
Whistleblower policy for The Eastern Star (Australia) Foundation Ltd

1. Background

- 1.1 The Board of The Eastern Star (Australia) Foundation Ltd (**Eastern Star Foundation**) is committed to operating:
- (1) legally, in accordance with all laws and legislation;
 - (2) properly, in accordance with all organisational policy and procedures; and
 - (3) ethically, in accordance with recognised ethical principles and the fundamental values of The Order of the Eastern Star.
- 1.2 As such, employees and people that work within the Eastern Star Foundation are expected and encouraged to cooperate with the Eastern Star Foundation in maintaining legal, proper and ethical activities and operations, including, if necessary, reporting non-compliant conduct by other people.
- 1.3 This policy will be made available to all individuals working within Eastern Star Foundation via the document control system.

2. Purpose

- 2.1 As a company limited by guarantee under the Corporations Act, Eastern Star Foundation is a public company. Eastern Star Foundation is also a registered income tax exempt charity. As such, Eastern Star Foundation:
- (1) is bound by the Whistleblower Protection Regime in the Corporations Act and Taxation Administration Act; and
 - (2) must have a whistleblower policy which complies with the Corporations Act.
- 2.2 This policy:
- (1) is designed to give guidance so that honesty and integrity are maintained at all times at Eastern Star Foundation; and
 - (2) deals with issues relating to those employees (or others) who wish to raise issues about whether Eastern Star Foundation, its employees or others have complied with applicable laws and other standards of behaviour (such as Eastern Star Foundation's policies or codes of conduct).
- 2.3 The purpose of this policy is to:
- (1) encourage the reporting of matters that may cause harm to individuals or financial or non-financial loss to Eastern Star Foundation or damage to its reputation;
 - (2) enable Eastern Star Foundation to deal with reports from whistleblowers in a way that will protect the identity of the whistleblower and provide for the secure storage of the information provided;

- (3) establish the mechanisms for protecting whistleblowers against victimisation by any person, whether internal or external to Eastern Star Foundation;
- (4) provide for the appropriate internal infrastructure to achieve the above; and
- (5) help to ensure Eastern Star Foundation maintains the highest standard of ethical behaviour, integrity and legal compliance.

3. Policy

3.1 Policy application

This policy applies to all directors, employees and others working within Eastern Star Foundation.

Eastern Star Foundation expects its employees who reasonably suspect potential cases of Reportable Conduct or become aware of actual Reportable Conduct to make a report under this policy or under any other applicable policies.

3.2 Reportable conduct

You may make a report pursuant to this policy if you genuinely, and have reasonable grounds to suspect that an Eastern Star Foundation director, officer, employee, contractor, supplier, tenderer or other person who has dealings with Eastern Star Foundation has engaged in conduct which:

- (1) is dishonest, fraudulent or corrupt;
- (2) is illegal (such as theft, violence, harassment or intimidation, or constitutes a breach of state or federal law);
- (3) is unethical or in breach of Eastern Star Foundation's policies (such as wilfully breaching a code of conduct, dishonestly altering company records etc);
- (4) is potentially damaging to Eastern Star Foundation, an Eastern Star Foundation employee, or a third party, such as unsafe work practices;
- (5) may cause financial loss to Eastern Star Foundation or damage its reputation or otherwise be detrimental to Eastern Star Foundation's interests;
- (6) involves harassment, discrimination, victimisation or bullying, other than a Personal Work Grievance; or
- (7) involves any other kind of misconduct or an improper state of affairs or circumstances.

This is known as **Reportable Conduct**.

Annexure A sets out special provisions for whistleblowers who disclose information concerning misconduct or an improper state of affairs or circumstances in relation to Eastern Star Foundation under the Corporations Act.

Annexure B describes special protections for whistleblowers who disclosure information regarding compliance with tax laws.

3.3 Who you can report to

Reports should be made to any of the following Compliance Officers:

Board Chairman 07 3493 6093
Jonathan Nantes info@easternstarfoundation.org.au

Chairman Audit & Risk Committee 07 3493 6093
John Howard info@easternstarfoundation.org.au

3.4 Investigations of Reportable Conduct

- (1) Eastern Star Foundation will investigate all matters reported pursuant to this policy as soon as practicable once a report has been received.
- (2) A Compliance Officer may, with your consent, appoint someone to assist in any investigation. Where appropriate, Eastern Star Foundation may, in its discretion, provide you with feedback regarding the investigation's progress and/or outcome.
- (3) An investigation will be conducted in a fair and objective manner, as is reasonable and appropriate having regard to the nature of the Reportable Conduct, the report made and any relevant circumstances.
- (4) The particular enquiries made and the process of any investigation will be determined by the nature and substance of the report. This may include the investigation being undertaken internally or the appointment of an independent third party.
- (5) If a report is not made anonymously, a Compliance Officer will, as soon as practicable, be in contact with you to discuss the investigation process including who may be contacted during the process and other matters relevant to the investigation.
- (6) If a report is made anonymously, Eastern Star Foundation will conduct the investigation and its enquiries based solely on the content of the report.

3.5 Protection of whistleblowers

To encourage reporting, Eastern Star Foundation is committed to ensuring the confidentiality of all matters raised under this policy and the protection and fair treatment of those who make a report.

(1) Protection against detrimental treatment

- (a) Detrimental treatment includes dismissal, demotion, harassment, discrimination, bullying, disciplinary action, threats, bias or other unfavourable treatment connected with making a report under this policy.
- (b) If you are subjected to detrimental treatment as a result of making a report under this policy, you should immediately inform a Compliance Officer.

(2) Protection of your identity and confidentiality

- (a) Subject to any legal requirements, on receiving a report under this policy, Eastern Star Foundation will only share your identity as a whistleblower or information likely to identify you if:
 - (i) you consent;
 - (ii) the report is made to ASIC, the Australian Taxation Office or the AFP; or
 - (iii) the concern is raised with a lawyer for the purpose of obtaining legal advice or representation.
- (b) Any disclosures of your identity or information likely to reveal your identity will be made on a strictly confidential basis.

(3) **Protection of files and records**

- (a) Eastern Star Foundation will ensure that all files and records created from an investigation arising from a report made under this policy will be stored securely.

3.6 Dictionary

- (1) In this policy:
 - (a) **AFP** means the Australian Federal Police;
 - (b) **APRA** means the Australian Prudential Regulation Authority;
 - (c) **ASIC** means the Australian Securities and Investments Commission;
 - (d) **Corporations Act** means the *Corporations Act 2001* (Cth);
 - (e) **Journalist** means a person who is working in a professional capacity as a journalist for any of the following:
 - (i) a newspaper or magazine;
 - (ii) a radio or television broadcasting service;
 - (iii) an electronic service (including a service provided through the internet) that:
 - (A) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and
 - (B) is similar to a newspaper, magazine or radio or television broadcast;
 - (f) **officer** has the same meaning as defined in the Corporations Act and includes a director or secretary of Eastern Star Foundation;

- (g) **Personal Work Grievance** has the same meaning as personal work-related grievance as defined in the Corporations Act and means information disclosed relating to the discloser if:
 - (i) the information concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally; and
 - (ii) the information:
 - (A) does not have significant implications for Eastern Star Foundation; and
 - (B) does not concern a Disclosable Matter;
- (h) **Public Interest Disclosure** means a disclosure within the meaning of clause 4 of Annexure A;
- (i) **Reportable Conduct** has the meaning given in clause 3.2I
- (j) **Taxation Administration Act** means the *Taxation Administration Act 1953* (Cth); and
- (k) **Whistleblower Protection Regime** means the regime contained in Part 9.4AAA of the Corporations Act and Part IVD of the Taxation Administration Act, as context requires.

Annexure A

Protections under the Corporations Act

The Corporations Act grants special protect to disclosers of information about misconduct or an improper state of affairs relating to Eastern Star Foundation (**Whistleblower**) if the following conditions are met:

1. The Whistleblower is or has been:
 - (1) an officer or employee of Eastern Star Foundation;
 - (2) an individual who supplies services or goods to Eastern Star Foundation, whether paid or unpaid (including volunteers);
 - (3) an employee of a person that supplies services or goods to Eastern Star Foundation, whether paid or unpaid;
 - (4) an individual who is an associate of Eastern Star Foundation within the meaning of the *Income Tax Assessment Act 1997* (Cth);
 - (5) a relative of any of the individuals described above; or
 - (6) a dependent or spouse of any of the individuals described above
2. The disclosure is made to any of:
 - (2) a Compliance Officer;
 - (3) the Australian Securities & Investments Commission;
 - (4) the Australian Prudential Regulation Authority; or
 - (5) an officer or senior manager of Eastern Star Foundation;
 - (6) Eastern Star Foundation's auditor (or a member of that audit team);
 - (7) a legal practitioner (e.g. a lawyer) for the purpose of obtaining legal advice or legal representation in relation to the Whistleblower Protection Regime under the Corporations Act.
3. The Whistleblower has reasonable grounds to suspect that the information being disclosed concerns:
 - (1) misconduct (including fraud, negligence, default, breach of trust and breach of duty¹) or an improper state of affairs or circumstances in relation to Eastern Star Foundation;
 - (2) information which indicates that Eastern Star Foundation, or an officer or employee of Eastern Star Foundation, has engaged in conduct which:
 - (a) is an offence against, or a contravention of, a provision of the Corporations Act or ASIC Act;

¹ Section 9, Corporations Act.

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- (b) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
 - (c) represents a danger to the public or the financial system.

4. **Public Interest Disclosure:** An individual will also be protected under the Whistleblower Protection Regime if they make a Public Interest Disclosure that meets the following:

- (1) the individual is an Eligible Whistleblower and has made a disclosure that meets clauses 1 to 3; and
- (2) at least 90 days have passed since that first disclosure was made; and
- (3) the individual 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; and
- (4) the individual has reasonable grounds to believe that making a further disclosure of the information as set out in this section would be in the public interest; and
- (5) after at least 90 days from when the first disclosure was made, the individual gives to the person to whom the first disclosure was made written notice that:
 - (a) includes sufficient information to identify the first disclosure; and
 - (b) states that the individual intends to make a Public Interest Disclosure; and
- (6) the individual makes the second disclosure to:
 - (a) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory, such as the Queensland Government; or
 - (b) a Journalist; and
- (7) the extent of the information disclosed by the individual in making the Public Interest Disclosure is no greater than is necessary to inform the recipient of the Disclosable Matter.

5. **Emergency Disclosure:** An individual will also be protected under the Whistleblower Protection Regime if they make an Emergency Disclosure that meets the following:

- (1) the individual is an Eligible Whistleblower and has made a disclosure that meets the conditions in clauses 1 to 3; and
- (2) the individual has reasonable grounds to believe that the information concerns a substantial and imminent danger to:
 - (a) the health or safety of one or more persons; or

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- (b) the natural environment;
 - (3) the individual gives to the person to whom the first disclosure was made written notice that:
 - (a) includes sufficient information to identify the first disclosure; and
 - (b) states that the individual intends to make an Emergency Disclosure; and
 - (4) the individual makes the second disclosure to:
 - (a) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory, such as the Queensland Government; or
 - (b) a Journalist; and
 - (5) the extent of the information disclosed by the individual in making the Emergency Disclosure is no greater than is necessary to inform the recipient of the substantial and imminent danger.
6. The following disclosures are **not protected**:
- (1) Disclosures of matters and circumstances which fall outside the terms of this policy will not qualify for protection under the Whistleblower Protection Regime.
 - (2) This means that amongst other matters, an individual who makes a disclosure about a Personal Work Grievance, will not generally be protected in the manner described in this policy.
 - (3) A disclosure about a Personal Work Grievance may qualify for protection if it is made to a legal practitioner for the purpose of obtaining legal advice or representation.
7. When the above conditions are met, the protections given by the Corporations Act, which Eastern Star Foundation must comply with, 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 remedy may be enforced, and no contractual or other right may be exercised, against the Whistleblower for making the disclosure;
 - (3) in some circumstances, the disclosed information is not admissible against the Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty²;

² For example, where the disclosure has been made to ASIC or APRA, or where it qualifies as a Public Interest Disclosure or Emergency Disclosure.

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- (4) anyone who causes or threatens to cause detriment³ to a Whistleblower or another person in the belief or suspicion that a report has been made, or may have been made, proposes to 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 disclose commits an offence if he or she discloses the Whistleblower's identity or information that is likely to lead to the identification of the Whistleblower, without the Whistleblower's consent, to anyone except:
 - (a) ASIC;
 - (b) APRA;
 - (c) the AFP; or
 - (d) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure.
8. If a disclosure is made, the identity of the Whistleblower must be kept confidential unless one of the following exceptions arises:
- (1) the Whistleblower consents to the disclosure of his or her identity;
 - (2) disclosure of details that might reveal the Whistleblower's identity is reasonably necessary for the effective investigation of the matter;
 - (3) the concern is report to ASIC, APRA or the AFP; or
 - (4) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure.

³ Detriment includes dismissal of an employee, injury of an employee, alteration of an employee's position or duties to his or her disadvantage, discrimination between an employee and other employees, harassment or intimidation, harm or injury (including psychological harm), damage to property, damage to reputation, damage to business or financial position or damage to another person.

Annexure B

Protections under the Taxation Administration Act

The Taxation Administration Act grants special protect to disclosers of information about a breach of any Australian tax law by Eastern Star Foundation in relation to its tax affairs (**Whistleblower**) if the following conditions are met:

1. The Whistleblower is or has been:
 - (1) an officer or employee of Eastern Star Foundation;
 - (2) an individual who supplies services or goods to Eastern Star Foundation, whether paid or unpaid (including volunteers);
 - (3) an employee of a person that supplies services or goods to Eastern Star Foundation, whether paid or unpaid;
 - (4) an individual who is an associate of Eastern Star Foundation within the meaning of the *Income Tax Assessment Act 1997* (Cth); or
 - (5) a spouse, child or dependent of any of the individuals described above.
2. The disclosure is made to any of:
 - (8) a Compliance Officer;
 - (9) a director, secretary or senior manager of Eastern Star Foundation
 - (10) Eastern Star Foundation's auditor (or a member of that audit team);
 - (11) a registered tax agent or BAS agent who provides tax or BAS services to Eastern Star Foundation;
 - (12) any other employee or officer of Eastern Star Foundation who has functions or duties relating to tax affairs of the company;

(Internal Recipient)

 - (13) the Commissioner of Taxation;
 - (14) a legal practitioner (e.g. a lawyer) for the purpose of obtaining legal advice or legal representation in relation to the Whistleblower Protection Regime under the Taxation Administration Act.
3. If the disclosure is made to an Internal Recipient, the Whistleblower:
 - (1) has reasonable grounds to suspect that the information being disclosed indicates misconduct, or an improper state of affairs or circumstances, in relation to the tax affairs of Eastern Star Foundation; or
 - (2) considers that the information may assist the recipient to perform functions or duties in relation to the tax affairs of Eastern Star Foundation.
4. If the disclosure is made to the Commissioner of Taxation, the Whistleblower considers that the information may assist the Commissioner to perform his or her

function or duties under a taxation law in relation to Eastern Star Foundation or an Associate of Eastern Star Foundation.

5. When the above conditions are met, the protections given by the Taxation Administration Act, which Eastern Star Foundation must comply with, 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 remedy may be enforced, and no contractual or other right may be exercised, against the Whistleblower for making the disclosure;
 - (3) where the disclosure is 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 proceedings in respect of the falsity of that information;
 - (4) anyone who causes or threatens to cause detriment⁴ to a Whistleblower or another person in the belief of 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;
 - (5) a Whistleblower's identity cannot be disclosed to a court or tribunal except where considered necessary; and
 - (6) the person receiving the disclosure commits an offence if he or she discloses the Whistleblower's identity or information that is likely to lead to the identification of the Whistleblower, 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 disclosure.
6. If a disclosure is made, the identity of the Whistleblower must be kept confidential unless one of the following exceptions arises:
- (1) the Whistleblower consents to the disclosure of his or her identity;
 - (2) disclosure of details that might reveal the Whistleblower's identity is reasonably necessary for the effective investigation of the matter;
 - (3) the concern is report to the Commissioner of Taxation or the AFP; or
 - (4) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the disclosure.

⁴ Detriment includes dismissal of an employee, injury of an employee, alteration of an employee's position or duties to his or her disadvantage, discrimination between an employee and other employees, harassment or intimidation, harm or injury (including psychological harm), damage to property, damage to reputation, damage to business or financial position or damage to another person.