



Education  
Services  
Australia

<b>Whistleblower Policy</b>	
Policy prepared by Education Services Australia Ltd	
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## 1.0 Policy

### 1.1 Overview

Professionalism, honesty and integrity are core to Education Services Australia's (ESA's) business and everything we do needs to be measured against the highest possible standards.

ESA is committed to operating legally (in accordance with applicable legislation and regulation), properly (in accordance with ESA policy and procedures), and ethically (in accordance with recognised ethical principles) and to identifying and responding to illegal, improper or unethical conduct (improper conduct), and fostering a culture of continuous improvement.

To support this commitment and promote an open working environment, ESA encourages employees to raise concerns about any known or suspected improper conduct within ESA and provides the processes outlined in this Policy to confidentially raise serious concerns without fear of reprisal, dismissal or discriminatory treatment. Prompt and appropriate action will be taken to investigate each report received to ensure improper conduct is detected and addressed appropriately.

This Policy is available on ESA's intranet, on ESA's website and hard copies are available on request from the General Manager, People and Culture.

### 1.2 Purpose

The purpose of this Policy is to:

- encourage and support the reporting of improper conduct;
- give whistleblowers assurance that it is safe to report improper conduct by emphasising the protections and support that will be provided by ESA;
- outline the processes to be followed in handling reports, including:
  - how disclosures of improper conduct can be reported and to whom;
  - how reports will be investigated;
  - how fair treatment of employees mentioned in disclosures (or to whom disclosures relate) will be ensured; and
- ensure that the Policy is made available and understood by all employees.

### 1.3 Scope

This Policy applies to 'eligible whistleblowers', i.e. individuals who have, or have had, a relationship with ESA. This can include directors, employees, former employees, contractors, suppliers, as well as associates and family members of these individuals.

### 1.4 Definitions:

In this Policy words have the following meaning unless the context otherwise requires:

- **improper conduct** means serious conduct by ESA or its employees which is, or could be, a breach of general law, ESA policy, or generally recognised principles of

ethics and/or an improper state of affairs or circumstances. For the purposes of this Policy, improper conduct includes (but is not limited to):

- *adverse behaviour*: unethical behaviour or misconduct, including breaches of ESA's policies, including the Employee Code of Conduct; other serious improper conduct that may be detrimental to the interests of ESA or could impact ESA's reputation or integrity (including harassment and unsafe work-practices) or cause either financial or non-financial loss to ESA; behaviour that represents a danger to the public or the financial system, and other behaviour which is contrary to ESA's corporate values;
  - *corrupt behaviour*: a person who dishonestly acts, or dishonestly omits to act, in the course of their employment or engagement with ESA, or dishonestly takes advantage of their position and/or their delegated authority to act on behalf of ESA to obtain any benefit for themselves or for another person or other parties, or to cause financial loss to ESA or another person or other parties; or accepting or providing secret commissions or bribes;
  - *fraud*: a dishonest activity that causes actual or potential financial loss, or an unjust advantage, to ESA or to any person or other parties. Fraud includes the theft of money or other financial benefits, data or other property; the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose; or the improper use of information or position; and
  - *legal/regulatory non-compliance*: illegal behaviour (e.g. theft, drug sale/use, violence or threatened violence, and criminal damage against property) and breaches of any laws, regulations and policies that apply to ESA's business operations; and/or illegal conduct by other parties that causes actual or potential financial loss to or is otherwise detrimental to the interests of ESA.
- **reprisal** means any form of reprisal, adverse action or detriment that a person takes or threatens to take against a whistleblower because that person made or intends to make a disclosure in accordance with this Policy, or if they believe that the person has made a disclosure. For the purposes of this Policy, reprisals include (but are not limited to):
    - dismissal or demotion;
    - any form of victimisation, intimidation or harassment;
    - discrimination;
    - current or future bias;
    - action causing injury, financial loss or hardship, or damage to property; and
    - threats (express or implied, conditional or unconditional) to cause detriment, as well as actually causing detriment.
  - **whistleblower** means any person who reports improper conduct in accordance with this Policy and includes current and former employees, officers and suppliers of ESA.

## **1.5 Policy principles**

ESA has adopted the following principles in relation to its whistleblowing program:

- ESA will support and protect whistleblowers who act honestly and have reasonable grounds to suspect improper conduct, from reprisals that stem from making a disclosure;
- ESA, or an independent third party appointed by ESA, will conduct investigations in an objective and confidential manner. Appropriate corrective action will be taken as warranted by the investigation in ESA's sole discretion;
- ESA will not take any disciplinary action, or tolerate reprisals, against a whistleblower where a disclosure is unable to be substantiated or is found to be untrue, when the disclosure was made with a genuine or reasonable belief regarding the improper conduct; and
- ESA will not prevent (whether through confidentiality agreement or otherwise) a whistleblower from making a disclosure to a regulator.

Disclosures may be made by any eligible whistleblower.

## **2.0 Whistleblowing reporting and investigation process**

### **2.1 Duty to report improper conduct**

It is expected that all staff will report known, suspected, or potential cases of improper conduct, whether such cases involve ESA, or other parties with which ESA has (or did have) dealings.

Failure to report improper conduct may result in disciplinary action, including possible termination of employment.

### **2.2 Reporting Improper Conduct**

Eligible whistleblowers, if current staff members of ESA, are encouraged to report concerns of improper conduct which would constitute a breach of ESA policy via the usual channels set out in the particular policy.

Where a member of staff, irrespective of the reason, feels unable to raise their concern(s) regarding improper conduct via standard channels or where the matter relates to improper conduct in relation to other parties or to improper conduct disclosed by a third party, they should report the matter to:

- their senior manager;
- the General Manager, People and Culture who is the designated ESA Whistleblower Protection Officer;
- the Chief Executive Officer;
- the ESA Board Chair, if the concern being reported relates to the Chief Executive Officer; or
- officers, auditors or actuaries of ESA.

When reporting inappropriate behaviour, the whistleblower should give as much information as they can to assist ESA in investigating the matter, including the person(s) suspected of the improper conduct and the nature and whereabouts of any evidence of the conduct, if known. However, a whistleblower should not be discouraged from making a report if they do not have evidence, as this is not a bar to the activation of ESA's investigative procedures.

If the eligible whistleblower does not wish to make a report of improper conduct via this Policy, they can consider making reports to the legal authorities responsible for the enforcement of the law in the relevant area (e.g. Australian Federal Police, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission).

### **2.3 Confidentiality and anonymity**

Whistleblowers do not have to reveal their identity when reporting improper conduct, that is, they may remain anonymous. It is an offence to disclose the whistleblower's identity without their consent or without a court order.

ESA recognises that maintaining confidentiality is crucial in ensuring ESA whistleblowers disclose improper conduct in a timely manner and without fear of reprisals.

Whether or not a whistleblower reveals their identity, their identity will remain confidential, subject to any regulatory or legislative requirements or where the reportable conduct involves a threat to life, property or may involve, or potentially involve, illegal activities. In such circumstances, reasonable steps will be taken to notify the whistleblower prior to disclosure of their identity being made.

ESA will also take all reasonable steps to reduce the risk of the whistleblower's identity becoming apparent in the course of investigating the improper conduct. Whether or not the whistleblower reveals their identity when reporting improper conduct, the whistleblower will be entitled to the same protections under this Policy.

### **2.4 Investigation**

All reports of improper conduct will, insofar as is reasonably practicable, be investigated in a timely, thorough and impartial manner with due regard to the rights of all people involved in the allegation.

ESA will determine the appropriate method for the investigation. ESA may elect to appoint an internal investigator or an independent body or person(s) as an investigator. Where appropriate, ESA may ask for the assistance of any internal or external accounting expertise or legal counsel or any other professional services that ESA deems necessary.

Allegations in relation to fraud will be investigated according to the procedures in the ESA Fraud Control Plan.

Where an investigation is initiated, it will be a fair and independent process, without bias. Investigations will be independent of the business unit in respect of which allegations have been made, the person who has made the disclosure, or any person who is the subject of the improper conduct.

The Chairs of the Board and the Finance, Risk and Audit Committee (FRAC) are to be notified of the investigation and provided with updates, as appropriate.

The whistleblower will be informed of the final outcome of the investigation, as appropriate.

Where appropriate, the matter may be referred to external authorities.

All records relating to whistleblower disclosures are to be retained in secure storage for a minimum period of seven years, unless local requirements specify a greater retention period.

## **2.5 Keeping the Whistleblower Informed and Protection of Whistleblowers**

The whistleblower (if not anonymous) will be contacted, as soon as practicable, to discuss their welfare and to establish a process of communicating with them during the investigation, if needed. The whistleblower will also be informed of the expected timeframes for completion of the investigation.

If it is determined that there is insufficient information or evidence to warrant further investigation, the whistleblower will be informed at the earliest possible opportunity. No further action will be taken.

## **2.6 Reprisal Resulting from a Report of Improper Conduct**

ESA prohibits its staff from undertaking reprisals in respect of a whistleblower or a third party outside ESA who reports improper conduct. In certain circumstances, victimisation of whistleblowers can result in a civil penalty and/or constitute a criminal offence and perpetrators may be liable to prosecution. Any employee of ESA who undertakes reprisals in respect of a whistleblower will be subject to disciplinary action, including possible termination of employment.

Such liability can arise even where:

- the eligible whistleblower has not yet made a disclosure of improper conduct;
- the victimiser does not have actual knowledge that a disclosure of improper conduct has been or will be made; or
- the victimiser does not intend that the victimisation exposes the whistleblower or eligible whistleblower to a detriment.

Whistleblowers may also be eligible to seek compensation under the *Corporations Act 2001* (Cth) regarding any such victimisation.

## **2.7 Person Against Whom the Disclosure is made**

ESA aims to ensure that a fair process is afforded to the employee who is the subject of allegations of improper conduct. ESA will, unless special circumstances apply, endeavour to ensure that the employee is:

- informed of the substance of the allegations against them; and
- given the opportunity to answer the allegations before a final decision is made.

## **2.8 False, Misleading or Malicious reports**

Any person who reports improper conduct under this Policy must have reasonable grounds for believing the information disclosed constitutes improper conduct.

Disciplinary or other action may be taken against a person making a report that is knowingly false, misleading or malicious, including possible termination of employment.

## **2.9 Findings**

At the conclusion of any investigation, the appointed investigator will prepare a report of the findings to either the CEO or the Board Chair (if the Chief Executive Officer is involved in the improper conduct) ensuring that confidentiality and anonymity is maintained.

This report will usually include:

- a summary of the allegations;
- a statement of all relevant findings of fact and the evidence relied upon in reaching any conclusions;
- the conclusions reached (including the damage caused, if any, and the impact on ESA and other affected parties) and their basis; and
- recommendations based on those conclusions for any action that should be taken to address any wrongdoing identified, gaps in ESA's risk management controls, or other matters arising during the investigation.

## **2.10 Decision**

After receiving a report of the findings, the final determination regarding the matter will be made by the CEO, or the Board where the CEO is involved in the improper conduct.

Actions that may occur as a result of the determination by the CEO or the Board may include:

- disciplinary action against the individuals found to be involved in the improper conduct such as warnings or termination of their employment;
- deciding on the corrective actions to be taken to prevent the improper conduct from occurring in the future as well as any action that should be taken to remedy any harm or loss arising from the improper conduct (including implementing the investigator's recommendations);
- referring the matter to the appropriate authorities for further action, investigation or review;
- in the case of improper conduct involving other parties, a decision whether it is appropriate to notify the other party;
- no further action; or
- any other action deemed appropriate.

## **2.11 Whistleblower immunity**

If the whistleblower qualifies for protection under the *Corporations Act 2001* (Cth), the information disclosed by the whistleblower in accordance with this Policy will not be admissible against them in any criminal or penalty proceedings (except proceedings relating to the falsity of the information).

### 3.0 Roles and Responsibilities

The Roles and Responsibilities with regard to the Policy are set out in the table below.

ROLE	RESPONSIBILITY
CEO	<ul style="list-style-type: none"> <li>• Approve the Whistleblower Policy.</li> <li>• Review the Policy every two years.</li> <li>• Ensure that the Policy is regularly communicated to staff.</li> <li>• Receive and assess reports from whistleblowing channels.</li> <li>• Notify the Board and FRAC Chairs of disclosures to be investigated and the result of the investigations.</li> <li>• Ensure that investigations are established and adequately resourced, and determine the appropriate method for the investigation.</li> </ul>
All staff	<ul style="list-style-type: none"> <li>• Report improper conduct.</li> </ul>
Senior Managers	<ul style="list-style-type: none"> <li>• Receive disclosures from whistleblowers.</li> <li>• Notify CEO/ ESA Whistleblower Protection Officer.</li> </ul>
Whistleblower Protection Officer	<ul style="list-style-type: none"> <li>• Receive disclosures from whistleblowers and managers.</li> <li>• Protect and support whistleblowers from personal disadvantage as a result of making a disclosure</li> <li>• Provide advice to anyone covered by this Policy prior to, during, or after a disclosure</li> <li>• Keep the whistleblower informed of the investigation's progress.</li> <li>• Notify CEO and Board and FRAC Chairs as appropriate.</li> </ul>
Gen. Man. People and Culture	<ul style="list-style-type: none"> <li>• Act as the ESA Whistleblower Protection Officer.</li> <li>• Keep the Policy up to date.</li> </ul>
Board Chair (as appropriate)	<ul style="list-style-type: none"> <li>• Receive and assess reports from whistleblowing channels, where the Chief Executive Officer is involved. In such instances:                             <ul style="list-style-type: none"> <li>○ notify the Board and FRAC of disclosures to be investigated and the result of the investigations; and</li> <li>○ ensure that investigations are established and adequately resourced and determine the appropriate method for the investigation.</li> </ul> </li> </ul>
Whistleblower	<ul style="list-style-type: none"> <li>• Have reasonable grounds for suspecting the improper conduct.</li> <li>• Provide as much information as possible and any known details relating to the improper conduct.</li> <li>• Make the choice whether or not to remain anonymous. However, whistleblowers are encouraged to identify themselves to assist with providing any further information and to ensure that protection and support is provided.</li> </ul>

## **4.0 Training and communication**

ESA will regularly communicate this Policy to its employees. Employees will also receive regular training on supporting this Policy in the scope of their employment or contract with ESA.

## **5.0 Review of this Policy**

The General Manager, People and Culture is responsible for keeping this Policy up to date. Formal review will occur every two years and the Chief Executive Officer is responsible for approving this Policy.

## **6.0 Related documents**

- Code of Conduct
- Fraud Control Plan
- ICT Use Policy
- Conflict of Interest Policy
- Workplace Behaviour Policy
- Counselling and Discipline Policy