

# Whistleblowing Policy

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This is the Whistleblowing Policy (the 'Policy') of the Energy Industries Superannuation Scheme Pty Limited ('EISS'), which is the Trustee of the Energy Industries Superannuation Scheme ('the Scheme').

This Policy provides the framework for whistleblowing and promotes a culture of compliance, honesty and ethical behaviour within EISS.

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# 1. Introduction

## 1.1 Purpose

This is the Whistleblowing Policy (the 'Policy') of the Energy Industries Superannuation Scheme Pty Limited ('EISS'), which is the Trustee of the Energy Industries Superannuation Scheme ('the Scheme').

This Policy provides the framework for whistleblowing and promotes a culture of compliance, honesty and ethical behaviour within EISS.

EISS's aim is to encourage staff to report any misconduct (suspected or actual) in an environment free from victimisation so that the Board and Management can adequately manage risk and cultural issues within EISS. The purpose of this Policy is to:

- Prevent and detect disclosable matters;
- outline the process by which a protected disclosure may occur, including how and to whom a protected disclosure should be made;
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- outline the process by which EISS will investigate protected disclosures;
- inform eligible whistle-blowers who make protected disclosures about the protections from detriment; and
- outline the process for fair treatment of persons to whom a protected disclosure relates or mentions.

In making this Policy EISS has had regard to the NSW Ombudsman's Guidelines on whistleblowing and the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2019 (the 'Bill') which are now incorporated into Part 9.4AAA of the Corporations Act 2001 (Cth). Specific definitions of terms pertaining to whistleblowing are outlined under Section 8 of the Policy, which are aligned with the Bill.

## 1.2 Scope

This Policy applies to all EISS employees and officers and sets out the manner in which EISS meets its obligations under various legislative instruments. Furthermore, this Policy must be read in conjunction with other relevant policies including the Fraud and Corruption Control Plan and Code of Conduct.

The Policy is made available to all employees and officers of EISS through EISS's public website, the intranet or through a shared repository for all EISS policies within EISS's IT infrastructure.

## 1.3 EISS Statement on Disclosable Matters

EISS does not tolerate misconduct and has a view that a formal Whistleblowing Policy can contribute to the enhancement of its business practices. The protection of eligible whistle-blowers is an integral element of EISS's governance and EISS considers it to be unacceptable for detriment to be taken against an eligible whistle-blower.

EISS is committed to:

- encouraging whistleblowing activities;
- providing the resources necessary for those responsible for managing whistleblowing, including awareness and training;

- responding to eligible whistleblowers thoroughly and impartially;
- ensuring that all disclosures are properly assessed and appropriately dealt with;
- providing an eligible whistle-blower with a copy of EISS's Whistleblowing Policy within 10 days of reporting a disclosable matter(s);
- keeping the identity of the eligible whistle-blower confidential, wherever possible and appropriate;
- protecting the integrity, wellbeing and career interest of all persons involved;
- ensuring fair treatment and protecting the eligible whistle-blower from any detriment as a result of reporting a disclosable matter(s);
- where some form of misconduct has been found, taking appropriate action;
- keeping the eligible whistle-blower informed of the progress and outcome of investigation of their reported disclosable matter(s); and
- appropriately dealing with anyone who causes detriment to an eligible whistle-blower.

## 2. What is a Protected Disclosure?

A disclosure of information by an individual will be a protected disclosure for the purposes of this policy if:

- the disclosure is an eligible whistle-blower; and
- the disclosure is made to an eligible recipient (which could be done orally or in writing); and
- the disclosure is of a disclosable matter.

## 3. What are Disclosable Matters?

Disclosable matter(s) could be a form of misconduct, which includes, but is not limited to:

- Fraudulent activity;
- Mismanagement;
- Corrupt conduct;
- Health and safety risks;
- Breach of law/regulations;
- Criminal offences;
- Illegal activity; and
- Conduct that could bring the organisation into disrepute

All disclosable matters are managed in accordance with the Policy. Disclosable matters are disclosures of information by an eligible whistle-blower:

- where the eligible whistle-blower has reasonable grounds to suspect that the information concerns misconduct or an improper state of affairs or circumstances in relation to EISS; or
- where an eligible whistle-blower has reasonable grounds to suspect that the information indicates that EISS, or an officer or employee of EISS has engaged in conduct that:
  - i. contravenes any provisions of the Corporations Act 2001, ASIC Act 2001, Banking Act 1959, Financial Sector (Collection of Data) Act 2001, Insurance Act 1973, Life Insurance Act 1995, National Consumer Credit Protection Act 2009, Superannuation Industry

- (Supervision) Act 1993 or an instrument or regulation made under these acts, as relevant to the Trustee; or
- ii. contravenes any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
- iii. represents a danger to the public or the financial system; or
- iv. in relation to a disclosure about affairs of EISS relating to any tax imposed by or under a law administered by the Commissioner of Taxation:
  - i) that it is made to an eligible recipient where the eligible whistle-blower has reasonable grounds to suspect that the information indicates a misconduct or an improper state of affairs or circumstances in relation to the tax affairs of EISS and considers that the information may assist the eligible recipient to perform functions or duties in relation to the tax affairs of EISS

## 4. Process of Whistleblowing

Depending on the nature of the disclosable matter(s), an eligible whistle-blower is encouraged to first discuss their concern with the EISS CEO or a nominated EISS Internal Disclosure Officer(s) as noted below.

- Chief Risk Officer ('CRO')
- Chief Financial Officer ('CFO')
- General Counsel
- Head of People and Learning

Disclosures can be done orally/in person or in writing to EISS's postal address as specified on the EISS public website. In doing so, the eligible whistle-blower should be specific and should provide as much information as possible. This escalation structure is encouraged in the first instance prior to escalating to other eligible recipients. Any eligible whistle-blower that submits a disclosure or any eligible recipient that receives a report must treat the matter confidentially.

Reports of disclosable matters raised will be investigated. Investigations may be undertaken internally or through the engagement of an external investigator. Where appropriate, the investigation may be undertaken under client legal privilege. Staff reporting disclosable matters will be protected and that the investigation will be conducted in accordance with the principles of fairness and natural justice.

If the disclosure is about the Chief Executive Officer, the disclosure should be made to the Chair of the Board or the Chair of the Audit and Compliance Committee. Other eligible recipients are defined in accordance with the Bill under Section 8 of the Policy.

## 5. The role of the investigations officer

Under this Policy, EISS Chief Executive Officer is the appointed Investigations Officer. An EISS Disclosure Officer is responsible for receiving and forwarding disclosures made in accordance with this Policy to the Investigations Officer. The Investigations Officer will, at all times, have direct and unrestricted access to financial, legal and operational assistance when this is required for any Whistleblowing investigation. Furthermore, the Investigations Officer is responsible for the following:

- coordinating a preliminary investigation into any report received from an eligible whistle-blower;
- documenting and handling all matters and escalating all legal matters to the appropriate legal expert;
- determining the best use of resources to run the investigation, including the use of external resources;
- ensuring confidentiality and protection of the eligible whistle-blower in accordance with this Policy;
- monitoring management's rectification and remediation arising out of the investigation;
- providing feedback to the eligible whistle-blower; and
- following and fulfilling the requirements of EISS's relevant policies where required.

## 6. Managing Disclosable Matters

EISS Chief Executive Officer is responsible for:

- acting as the Investigations Officer as described above;
- reporting to the Board, where appropriate, that a disclosure has been made;
- reporting to the Board, where appropriate, the findings of any investigation within agreed timeframes;
- ensuring an eligible whistle-blower who have raised disclosable matters are protected in accordance with this Policy;
- maintaining and improving existing control mechanisms to minimise conduct that amounts to disclosable matters; and
- promoting a culture that encourages the voluntary reporting of any known disclosable matter(s).

Although the Chief Executive Officer has day-to-day responsibility for the implementation of this Policy, all Directors, Officers and employees of EISS remain responsible for ensuring that EISS complies with all prudential and regulatory requirements that relate to whistleblowing and the protection of eligible whistle-blowers.

Where a disclosable matter(s) relate to the Chief Executive Officer, the Chair of the EISS Board will appoint a person other than the Chief Executive Officer to be the Investigation Officer (external or Internal at the discretion of the Chair) in relation to the disclosable matter(s).

### 6.1 Protections for Eligible Whistle-Blowers

Legislation provides protection to eligible whistle-blowers (including protection from certain liability) and imposes penalties on anyone who:

- discloses an eligible whistle-blower's identity without their consent; or
- inflicts detriments in reprisal for reporting disclosable matters.

An eligible whistle-blower will not be subject to any civil, criminal or administrative liability for making a protected disclosure. However, this does not prevent an eligible whistle-blower from being subject to any civil, criminal or administrative liability for conduct by the eligible whistle-blower which is revealed by the protected disclosure.

An eligible whistle-blower must not suffer detriment or be otherwise disadvantaged in reprisal for making a protected disclosure. Specifically, no one may cause or threaten to cause detriment to another person because they believe or suspect that any person may have made, proposes to make, or could make a protected disclosure. EISS will take all reasonable steps to protect eligible whistle-blowers who make protected disclosures from suffering detriment by:

- ensuring that all employees and officers of EISS are made aware of this Policy and the right to make a protected disclosure without suffering detriment; and
- enabling eligible whistle-blowers to make a complaint to the Investigations Officer or an EISS appointed Disclosure Officer if they believe they have suffered detriment.

It must be noted that the onus of proving detriments or damages lies with the person claiming to have suffered the detriment. Protections under this Policy also applies to any employee(s) who are mentioned in disclosable matter(s) and to any employee(s) who provide assistance in the investigations of a disclosable matter(s).

## 6.2 Malicious and Vexatious Disclosures

Protection is not available under this Policy to a person who reports an alleged disclosable matter(s) that is made with the sole or substantial intention of avoiding dismissal or other disciplinary action. Personal work-related grievances are also not considered disclosable matters and therefore, are not protected under this Policy, except to the extent that they concern detriment to the eligible whistle-blower.

It is unacceptable for EISS employees and/or officers to make vexatious, malicious or false disclosures (including any detriment and reprisal claims), or to knowingly provide vexatious, false or misleading information regarding a disclosure. The making of a vexatious, malicious or false disclosure (including any detriment and reprisal claims) or the provision of knowingly vexatious, false or misleading information may be subject to disciplinary and/or legal action up to and including termination of employment.

## 6.3 Confidentiality

Whilst EISS respects a person's right to make anonymous disclosable matter(s), EISS acknowledges that if an anonymous disclosure is made to the Investigations Officer, sufficient and appropriate evidence must be provided to enable an investigation to be carried out. An eligible whistle-blower who makes a protected disclosure is not required to identify themselves in order to be protected under this Policy. However, EISS encourages any person making a disclosure to reveal his/her identity when making a report as this would ensure that the person is afforded the appropriate protection.

In circumstances where an eligible whistle-blower provides their identify in raising a protected disclosure, their identity will not be disclosed to any person except:

- With the eligible whistle-blower's consent; or
- To a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of relevant whistle-blower protection legislation; or
- To ASIC, APRA or the AFP, only in their execution of their lawful and statutory duties; or

- If the protected disclosure relates to tax affairs - to the Commissioner of Taxation; or
- To any government authority for the purpose of assisting the authority in the performance of its functions or duties, as long as it has also been disclosed to ASIC, APRA, the AFP (or if the protected disclosure relates to tax affairs, the Commissioner of Taxation) or Parliamentary Committees.

Maintaining confidentiality is critical in ensuring that no reprisal or recriminatory action is taken against the person who makes a protected disclosure. Accordingly, EISS aims to treat all protected disclosures with the strictest of confidentiality and takes all reasonable steps to protect the identity of the person making the disclosure, and any person who is the subject of the disclosure.

## 7. Training

EISS will carry out training for EISS employees to educate them on their rights and obligations under this Policy and applicable whistle-blower legislation.

## 8. Definitions

- a. **'Detriment'** means damage caused to a person, comprising or involving any of the following:
  - dismissal of an employee;
  - injury of an employee in his or her employment;
  - alteration of an employee's position to his or her disadvantage;
  - discrimination between an employee and other employees of the same employer;
  - harassment or intimidation of a person;
  - harm or injury to a person, including psychological harm;
  - damage to a person's property;
  - damage to a person's reputation; and
  - damage to a person's business or financial position.
- b. **'Eligible whistle-blower'** means a person who is, or has been in, one of the following relationships with EISS:
  - an EISS officer;
  - an EISS employee;
  - an individual who supplies services or goods to EISS including but not limited to the appointed Custodian and appointed external Investment Managers;
  - an employee of a supplier of goods or services to EISS;
  - an individual who is an associate<sup>1</sup> of EISS; or
  - a relative, dependant or spouse of an individual referred to in any of the above.
- c. **'Eligible recipient'** means any body or bodies that an eligible whistle-blower can report disclosable matter(s) to, based on reasonable grounds, under the whistleblowing protection of this Policy. Eligible recipients include:
  - an EISS officer;
  - an auditor, or a member of an audit team conducting an audit of EISS;
  - an actuary of EISS;

- ASIC;
  - APRA; or
  - a Commonwealth authority
- d. **'Maladministration'** means conduct that involves action or inaction of a serious nature that is:
- contrary to law;
  - unreasonable, unjust, oppressive or improperly discriminatory; and/or
  - based wholly or partly on improper motives.
- e. **'Officer'** means:
- an EISS Director or Secretary; or
  - a nominated EISS Internal Disclosure Officer;
- f. **'Protected Disclosure'** means a disclosure that is protected under this Policy if:
- it is made by an eligible whistle-blower; and
  - it is made to an eligible recipient (which could be done orally or in writing); and
  - the disclosure is of a disclosable matter.
- g. **'Public Interest and Emergency Disclosure'** means a disclosure that qualifies for protection under subsection 1317AAD(1) and 1317AAD(2) of the Corporations Act. Public Interest and Emergency Disclosures qualify for protection in accordance with this Policy.
- h. **'Whistleblowing'** means a disclosure of information, that concerns a disclosable matter(s), in relation to EISS or a Director of EISS where the person making the disclosure honestly believes, on reasonable grounds and considers that the information may assist a regulator, investigating authority, an auditor, actuary, Director, the Chief Executive Officer or an EISS appointed Disclosure Officer in performing their functions.
- i. **'Serious and Substantial Waste'** means any uneconomical, inefficient or ineffective use of resources, authorized or unauthorized, that results in a significant loss and/or wastage of resources.

## We're here to help

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