

Whistleblower Policy

Prepared by

HESTA Legal Team

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1 Overview

H.E.S.T. Australia Ltd ("**HESTA**") is committed to fostering a culture of transparency, ethical behaviour and strong corporate governance in which people feel free and safe to raise legitimate issues relating to any '*wrongdoing*' in relation to HESTA's operations. HESTA will support individuals who speak up and make disclosures under this Policy.

2 Purpose

Whistleblowers play an important role in identifying and calling out '*wrongdoing*' that may not be uncovered unless there is a safe and secure means for disclosing wrongdoing. To encourage whistleblowers to come forward with their concerns and protect them when they do, the *Corporations Act 2001* and *Taxation Administration Act 1953* give eligible persons legal rights and **protections** for disclosures that are covered.

The Whistleblower Policy ("**Policy**") sets out information about:

- the types of disclosures that qualify for protection
- the protections available to whistle-blowers
- to whom disclosures can be made and how they can be made
- how HESTA will support whistle-blowers and protect them from detriment
- how HESTA will investigate disclosures
- how HESTA will ensure fair treatment of employees who are the subject of or are mentioned in disclosures; and
- how this Policy is to be made available to officers and employees of the Trustee.

This Policy should be read with the Whistle-blower Process and Guide and the HESTA Code of Conduct.

3 What disclosures are protected?

A disclosure qualifies for statutory protection under the whistleblower regime in the Corporations Act or Tax Administration Act if:

- it is a disclosure by an '**eligible whistle-blower**' made:
 - directly to the Australian Securities and Investments Commission (ASIC), the Commissioner of Taxation (in relation to tax matters), Australian Prudential Regulator Authority (APRA); or
 - to a prescribed Commonwealth authority; or
 - to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act; or
 - to an '**eligible recipient**';

AND

- the discloser has 'reasonable grounds to suspect' that the disclosed information concerns a '**disclosable matter**' (also referred to as a *wrongdoing* in this Policy). Public interest and emergency disclosures also qualify for protection – see paragraphs 7.2(d) and 7.2(e) for more detail.

4 Who is an 'eligible whistleblower'?

The following individuals are capable of being '*eligible whistle-blowers*':

- a current or former director or company secretary of HESTA;
- a current or former officer¹ of HESTA;
- a current or former employee of HESTA;
- an individual who is a current or former supplier of services or goods to HESTA whether paid or unpaid and any supplier of services or goods employee of a person that supplies goods or services to HESTA;
- a current or former director, company secretary, employee or other officer of the custodian or investment manager of HESTA;
- a current or former supplier or contractor to a custodian or investment manager of HESTA, whether paid or unpaid (and any employee of that supplier or contractor).

An '*eligible whistleblower*' also includes an individual who is a relative, dependant, spouse, or dependant of a spouse, of the individuals set out above.

5 Disclosable matters

5.1 What is a disclosable matter?

A '*disclosable matter*' (also defined as "wrongdoing") is information an eligible whistleblower reasonably suspects:

- concerns misconduct² or an improper state of affairs or circumstances in relation to HESTA (including in relation to HESTA's tax affairs); or
- indicates HESTA, or one of its officers or employees has engaged in conduct that constitutes an offence against, or a contravention of, Commonwealth or State Laws including the:
 - Corporations Act 2001 (Cth)
 - Australian Securities and Investments Commission Act 2001 (Cth);

¹ An officer of a corporations means a person who makes or participates in making, decisions that affect the whole, or substantial part of the business

² Misconduct for the purpose of this policy includes: fraud, negligence, default, breach of trust and breach of duty (See Section 9 of the Corporations Act 2001)

- Superannuation Industry (Supervision Act) 1993 (Cth);
 - the Banking Act 1959;
 - the Financial Sector (Collection of Data) Act 2001;
 - the Insurance Act 1973;
 - the Life Insurance Act 1995;
 - the National Consumer Credit Protection Act 2009; and
 - any instrument made under these Acts;
- constitutes an offence or a contravention of any other law of the Commonwealth that is punishable by imprisonment for 12 months or more; or
 - represents a danger to the public or the financial system;
 - indicative of systemic issues, dishonest or unethical behaviours or practices;
 - other conduct which causes harm, or has the potential to cause harm to HESTA, or is prohibited by its Code of Conduct (but is not a personal work-related grievance);
 - breach of the HESTA policies which amounts to an improper state of affairs or circumstances relating to HESTA;
 - dishonest, fraudulent, corrupt or unlawful conduct or practices;
 - misleading or deceptive conduct, including improper or misleading accounting or financial reporting practices or;
 - coercion, harassment or discrimination that is not otherwise a personal work-related grievance;
 - any other conduct or act which may cause significant loss (including financial and non-financial loss) to HESTA, or which may otherwise be detrimental to HESTA;
 - victimisation of a whistle-blower or potential whistle-blower;
 - modern slavery or human trafficking, including within HESTA's supply chains or customers;
 - concealment of any of the above

Disclosable matters or wrongdoing may not necessarily involve a contravention of a particular law. For example, 'misconduct or an improper state of affairs or circumstances' could involve conduct that, whilst not unlawful, indicates a systemic issue of concern that the relevant regulator should know about to properly perform its functions. It may also relate to dishonest or unethical behaviour and practices, conduct that may cause harm, or conduct prohibited by HESTA's Code of Conduct.

5.2 On what basis should an eligible whistleblower make a disclosure?

An eligible whistle-blower who makes disclosure about a wrongdoing must have 'reasonable grounds to suspect' the information concerns wrongdoing to qualify for protection. This means that even if a disclosure turns out to be incorrect, the protections will still apply provided the eligible whistle-blower had 'reasonable grounds to suspect'.

Reasonable grounds means that a reasonable person in the position of the person would also suspect the information indicates 'misconduct' or an improper state of affairs or circumstances.³ The term 'reasonable grounds to suspect' is based on the objective reasonableness of the reasons for the discloser's suspicion. In practice, a mere allegation with no supporting information is not likely to be considered as having 'reasonable grounds to suspect'. However, a discloser does not need to prove their allegations.

Misconduct is defined to include, fraud, negligence, default, breach of trust and breach of duty.

The phrase 'improper state of affairs or circumstances' is not defined and is intentionally broad and may not involve unlawful conduct but may indicate a systemic issue. The term may also refer to behaviours and practices that may cause consumer harm.

HESTA strongly discourages deliberate false reporting and may take disciplinary action against employees or officers who make deliberate false reports.

6 Disclosures Not Protected under this Policy

Any disclosures that do not fall within the expressions "misconduct or an improper state of affairs" or section 5.1 are not protected under this Policy, but may be protected under separate laws, such as the Fair Work Act for personal work-related grievances.

Misconduct or an improper state of affairs does not generally include personal work-related grievances that do not concern a contravention, or alleged contravention of the detriment provisions referred to in section 8.3 of the policy.

Personal work-related grievances are grievances that relate to current or former employment and have, or tend to have, implications for the person making the disclosure personally, but do not:

- have any other significant implications for HESTA (or another entity); or
- relate to specific types of conduct (e.g., conduct constituting an offence against other laws punishable by imprisonment for a period of 12 months or more; or conduct representing a danger to the public or the financial system).

Generally, a personal work-related grievance includes:

- an interpersonal conflict with another employee
- a decision that does not involve a breach of workplace laws
- a decision about the discloser's employment, transfer, or promotion
- a decision about the terms and conditions of discloser's employment, such as
- a decision to suspend or terminate employment or otherwise discipline the discloser.

HESTA has procedures for raising personal grievance and encourages employees to do so through the People and Culture team.

A personal workplace related grievance may qualify for protection in some circumstances, for example:

- in relation to detrimental treatment suffered by a whistle-blower because of having made a protected disclosure; or
- information about misconduct or an improper state of affairs that includes or is accompanied by a personal work-related grievance (mixed report); or
- it has significant implications for the Company, or the information relates to specific types of conduct (e.g., conduct constituting an offence against other laws punishable by imprisonment for a period of 12 months or more; or conduct representing a danger to the public or the financial system).

If a discloser is unsure whether the conduct falls under this Policy as potential wrongdoing, or alternatively is a personal work-related grievance, then it can be disclosed under this Policy in the first instance. If it is determined the disclosure is not protected under this Policy, but a personal grievance, it will be referred to the People and Culture team.

If disclosers wish to seek additional information before formally making a disclosure, information can be obtained by contacting HESTA's Whistle-blower Protection Officer or the discloser can seek their own independent legal advice.

7 Who are Eligible Recipients?

The role of eligible recipients is to receive disclosures that qualify for protection under this Policy. For a disclosure to be protected under the Policy the disclosure must be made directly to an eligible recipient, and protections apply to disclosures made to internal as well as external eligible recipients.

7.1 Eligible recipients within HESTA

For a disclosure to be protected under the Policy the disclosure must be made to an eligible recipient.

HESTA encourages disclosure to be made to the following eligible recipients in the first instance. Disclosures can be made anonymously, confidentially, securely and during **business hours** to the following persons (or persons holding equivalent titles that may change from time to time):

Chief Financial Officer

Chief Risk Officer

Head of People & Culture

Company Secretary

General Counsel *

Disclosures can be made by calling HESTA's 1300 Whistleblower number on **1300 132 697**. Upon dialing HESTA's 1300 Whistleblower number, you will have the option to choose which of the five eligible recipients listed above you would like to be transferred to.

*The General Counsel will not be able to provide the disclosers with legal advice however, and a discloser may seek independent legal advice about what remedies may be available if they suffer loss for making the disclosure.

Disclosures can also be made to:

- a Senior Manager (members of the Executive Team)⁴;
- an internal or external auditor (including a member of an audit team conducting an audit of HESTA);
- an actuary of HESTA;
- if the disclosure relates to HESTA's tax affairs, a registered tax agent or BAS agent of HESTA or an employee or officer of HESTA who has functions or duties that relate to HESTA's tax affairs;
- an officer of HESTA (director or company secretary)⁵; or
- any other person authorised by HESTA to receive disclosures that may qualify for protection under this Policy (for example, the Whistleblower hotline).

7.2 WHO ARE EXTERNAL ELIGIBLE RECIPIENTS?

a) Whistleblower hotline

HESTA has a confidential, secure service in place with an external entity, Grant Thornton Australia Limited, for whistleblowers to contact and make disclosures anonymously and outside business hours.

Disclosures can be made to:

Grant Thornton Australia Limited

Telephone: 1300 573 929

Email: hestadisclosures@myvault.net.au.

Post: HESTA Disclosures C/O Forensic Consulting PO Box 4736, Melbourne, VIC, 3001

⁴ A Senior Manager is generally a senior executive, other than a director or company secretary, who makes or participates in making decisions that affect the whole, or a substantial part, of HESTA, or has the capacity to significantly affect the HESTA's financial standing. This generally means the Executive Team at HESTA.

⁵ An officer of a corporations means a person who makes or participates in making, decisions that affect the whole, or substantial part of the business of the corporation or who has the capacity to significantly affect the corporation's financial standing. Generally, it includes a director or the Company Secretary.

HESTA will respect a discloser's right to remain anonymous, however if a discloser chooses to remain anonymous, it may limit HESTA's ability to properly investigate the matter being disclosed and to support the discloser.

b) Disclosure to external regulatory bodies

While it is HESTA's preference for disclosures to be made internally - an eligible whistleblower may choose to raise disclosable matters outside of HESTA with:

- ASIC; or
- APRA; or
- ATO; or
- another Commonwealth body prescribed by regulations.

c) Disclosure to a legal practitioner

Disclosures may also be made under the Australian whistleblower laws to a lawyer for the purposes of obtaining legal advice or representation in relation to the operation of the Australian whistleblower laws (even if the legal practitioner concludes that a disclosure does not relate to a 'disclosable matter').

d) Public interest disclosures

An eligible whistleblower can also be afforded protection for 'public interest disclosures', but it is important to understand protection is only afforded if the disclosure complies with the below requirements.

A 'public interest disclosure' is the disclosure of information only to a journalist or a parliamentarian, where:

- The eligible whistle-blower must have made a qualifying disclosure to ASIC, APRA or another Commonwealth body prescribed by regulations;
- at least 90 days have passed since the whistle-blower made the disclosure to ASIC, APRA or another Commonwealth body prescribed by regulation;
- the whistle-blower does not have reasonable grounds to believe that action is being, or has been taken, in relation to their disclosure;
- the eligible whistle-blower has reasonable grounds to believe that making a further disclosure of the information is in the public interest; and
- before making the public interest disclosure, the whistle-blower has given written notice to the body to which the previous disclosure was made, written notification that:
 - i. includes sufficient information to identify the previous disclosure; and
 - ii. states that the discloser intends to make a public interest disclosure; and
- the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the journalist or parliamentarian of the wrongdoing.

Disclosers should contact an independent legal adviser before making a public interest disclosure.

e) Emergency Disclosures

An eligible whistleblower can also be afforded protection for 'emergency disclosures', but it is important to understand protection is only afforded if the disclosure complies with the below requirements.

An 'emergency disclosure' is the disclosure of information only to a journalist or parliamentarian, where:

- the eligible whistle-blower must have made a qualifying disclosure to ASIC, APRA or another Commonwealth body prescribed by regulations;
- the whistle-blower 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;
- before making the emergency disclosure, the whistle-blower has given written notice to the body to which the previous disclosure was made that:
 - i. includes sufficient information to identify the previous disclosure; and
 - ii. states that the discloser intends to make an emergency disclosure; and
- the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or parliamentarian of the substantial and imminent danger.

Disclosers should contact an independent legal adviser before making an emergency disclosure.

8 Protection under this Policy

HESTA is committed to protection of all people who speak up under this Policy, even if the matter disclosed turns out to be incorrect. HESTA takes contraventions of protections very seriously and may take discipline action for a breach of this Policy.

8.1 Whistleblower Protection Officer

An eligible recipient who receives a disclosure will provide that disclosure to the Whistleblower Protection Officer (as well as to the Whistleblower Investigating Officers). Where the whistleblower consents, their identity will also be shared.

To ensure that whistleblowers are protected HESTA has nominated a Whistleblower Protection Officer. The Whistleblower Protection Officer ensures the protection and fair treatment of the whistleblower and provides support to persons making a disclosure and provides protection of persons making a report of disclosable conduct under this Policy.

Whistleblower Protection Officer

Laura Dhana

8.2 Protecting confidentiality

A discloser's right to confidentiality (identity protections) is protected under the law and it is an offence to breach confidentiality.

Disclosers can remain anonymous when making a disclosure and still qualify for statutory protections. There is no requirement to identify themselves at any stage during the reporting or investigation process, or after investigation is finalized.

HESTA will ensure neither the discloser's identity nor information that is likely to lead to the identification of the discloser is disclosed unless the disclosure is made:

- to ASIC, APRA, ATO or a member of the Australian Federal Police;
- to a legal practitioner for the purposes of obtaining legal advice or legal representation about the whistle-blower protections in the Regulations;
- with the discloser's consent.

Identification of the discloser in any other circumstances is illegal.

Notwithstanding the above, if reasonably necessary to investigate the disclosure, HESTA is allowed to disclose information (other than the identity of the discloser) that could lead to someone identifying the discloser, provided HESTA takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure.

Disclosers can refuse to answer questions that they feel could reveal their identity at any time, including during follow-up conversations. A discloser who wishes to remain anonymous is encouraged to maintain ongoing two-way communication with HESTA so follow-up questions can be asked or to provide feedback.

The steps HESTA may take to reduce the risk that the discloser will be identified from the information contained in a disclosure, include:

- redacting personal information or reference to the discloser witnessing an event;
- referring to the discloser in a gender-neutral context;
- where possible, the discloser will be contacted to help identify certain aspects of their disclosure that could inadvertently identify them; and
- qualified staff handling disclosures and investigations.

A discloser can lodge a complaint relating to a breach of their confidentiality by the Whistle-blower Protection Officer. In addition, a complaint can be lodged with APRA, ASIC or the ATO for investigation.

8.3 Protection from detrimental treatment

The law contains protections from detrimental treatment, and it is an offence to cause detriment to a whistleblower or another person due to a disclosure.

HESTA does not tolerate any detrimental conduct to another person because of a belief or suspicion that a person has made, may have made, or could make a disclosure under this Policy.

HESTA will support those who speak up with access to support services, including through the:

Whistleblower Protection Officer

Laura Dhana: ldhana@hesta.com.au

[Acacia EAP](#)

1300 364 273

Detrimental conduct can take many forms and includes:

- dismissal of an employee;
- injury of an employee in their employment;
- alteration of an employee's position or duties to their disadvantage;
- discrimination between an employee and other employees;
- 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;
- damage to a person's business or financial position;
- any other damage to a person.

Not all actions taken will be detrimental conduct. Actions which are not detrimental conduct include:

- administrative action that is reasonable for the purpose of protecting a discloser from detriment (for example, moving a discloser who has made a disclosure about their immediate work area to another office to prevent them from detriment); and
- managing a discloser's unsatisfactory work performance, if the action is in line with HESTA's performance management framework.

Any form of detrimental treatment is a serious breach of this Policy and should be reported to the Whistle-blower Protection Officer. It will be treated as serious matter and HESTA will take disciplinary action against anyone proven to have engaged in detrimental treatment against people who speak up.

A discloser should seek independent legal advice, or contact regulatory bodies such as ASIC, APRA, ATO, if they believe they have suffered loss, damage, or injury for making the disclosure.

A discloser (or any other employee or person) can seek compensation and other remedies through the courts if they suffer loss, damage or injury because of a disclosure, and HESTA failed to take reasonable precautions and exercise due diligence to prevent the detrimental conduct.

To protect disclosers from detriment, HESTA management are trained to be aware of their responsibilities to maintain the confidentiality of a disclosure, address the risks of isolation or harassment, manage conflicts, and ensure fairness when managing the performance of, or taking other management action relating to, a discloser.

8.4 Other statutory protections available

Under Australian law, whistle-blowers may be entitled to additional legal protections in certain circumstances, including:

- the right to not be compelled to disclose in a Court or Tribunal their identity or information that may lead to their identity becoming known (other than in limited circumstances);
- protection from civil, criminal or administrative legal action for making the disclosure;
- protection from contractual or other remedies being sought against them on the basis of the disclosure; and
- the information whistle-blowers provide may not be admissible in evidence against them in legal proceedings (unless they have provided false information).

Examples of the liabilities described above are as follows:

- civil liability (e.g., any legal action against the whistle-blower for breach of an employment contract, duty of confidentiality or another contractual obligation);
- criminal liability (e.g., attempted prosecution of the whistle-blower for unlawfully releasing information, or other use of the disclosure against the discloser in a prosecution (other than for making a false disclosure)); and
- administrative liability (e.g., disciplinary action for making the disclosure).

Please note the protections do not grant immunity for any misconduct an eligible whistle-blower has engaged in that is revealed in their disclosure.

9 Investigating a disclosure

9.1 Investigation process

All disclosures under this Policy will be treated seriously and respectfully. Each disclosure will be assessed and investigated (as and when appropriate) in an objective and fair manner, and otherwise as is reasonable and appropriate having regard to the nature of the disclosed conduct and the circumstances. Once a disclosure has been made to an eligible recipient, the disclosure will be referred to the Whistleblower Investigation Officers, subject to appropriate confidentiality considerations. Two Whistleblower Investigation Officers will assess the disclosure.

HESTA's Investigation Officers are trained to ensure independence, awareness of conflicts and the need for procedural fairness. An Investigation Officer will not take part in the assessment of a disclosure if the disclosure relates to them or a person in their team.

HESTA's Investigation Officers will assess each disclosure and aim:

- to contact the discloser within 3 business days to acknowledge receipt and check on the disclosure's wellbeing (if they have provided their name and contact details);
- to conduct preliminary enquiries to determine whether the report qualifies for protection under this Policy and if an investigation is appropriate, within 10 business days of the disclosure; and
- to engage with the discloser to put in place appropriate measures to support them; and
- to determine the investigation approach and the scope (including obtaining third party support to assist with investigations – such as investigation firms, and financial, legal and other advisers), and aim to complete this within 20 business days of the disclosure.

The investigation will be managed and conducted by the Whistleblower Investigation Officers.

The Whistleblower Investigation Officers are:



While investigation steps required may vary based on the disclosure, investigations will generally include steps for planning, evidence gathering, analysis, documentation and reporting. It may be necessary to conduct interviews with witnesses or the person who is the subject of the disclosure.

During the investigation the discloser will be provided with timely updates where a communication channel is available, secure and protects anonymity, as to the progress of such investigation (the frequency and timeframe may vary depend on the nature of the disclosure).

An employee who is the subject of, or mentioned in, a disclosure will be advised about the subject matter of the disclosure as and when required having regard to principles of natural justice and procedural fairness and prior to any actions being taken, unless doing so would compromise the investigation effectiveness. Employees will also be informed and afforded the opportunity to respond before an adverse finding is made against them and will have access to HESTA's EAP service.

As part of the investigation process, HESTA will ensure:

- all paper and electronic documents and other materials relating to disclosures will be stored securely;
- appropriate records and documentation for each step in the process are maintained.
- access to all information relating to a discloser will be limited to those directly involved in managing and investigating the disclosure;

- only a restricted number of people who are directly involved in handling and investigating a disclosure will be made aware of a discloser's identity (subject to their consent) or information that is likely to lead to the identification of the discloser;
- communications and documents relating to the investigation of a disclosure will not to be sent to an email address or to a printer that can be accessed by other staff; and
- each person who is involved in handling and investigating a disclosure will be reminded about the confidentiality requirements, including that an unauthorised disclosure of a discloser's identity may be a criminal offence.

Without the discloser's consent, HESTA cannot disclose information that is likely to lead to the identification of the discloser as part of its investigation process, unless:

- the information does not include the discloser's identity;
- HESTA takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure; and
- it is reasonably necessary for investigating the issues raised in the disclosure.

In addition, Whistleblower Investigation Officers may not be able to undertake an investigation if they are not able to contact the discloser (for example, if a disclosure is made anonymously and the discloser has refused to provide, or has not provided, a means of contacting them).

9.2 Reporting of investigation outcomes

Where a person is found to have engaged in wrongdoing the matter will be referred to the Head of People and Culture and may result in disciplinary action, including dismissal. HESTA will report serious criminal matters to the police or other appropriate regulatory authorities. HESTA will assess and report compliance incidents in accordance with the Compliance Framework.

The Whistle-blower Investigating Officers will attempt to contact the discloser to provide them with a final status update. Depending on the circumstances of the "disclosable conduct" or "wrongdoing" and any privacy or confidentiality concerns, information provided to the discloser about the investigation may be limited.

The method for documenting and reporting the findings will depend on the nature of the disclosure.

Findings from an investigation will be made known to all Whistle-blower Investigation Officers. Findings will also be reported to the Risk Committee at the next practicable committee meeting after the conclusion of an investigation, with details of the disclosure omitted as necessary to preserve confidentiality.

10 Availability of this Policy

This Policy is available to all employees and officers via the HESTA website. Employees and officers will be provided with a link to the policy at induction.

11 Training

Training on this Policy will be provided to all employees annually. Specialist training for Eligible Recipients, the Whistleblower Protection Officer, and Whistleblower Investigation Officers will be provided on appointment to relevant roles.

12 Review

The Policy will be reviewed in accordance with the Policy Review Framework. The General Counsel will have oversight and monitor the effectiveness of the Policy, and any material changes will be approved by the Risk Committee.

13 Other matters

This Policy is not intended to go beyond the legislation.

On an annual basis, the Risk Committee will be provided with statistics as to the number of reports made through each of the different options available for making a disclosure under this Policy, the types of matter reported, and the number of investigations undertaken.