provisions in the Corporations Act; or</li> <li>f) where it is a Public Interest Report or Emergency Report, a journalist or a parliamentarian.</li> </ul>



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**Reportable conduct**

The person making the report must have reasonable grounds to suspect that the information being reported concerns Reportable Conduct as described in paragraph 4.11.

Examples of Reportable Conduct

Examples of wrongdoing that could be reportable include:

- a) illegal conduct, such as theft, dealing in, or use of illicit drugs, violence or threatened violence, and criminal damage against property;
- b) fraud, money laundering or misappropriation of funds;
- c) offering or accepting a bribe;
- d) financial irregularities;
- e) failure to comply with, or a breach of legal or regulatory requirements; and
- f) engaging in or threatening to engage in detrimental conduct against a person who has reported conduct or is believed or suspected to have reported conduct, or is planning to report conduct.

Reportable Conduct may include conduct that may not involve the contravention of a particular law.

An Eligible Whistleblower can still qualify for protection even if their disclosure regarding Reportable Conduct turns out to be incorrect.

Disclosures that are about Non-Reportable Conduct do not qualify for protection under the Corporations Act or the Taxation Act.

Examples of Non-Reportable Conduct

Conduct which relate solely to personal work-related grievances do not qualify for protection under the Corporations Act.

Examples of grievances that may be personal work-related grievances include:

- a) an interpersonal conflict between the discloser and another employee;
- b) a decision that does not involve a breach of workplace laws;
- c) a decision about the engagement, transfer or promotion of the discloser;
- d) a decision about the terms and conditions of engagement of the discloser; or
- e) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

Such matters may nonetheless be protected under other legislation, such as the *Fair Work Act 2009* (Cth).

A personal work-related grievance may still qualify for protection under the Corporations Act if:

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- a) it includes information about misconduct, or is accompanied by a personal work-related grievance (mixed report);
  - b) ESR Australia has breached employment or other laws punishable by imprisonment for a period of 12 months or more, engaged in conduct that represents a danger to the public, or the report relates to information that suggests misconduct beyond the Eligible Whistleblower's personal circumstances;
  - c) the Eligible Whistleblower suffers from or is threatened with detriment for lodging a report; or
  - d) the Eligible Whistleblower seeks legal advice or legal representation about the operation of the whistleblower protections under the Corporations Act.
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**8.2** Subject to clause 8.5, if the criteria for Reportable Conduct is met, Eligible Whistleblowers are entitled to the following legal protections:

- a) identity protection (confidentiality);
- b) protection from detrimental acts or omissions;
- c) compensation and other remedies; and
- d) civil, criminal and administrative liability protection.

**8.3** The legal protections apply not only to internal reports, but to external reports to legal practitioners, regulatory and other external bodies, and Public Interest and Emergency Reports.

#### **8.4 Protection 1: Identity Protection**

The Eligible Whistleblower's identity will be kept strictly confidential. It is illegal to disclose the identity of the Eligible Whistleblower or information that is likely to lead to the identification of the Eligible Whistleblower, outside of the exceptions listed below.

**8.5** ESR Australia may only disclose the identity of the Eligible Whistleblower:

- a) to ASIC, APRA or a member of the Australian Federal Police;
- b) to a legal practitioner (for the purposes of obtaining legal advice or legal representation in relation to the whistleblower provisions in the Corporations Act);
- c) to a person or body prescribed by the regulations; or
- d) with the consent of the Eligible Whistleblower.

**8.6** ESR Australia can disclose the information contained in a report with or without the Eligible Whistleblower's consent if:

- a) the information does not include the Eligible Whistleblower's identity;
- b) ESR Australia has taken all reasonable steps to reduce the risk that the Eligible Whistleblower will be identified as a result of the disclosure; and
- c) it is reasonably necessary for investigating the issues raised in the report.

## **8.7 Protection 2: Protection from Detrimental Conduct**

All reasonable steps will be taken by ESR Australia to ensure that the Eligible Whistleblower will be protected from Detrimental Conduct in relation to a report.

**8.8** It is illegal for a person to engage in conduct that subjects an Eligible Whistleblower (or another person) to an act of Detrimental Conduct, in relation to a report, if:

- a) the person believes or suspects that the Eligible Whistleblower (or another person) made, may have made, proposes to make or could make a disclosure that qualifies for protection; and
- b) the belief or suspicion is the reason, or part of the reason, for the Detrimental Conduct.

**8.9** In addition, it is illegal for a person to make a threat to subject an Eligible Whistleblower (or another person) to an act of Detrimental Conduct in relation to a report. A threat may be express or implied, or conditional or unconditional.

**8.10** Examples of actions that are not acts of Detrimental Conduct include reasonable administrative action designed to protect whistleblowers or manage an Eligible Whistleblower's unsatisfactory work performance.

## **8.11 Protection 3: Compensation and Other Remedies**

An Eligible Whistleblower (or any other employee or person) can seek compensation and other remedies through the courts if:

- a) they suffer loss, damage or injury as a result of an act of Detrimental Conduct; and
- b) ESR Australia failed to take reasonable precautions and exercise due diligence to prevent the act of Detrimental Conduct.

## **8.12 Protection 4: Civil, Criminal and Administrative Liability Protection**

An Eligible Whistleblower is protected from any of the following in relation to their report:

- a) civil liability (e.g. any legal action against the Eligible Whistleblower for breach of an employment contract, duty of confidentiality or another contractual obligation);
- b) criminal liability (e.g. attempted prosecution of the Eligible Whistleblower for unlawfully releasing information, or other use of the report against the Eligible Whistleblower in a prosecution); and
- c) administrative liability (e.g. disciplinary action for making the report).

**8.13** These protections do not grant immunity for any misconduct an Eligible Whistleblower has engaged in that is revealed in their report.

## **8.14 Support and Practical Protection for Whistleblowers**

ESR Australia will implement measures to support Eligible Whistleblowers and protect Eligible Whistleblowers from detriment.

**8.15** Eligible Whistleblowers are encouraged to contact the Whistleblower Officer or an independent legal adviser if they wish to seek additional information before formally making a report.

## **8.16 Remedies for Breaches of Protection**

Compensation and other remedies are available to Eligible Whistleblowers for any breaches of protection.

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# **9. General Protections from ESR Australia**



- 9.1 Whether or not the criteria in clause 8 are satisfied, ESR Australia is committed to an open, fair and transparent environment to allow Eligible Whistleblowers to report genuine concerns about Reportable Conduct.
- 9.2 Eligible Whistleblowers who report actual or potential wrongdoing in good faith will not be subjected to retaliation, retribution or harassment.
- 9.3 No employee of ESR Australia or ESR Group is permitted to engage in retaliation, retribution, or any form of harassment against an Eligible Whistleblower (or another person) for reporting compliance-related concerns. Any retribution, retaliation, or harassment will be met with disciplinary action.
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## 10. Communications to the Eligible Whistleblower

- 10.1 ESR Australia shall ensure that an Eligible Whistleblower is provided with regular updates if they can be contacted (including through anonymous channels), subject to the considerations of privacy of those against whom allegations are made.
- 10.2 Eligible Whistleblower can refuse to answer any questions that they feel could reveal their identity.
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## 11. Recordkeeping, Accessibility and Reviews

- 11.1 The Whistleblower Officer will ensure all records arising from this policy, including all reports and investigatory evidence and reports, are securely retained with access restricted.
- 11.2 The Compliance Officer will be responsible for undertaking reviews of this policy annually, with all changes to be approved by the CEO and communicated to the Board of ESR Australia. All material changes to the policy will be communicated to ESR Australia staff via email or the ESR Australia intranet.
- 11.3 The Compliance Officer will ensure this policy is accessible:
- a) on the ESR Australia intranet, for staff, officers and any internal stakeholders; and
  - b) upon request from any external stakeholders.
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## 12. Further Information and Advice

- 12.1 For further information, refer to any other related policies or contact the Compliance Officer.
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## 13. Review Process

- 13.1 This policy will be reviewed annually or as required.

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