

# WHISTLEBLOWER POLICY

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V1.0	20 June 2019	Compliance Officer	Creation of new policy
V2.0	28 September 2020	ESR ANZ Legal and Compliance Department	Amended to comply with ASIC Regulatory Guide 270: Whistleblower Policies, and to include modern slavery reports within the scope of this policy.
V3.0	25 November 2021	ESR ANZ Legal and Compliance Department	Annual review of policy
V4.0	5 September 2022	ESR ANZ Legal and Compliance Department	Remove reference to Compliance Platform Speeki Annual review of policy
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## **1 Purpose**

- 1.1 ESR ANZ is committed to maintaining high standards of integrity, business ethics and accountability to safeguard shareholders' interest and reputation.
- 1.2 The purpose of this Policy is to:
- (1) encourage Eligible Whistleblowers to disclose any Reportable Conduct of which they become aware;
  - (2) provide protection for Eligible Whistleblowers who report allegations of Reportable Conduct;
  - (3) provide remediation processes in accordance with the Modern Slavery Act; and
  - (4) ensure that all allegations of Reportable Conduct are thoroughly investigated with suitable action taken, where necessary.
- 1.3 It should be noted that there are certain differences between:
- (1) the whistleblower protections that exist under the Corporations Act and the whistleblower protections that exist under the Taxation Act;
  - (2) the whistleblower protections that exist under Australian law and New Zealand law. Please refer to section 12 for the New Zealand provisions.
- 1.4 Please read this Policy carefully before making a disclosure to ensure that you understand what is required in order for you to be afforded adequate protection.

## **2 Scope**

- 2.1 This Policy applies to all Employees and officers of ESR ANZ and any other person who satisfies the definition of Eligible Whistleblower.
- 2.2 The reporting mechanisms under this Policy apply to:
- (1) allegations of Reportable Conduct;
  - (2) allegations that ESR ANZ has caused or contributed to adverse impacts of modern slavery, in accordance with the Modern Slavery Act or has otherwise breached ESR ANZ's Modern Slavery Policy; or
  - (3) concerns about serious breaches of ESR Group or ESR ANZ policies that could amount to Reportable Conduct.

- 2.3 All other concerns should be referred to ESR ANZ Human Resources, or the ESR ANZ or LRC as appropriate.

### 3 Definitions

Term	Meaning
<b>ASIC</b>	Means Australian Securities and Investments Commission.
<b>Corporations Act</b>	Means the Corporations Act 2001 (Cth).
<b>Detrimental Conduct</b>	Means: <ul style="list-style-type: none"> <li>• harassment or intimidation;</li> <li>• harm or injury, including psychological harm;</li> <li>• damage to property, reputation, business or financial position, or any other type of damage;</li> <li>• for Eligible Whistleblower who are employees: <ul style="list-style-type: none"> <li>○ dismissal;</li> <li>○ injury in employment;</li> <li>○ alteration of an employee's position or duties to his or her disadvantage; or</li> <li>○ discrimination between the employee and other employees of the same employer.</li> </ul> </li> </ul>
<b>Eligible Whistleblower</b>	Means a person referred to in clause 4.1.
<b>Emergency Report</b>	Refers to the disclosure of information to a journalist or parliamentarian, where: <ul style="list-style-type: none"> <li>• the Eligible Whistleblower has previously reported to ASIC, APRA or another Commonwealth body prescribed by Corporations Act;</li> <li>• 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;</li> <li>• before making the Emergency Report, the Eligible Whistleblower has given written notice to the body to which the previous report was made that: <ul style="list-style-type: none"> <li>○ includes sufficient information to identify the previous report; and</li> <li>○ states that the Eligible Whistleblower intends to make an Emergency Report, and</li> </ul> </li> <li>• 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.</li> </ul>

Term	Meaning
<b>Employees</b>	Refers to officers or employees of ESR ANZ (including employees who are permanent, part time, fixed term or temporary, interns, secondees, managers and directors).
<b>ESR ANZ</b>	Refers to, as the case requires, the Australia and New Zealand based subsidiaries of the ESR Group and their controlled entities.
<b>ESR Group</b>	ESR Group Limited and its subsidiaries.
<b>LRC</b>	Legal, Risk and Compliance team.
<b>Modern Slavery Act</b>	Means the <i>Modern Slavery Act 2018</i> (Cth).
<b>Public Interest Report</b>	<p>Refers to the disclosure of information to a journalist or a parliamentarian, where:</p> <ul style="list-style-type: none"> <li>the Eligible Whistleblower has previously reported to ASIC, APRA or another Commonwealth body prescribed by the Corporations Act;</li> <li>at least 90 days have passed since the disclosure to ASIC, APRA or other Commonwealth body prescribed by the Corporations Act;</li> <li>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;</li> <li>the Eligible Whistleblower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and</li> <li>before making the Public Interest Report, the Eligible Whistleblower has given written notice to the body to which the previous report was made that: <ul style="list-style-type: none"> <li>includes sufficient information to identify the previous report; and</li> <li>states that the Eligible Whistleblower intends to make a Public Interest Report.</li> </ul> </li> </ul>
<b>Reportable Conduct</b>	Means the conduct referred to in clause 5.1.
<b>Taxation Act</b>	Means the or Taxation Administration Act 1953 (Cth).
<b>Whistleblower Officer</b>	Means the General Counsel.

## 4 Who Can Make A Disclosure?

4.1 The following persons (both in a current or previous capacity) may make a disclosure under this Policy:

- (1) Employees;

- (2) suppliers to ESR ANZ (whether paid or unpaid), and employees of these suppliers (including contractors, consultants, service providers or business partners);
- (3) individuals who are associates<sup>1</sup> of ESR ANZ ;
- (4) a relative<sup>2</sup>, dependant or spouse of any of the above individuals; or
- (5) any persons prescribed from time to time as being able to make a disclosure by regulations under the Corporations Act or the Taxation Act.

## 5 What Does A Disclosure Have To Be About?

5.1 To make a disclosure under this Policy, the Eligible Whistleblower must have reasonable grounds to suspect:

- (1) misconduct, or an improper state of affairs in relation to ESR ANZ, such as bribery, fraud, illegal activity etc;
- (2) conduct that constitutes an offence against, or a contravention of, the Corporations Act, the Australian Securities and Investments Commission Act 2001 (Cth) or National Consumer Credit Protection Act 2009;
- (3) conduct that constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more;
- (4) conduct that represents a danger to the public or the financial system; or
- (5) conduct that is prescribed under regulations made under the Corporations Act, from time to time.

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

5.3 Disclosures under this Policy do not necessarily need to involve a contravention of a particular law. Information that indicates a significant risk to public safety or the stability of, or confidence in, the financial system or presents a danger to the public is also relevant, even if it does not involve a breach of particular law.

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<sup>1</sup> In relation to tax disclosures, references to an “associate” means an associate within the meaning of section 318 of the Income Tax Assessment Act 1936

<sup>2</sup> In relation to tax disclosures, only a spouse or child of an individual described in paragraphs (a) to (c) or a dependent of an individual described para (a) to (c) or their spouse can make a disclosure.

## 6 Who Can Disclosures Be Made To And How?

### 6.1 Internal Reporting

- (1) A person who is an Eligible Whistleblower is encouraged to report Reportable Conduct to the Whistleblower Officer, in the first instance.
- (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.
- (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.
- (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.
- (5) The **Whistleblowing Report Form** can be used as a template for reporting purposes. The Whistleblowing Report can be downloaded from the ESR ANZ corporate webpage and once completed emailed to [whistleblowing@esr.com](mailto:whistleblowing@esr.com).
- (6) 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.
- (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.

### 6.2 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:

- (1) ASIC or APRA or any other Commonwealth authority prescribed under the Corporations Act;
- (2) an auditor or a member of an audit team conducting an audit on an ESR ANZ entity;



- (3) any legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act; and
- (4) where it is a Public Interest Report or Emergency Report, a journalist or a parliamentarian.

## **7 Investigations**

### **7.1 Step 1: Initial Assessment**

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

- (1) whether the report qualifies for protection under the Corporations Act;
- (2) whether the report relates to the Modern Slavery Act; and
- (3) whether a formal, in-depth investigation is required, **(Initial Assessment)**.
- (4) The Initial Assessment step must be completed within 2 weeks after receiving the report.

### **7.2 Step 2: Commence Investigation**

- (1) 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.
- (2) 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.
- (3) The Whistleblower Officer will determine the appropriate method for the investigation. The Whistleblower Officer may ask for the assistance of an internal or an external accounting or legal specialist, if deemed necessary.
- (4) During the investigation, the Whistleblower Officer will have access to all of the relevant materials, documents, and records. The Employees and agents of ESR ANZ 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.
- (5) 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 where the investigation leads to the discovery of further misconduct that requires additional investigation time.

- (6) The Whistleblower Officer must commence the investigation as soon as practicable after completing the Initial Assessment.

### 7.3 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:

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

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

- (1) the Final Report will contain recommendations for steps to be taken to prevent the misconduct or contravention from occurring in the future;
- (2) 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;
- (3) 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
- (4) the Final Report will provide reasonable timeframes for the implementation of any recommendations.

### 7.5 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.

### 7.6 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**

8.1 If the criteria for a Reportable Conduct is met, Eligible Whistleblowers are entitled to the following legal protections under the Corporations Act and the Taxation Act:

- (1) identity protection (confidentiality);
- (2) protection from detrimental acts or omissions;
- (3) compensation and other remedies; and
- (4) civil, criminal and administrative liability protection.

### **8.2 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.

8.3 ESR ANZ may only disclose the identity of the Eligible Whistleblower:

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

8.4 ESR ANZ can disclose the information contained in a report with or without the Eligible Whistleblower's consent if:

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

### **8.5 Protection from Detrimental Conduct**

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

- 8.6 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:
- (1) 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
  - (2) the belief or suspicion is the reason, or part of the reason, for the Detrimental Conduct.

- 8.7 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.

- 8.8 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.

#### 8.9 **Compensation and Other Remedies**

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

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

#### 8.10 **Civil, Criminal and Administrative Liability Protection**

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

- (1) civil liability (e.g. any legal action against the Eligible Whistleblower for breach of an employment contract, duty of confidentiality or another contractual obligation);
- (2) 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
- (3) administrative liability (e.g. disciplinary action for making the report).

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

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

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

- 8.13 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.

8.14 Remedies for Breaches of Protection

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

## **9 General Protections from ESR ANZ**

- 9.1 Whether or not the criteria in clause 8 are satisfied, ESR ANZ 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 ANZ 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.

## **10 Communications to the Eligible Whistleblower**

- 10.1 ESR ANZ shall ensure that an Eligible Whistleblower is provided with regular updates if they can be contacted, subject to the considerations of confidentiality and 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.

## **11 Recordkeeping and Review of Policy**

- 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 This Policy will be reviewed biennially.

## 12 New Zealand

### 12.1 Further requirements

If you are reporting from New Zealand or your concern or report relates to anyone based in, or conduct connected to, ESR ANZ's business in New Zealand, this Policy should be read subject to the following provisions which add to or replace, as relevant, the provisions of the Policy.

### 12.2 Who Can Disclosures Be Made To and How?

- (1) Under New Zealand law, employees, secondees, contractors, management of an organisation (such as board members), and volunteers (or an individual who formerly held one of these positions) may all report serious wrongdoing. Serious wrongdoing includes: an offence; a serious risk to public health, public safety, the health or safety of any individual, or the environment; a serious risk to the maintenance of the law, including the prevention, investigation, and detection of offences, or the right to a fair trial; or an unlawful, a corrupt, or an irregular use of public funds or public resources.
- (2) You may report the serious wrongdoing:
  - (a) to ESR ANZ in accordance with any internal procedures (i.e. this Policy); or
  - (b) to an appropriate authority, which includes the head of any public sector organisation;
  - (c) any officer of Parliament (including the Ombudsman but not Ministers or members of Parliament);
  - (d) and the membership body of a particular profession or trade that has the power to discipline its members. Examples of the relevant public sector agencies for certain categories of concerns are set out in the table below.

However, information related to intelligence and security must be reported to the Inspector General of Intelligence and Security only and information related to international relations must be reported to the Ombudsman only.

Nature of Concern	Appropriate Authority
Anticompetitive conduct Commerce Commission	Anticompetitive conduct Commerce Commission
Bullying or harassment, including sexual harassment	WorkSafe New Zealand (where workrelated) Human Rights Commission

Nature of Concern	Appropriate Authority
Crime	Commissioner of Police, Director of the Serious Fraud Office
Discrimination	Human Rights Commission
Environment	Ministry for the Environment, Department of Conservation
Financial reporting (private sector—issuers and large companies)	Financial Markets Authority
Financial reporting (public sector)	Controller and Auditor-General
Financial service providers' conduct	Financial Markets Authority
Privacy of individuals or security of personal information	Privacy Commissioner
Whistleblowing and protected disclosures	Ombudsman

### 12.3 Identity Protection

- (1) The ability to make anonymous protected reports is not clearly provided for in the New Zealand legislation, although the Ombudsman may provide information to organisations and individuals about the circumstances in which anonymous reports may be made.
- (2) The person you report to must use their best efforts to keep information that might identify your identity confidential. However, they may disclose such information with your consent, or if there are reasonable grounds to believe the release of such information is essential:
  - (a) for the effective investigation of the report;
  - (b) to prevent serious risk to public health, public safety, the health or safety of any individual, or the environment;
  - (c) to comply with the principles of natural justice; or
  - (d) to an investigation by a law enforcement or regulatory agency.

The person must consult with you if they intend to release the information under section (a) or (b); and must consult with you if practicable if they intend to release the information under section (c) or (d).

- (3) You may make a complaint to the Privacy Commissioner if you feel the person you report to has released the information for an improper purpose.

#### 12.4 What protections are available under New Zealand law

- (1) You will receive the following protections if you report serious wrongdoing:
  - (a) your identity will be kept confidential;
  - (b) ESR ANZ may not dismiss you, cause you to retire or resign, or treat you less favourably because of your report;
  - (c) you, your friends and your family may not be treated less favourably because of your report; and
  - (d) you will have immunity for the report in court or disciplinary proceedings. There are limitations to this immunity if you are a party to the wrongdoing.
- (2) If ESR ANZ, as a receiver of a protected disclosure decides that no action is required in response to a disclosure, ESR ANZ will inform the discloser (with reasons for deciding that no action is required).

#### 12.5 Section 8 (How can you lose protection or confidentiality under New Zealand law?)

- (1) Under New Zealand law, you may only lose your protection or confidentiality where:
  - (a) you do not have reasonable grounds to believe that serious wrongdoing has occurred;
  - (b) you have not reported the wrongdoing in accordance with the process noted above (however, note the exception below);
    - (i) you reported the wrongdoing in bad faith; or
    - (ii) you have reported information that is protected by legal professional privilege.
  - (c) You will not lose your protection if:
    - (i) you are mistaken and there is no serious wrongdoing;
    - (ii) you do not refer to the legislation which provides protection when making the report;
    - (iii) you only technically fail to report the wrongdoing and have substantially complied with the required process; or



- (iv) you also discuss the report with another person, as long as you do so on a confidential basis and for the purposes of seeking advice about whether or how to make a disclosure in accordance with the legislation.

12.6 The Ombudsman's guide to making a protected disclosures can be found here:

<https://www.ombudsman.parliament.nz/sites/default/files/2023-07/Guide%20to%20making%20a%20protected%20disclosure%20-%20July%201%202022.pdf>

