



## ERFA Whistleblowing Policy

<b>Policy &amp; Procedure Owner</b>	ERFA CEO	
<b>Approved by</b>	ERFA Board of Directors	
<b>First Adopted</b>	<b>Date Approved</b>	<b>Next Review</b>
9 December 2019	9 December 2019	November 2021

### Abbreviations

ACFID	Australian Council for International Development
ERFA	Edmund Rice Foundation Australia
Partner	Any organisation which has an MOU / Contract with / or receives funding from ERFA

### 1 RATIONALE

A Whistleblowing Policy is a critical element for internal control and governance. ERFA's Whistleblowing Policy is an articulation of ERFA's commitments to operating:

- Legally, in accordance with applicable legislation and regulations
- Correctly, in accordance with its organisational constitution, policies and procedures
- Ethically, in accordance with the principles enunciated in its Code of Conduct

This policy will be made available to all individuals working within ERFA via an employee induction pack, staff policy folder and website and to those outside ERFA via our website.

### 2 ACFID CONTEXT

The ACFID Code of Conduct requires that member organisations must have in place a Whistleblowing Policy that has the following components as a minimum:

- A clear statement that staff, volunteers, contractors and partners who are aware of possible wrongdoing have a responsibility to disclose that information
- A guarantee that staff and volunteers who in good faith disclose perceived wrongdoing, will be protected from adverse employment consequences
- The establishment of a fair and impartial investigative process
- Provides protection for whistleblowers

### 3 OBLIGATIONS UNDER CORPORATIONS ACT AND HOW TO READ THIS POLICY

As a company limited by guarantee under the Corporations Act, ERFA is a public company and therefore required to have a whistleblower policy in place which meets the requirements of Whistleblower Protection Regime.

Whistleblowers, which can include people outside ERFA, are in certain circumstances afforded additional special protections under the Corporations Act in relation to reports made regarding corporate misconduct and the Taxation Administration Act in relation to breaches of tax law.

In addition to ERFA's internal policy, Annexure A sets out the matters required under the Corporations Act and the protections available to whistleblowers under the Corporations Act and the

circumstances in which those protections will apply in addition to those afforded by ERFA under this policy, and Annexure B sets out the protections available to whistleblowers under the TAA.

Individuals should read the first section of this policy and then read Annexures A and B as applying in addition to the contents of ERFA's internal policy.

#### **4 RELATED ERFA POLICIES**

ERFA Whistleblowing Policy is to be read in conjunction with:

- ERFA Anti-Corruption & Anti-Fraud Policy
- ERFA Child Protection Policy
- ERFA Code of Conduct
- ERFA Complaints Handling Policy
- ERFA Conflict of Interest Policy
- ERFA Prevention of Sexual Exploitation, Abuse & Harassment Policy
- ERFA Risk Management Framework

#### **5 PURPOSE**

The purpose of this policy is to:

- Encourage more disclosures of wrongdoing
- Help deter wrongdoing, in line with ERFA's commitments described in paragraph 1
- Apprise staff, volunteers, contractors and partners of their responsibility to disclose serious wrongdoing that may cause harm to individuals, financial or non-financial loss to ERFA or damage to its reputation
- Strengthen ERFA's core values, as articulated in ERFA's Code of Conduct, by empowering all ERFA personnel and others within and outside ERFA to disclose any wrongful acts if they have objectively reasonable grounds for suspecting wrongdoing
- Provide reporting mechanisms and the means through which all individuals, regardless of their position and location, are able to report alleged or suspected wrongful acts and can do so in safely, securely and with confidence that they will be protected and supported
- Provide transparency regarding ERFA's framework for receiving, handling and investigating disclosures
- Enable ERFA to deal with disclosures from whistleblowers in a manner that will protect the whistleblower against any internal or external reprisal and ensure secure storage of information disclosed
- Ensure disclosures are dealt with appropriately and in a timely way
- Ensure that ERFA maintains the highest standards of ethical behaviour and integrity

#### **6 SCOPE**

This policy applies to all ERFA board members, staff, volunteers, contractors and partners and others outside ERFA as set out in Annexure A and B.

#### **7 DEFINITIONS**

In this policy, including the annexures:

1. **AFP** means the Australian Federal Police.
2. **APRA** means the Australian Prudential Regulation Authority.
3. **ASIC** means the Australian Securities & Investments Commission.
4. **Journalist** means a person who is working in a professional capacity as a journalist for any of the following:

- a. newspaper or magazine;
  - b. a radio or television broadcasting service;
  - c. an electronic service (including a service provided through the internet) that:
    - i. 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
    - ii. is similar to a newspaper, magazine or radio or television broadcast;
5. **officer** has the same meaning as defined in the Corporations Act and includes a director or secretary of ERFA;
  6. **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:
    - a. 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
    - b. the information:
      - i. does not have significant implications for ERFA; and
      - ii. does not concern Reportable Conduct;
  7. **Public Interest Disclosure** means a disclosure within the meaning of clause 4 of Annexure A.
  8. **Reportable Conduct** has the meaning given by section 9.2.
  9. **Taxation Administration Act** means the *Taxation Administration Act 1953* (Cth).
  10. **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.
  11. **Whistleblower** means any person who makes a report in connection with a wrongful act under this policy and who wishes to avail themselves of the protection offered by this policy.
  12. **Whistleblowing** means the deliberate, voluntary disclosure of individual or organizational wrongdoing by a person who has access to data, events or information about an actual, suspected or anticipated wrongdoing within the organisation.

## 8 POLICY

### 8.1 Policy

At all times ERFA is committed to conducting its activities professionally, honestly and with integrity.

However, ERFA is aware that in all organisations there can be the possibility for unprofessional conduct, criminal behaviour or mismanagement. Therefore, ERFA accepts responsibility for:

- having in place established procedures for enabling such situations to be identified and disclosed; and
- taking appropriate action to remedy such situations

ERFA is committed to:

- ensuring that all ERFA personnel are aware of their obligation to disclose wrongdoing
- fostering a culture where ERFA personnel are encouraged to raise concerns about wrongdoing and unethical conduct and can do so in a safe environment

### 8.2 Policy Principles

1. All ERFA personnel have an obligation to report wrongful acts or suspected wrongful acts in accordance with this policy.
2. All ERFA personnel have the right to speak freely and honestly to report wrongful acts in a safe environment without fear of retaliation or reprisal.

3. ERFA will respond in a timely, respectful and confidential manner to all disclosures of wrongful acts as set out in this policy.
4. ERFA will take steps to protect its personnel from detrimental treatment or dismissal if they have reasonably objective grounds for suspecting and reporting wrongful acts and comply with this policy.

## **9 REPORTING & INVESTIGATION FRAMEWORK**

### **9.1 Clarification**

This Whistleblowing Policy is intended to cover serious breaches that have the capacity for a significant actual or potential detrimental impact on ERFA. In that respect, the serious breaches, which are the focus of this policy, are to be differentiated from the issues and grievances which are the subject of ERFA's Complaints Handling Policy.

### **9.2 What types of breaches should be reported?**

Serious breaches that should be reported under ERFA's Whistleblowing Policy include but are not limited to:

- criminal offences / illegal acts
- actual or suspected corrupt behaviour, theft, fraud, embezzlement, incorrect financial reporting, questionable accounting and auditing matters
- activities such as and including the above, potentially damaging to ERFA's reputation or that could result in serious financial or non-financial loss for ERFA
- breaches of legal obligations including negligence, breaches of employment or other contracts or procurement procedures
- unethical behaviour such as acting dishonestly, altering organisational records, wilfully making false entries in official records
- serious abuse of authority
- serious conflicts of interests
- serious breaches of ERFA policy, ERFA Code of Conduct or the ACFID Code of Conduct
- serious disregard for work health or safety of staff, volunteers, program participants and the general public
- actual or potential harm or threats to an individual's safety or health
- physical, psychological, emotional or sexual abuse of ERFA personnel or program participants
- harassment, unlawful discrimination and bullying
- actual or threatened retaliation against a whistleblower who has made a disclosure of wrongdoing
- serious actual or potential environmental damage
- the concealment of any of the above

The above is defined in this policy as **Reportable Conduct**.

[Note: All of the above would also constitute breaches of the ACFID Code of Conduct, to which ERFA is a signatory.]

### **9.3 Making a Report**

Where a person has objectively reasonable grounds for suspecting that an individual has engaged in Reportable Conduct, as defined by this policy, that person must report their concern. The following avenues are available for reporting:

- ERFA CEO

- ERFA Board Chair (if it is believed that the CEO or a Board Member may be complicit in a breach)
- Where a whistleblower is of the view that an exceptionally serious issue warrants reporting to an external body independent of ERFA management and governance, the disclosure can be made to:
  - Carroll & O’Dea Lawyers (ERFA appointed external legal firm)
  - the ACFID Code of Conduct Committee

**(ERFA Disclosure Recipients)**

- Where a breach of general law is alleged, the duly constituted legal authorities responsible for enforcement of the law in the relevant geographical area must be notified.

ERFA recommends strongly that in making a report, a Whistleblower first follow the procedures in this policy to provide ERFA with the opportunity to investigate and respond to the subject of the report. If considering making an external report, Whistleblowers should be aware of their duty of confidentiality and that they will only be protected from disclosures made to a third party as set out in Annexures A and B.

**9.4 Contact Information for ERFA Disclosure Recipients**

ERFA Chief Executive Officer, Bren Arkinstall – [barkinstall@edmundrice.org](mailto:barkinstall@edmundrice.org)  
 PO Box 130 Virginia, Queensland, Australia 4014  
 Phone: +61 7 3621 9649

ERFA Board Chair, Paul Gallagher – [paul.gallagher@bdo.com.au](mailto:paul.gallagher@bdo.com.au)

Carroll & O’Dea Lawyers, Josephine Heesh, Partner – [Josephine\\_Heesh@codea.com.au](mailto:Josephine_Heesh@codea.com.au)  
 Level 18, St James Centre, 111 Elizabeth Street, Sydney, NSW, Australia 2000  
 Phone: +61 2 9291 7100

ACFID Code of Conduct Committee – [code@acfid.asn.au](mailto:code@acfid.asn.au)  
 Chair, ACFID Code of Conduct Committee, C/- ACFID, Private Bag 3, Deakin, ACT, Australia 2600  
<https://acfid.asn.au/content/complaints>

**9.5 Reporting Procedures**

- In contemplating the use of this policy, a potential whistleblower should consider whether the matter of concern would be more appropriately raised through ERFA’s Complaints Handling Policy procedures.
- A report must be made only if the Whistleblower has objectively reasonable grounds for suspecting Reportable Conduct and the report should be as thorough as possible. False or malicious allegations made by personnel may result in disciplinary action.
- Individuals may make reports anonymously and/or confidentially and outside of ERFA’s usual business hours.
- While whistleblowing reports may initially be made verbally and by telephone, because evidence to support the allegation(s), if it exists, should be provided as part of the report, it is preferred that reports be provided in writing and include details of:
  - The nature of the allegation(s)
  - Person or persons responsible
  - The substantiating facts on which the whistleblower has formed the view that the Reportable Conduct being reported did in fact occur and was committed by the person or persons named in the report

- Nature and whereabouts of any further evidence that would substantiate the allegation(s)
- ERFA will need to assess each disclosure to determine whether:
  - it qualifies for protection under the Whistleblower Protection Regime; and
  - a formal, in-depth investigation is required.

[Note: The absence of evidence will be taken into account in considering whether to open an investigation. However, the absence of evidence is not an absolute bar to the activation of an investigation if the existence and nature of the concern is sufficient to trigger ERFA's investigative responsibilities.]

To facilitate the provision of written reports, ERFA Whistleblower Report template is available on ERFA website at <https://erf.org.au/about-erfa/contact-us/> (see below - Annexure C).

### 9.6 Anonymous Reports

Whilst ERFA encourages Whistleblowers to put their names to allegations in order to facilitate appropriate follow-up and investigation, ERFA will accept anonymous disclosures.

However, in the investigation of anonymous disclosures consideration will be given to the following:

- The seriousness of the issue raised
- The credibility of the concern
- The likelihood of confirming the allegation from other sources

A Whistleblower who wishes to remain anonymous should maintain ongoing two-way communication with ERFA so that ERFA can follow up questions or provide feedback without knowing the Whistleblower's identity.

Where possible, ERFA will protect the anonymity of disclosers by:

- Communicating through an anonymous phone number or email address; and
- Allowing the discloser to adopt a pseudonym for the purpose of the disclosure.

***Disclosures made anonymously will still be protected under the Corporations Act as set out in Annexures A and B.***

[Note: The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* allows for anonymous disclosures – see below under 'Relevant Australian Legislation']

### 9.7 Investigation Procedures

- All reports received by the CEO or Board Chair must be provided to the Board within 1 business day.
- If the Board reasonably believes the report to be unquestionably trivial or fanciful and dismisses the allegation, the person who made the allegation must be notified of the decision.
- If the Board reasonably believes that the report has substance, the Board must put in motion the following investigative process:
  - The CEO or Board Chair will ensure that an investigation of the allegations is established and adequately resourced
  - Terms of Reference for the investigation will be drawn up to clarify the issues to be investigated and the scale of the investigation in proportion to the seriousness of the allegation(s)
  - The investigation must commence within 1 business day of it being provided to the Board.
- Throughout the investigation:

- All information obtained will be properly secured to prevent unauthorised access and disclosure in accordance with this policy
- All relevant witnesses will be interviewed and documents examined
- Notes will be made of all discussions, phone calls and interviews
- The principles of procedural fairness (natural justice) will be observed. In particular, where adverse comment about a person is likely to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.
- The person or persons conducting the investigation will be as far as possible unbiased.
- Without the Whistleblower's consent, ERFA cannot disclose information that is likely to lead to the identification of the Whistleblower as part of its investigation process, unless:
  - the information does not include the Whistleblower's identity;
  - ERFA removes information relating to the Whistleblower's identity or other information that is likely to lead to the identification of the Whistleblower (e.g. name, position, title, other identifying details); and
  - it is reasonably necessary for investigation the issues raised in the disclosure.
- If the Whistleblower has provided contact details, ERFA will provide the Whistleblower with regular updates. The frequency and timeframe of such updates will vary depending on the subject matter of the disclosure.
- The Board will ensure the investigation is completed within a reasonable time depending on the circumstances and within no less than 90 days of the investigation commences, subject to extraordinary circumstances justifying extension beyond this time.
- A Whistleblower who makes an anonymous report may choose to remain anonymous while making a disclosure, over the course of the investigation and after the investigation is finalised.
  - Accordingly, a Whistleblower can refuse to answer questions that they feel could reveal their identity at any time.

ERFA's investigation process may be subject to some limitations, including that ERFA may not be able to undertake an investigation if it is not able to identify the Whistleblower, for example, if a disclosure is made anonymously and the Whistleblower has refused to provide or has not provided a means of contact for any further questions or follow up which ERFA may need as part of the investigation.

[Note: Natural Justice and procedural fairness do not require that the affected be informed of the identity of the person making the initial disclosure, unless that communication constitutes part of the evidence relied upon in making the eventual finding.]

### **9.8 Findings**

A report will be prepared for the Board when the investigation is complete. The report will include:

- The allegation(s)
- A statement of all relevant findings of fact and the evidence gathered and upon which conclusions have been based
- The conclusions reached, including the damage caused, if any, and the impact on ERFA and any other affected parties
- Recommendations, based on the report's conclusions, to address any wrongdoing identified and any other matters that arose during the investigation

The Report will be provided to ERFA Board and to the Whistleblower (if possible) with, if necessary, any applicable confidential stipulations.

## **10 WHISTLEBLOWER PROTECTION**

### **10.1 Whistleblower Protection**

- ERFA encourages all Whistleblowers or people considering Whistleblowing to obtain independent legal advice.
- ERFA will not tolerate any form of harassment or retaliation against personnel who on objectively reasonable grounds report concerns regarding ERFA's operations.
- Any ERFA personnel who engage in retaliation or harassment of a Whistleblower will be subject to disciplinary action, which could result in termination.
- Any person who has made a whistleblowing report and who believes subsequently that they are the subject of retaliation of any kind by should immediately report that, utilising the appropriate avenue.
- Reports of retaliation will be investigated promptly in a manner intended to protect confidentiality and consistent with a full and fair investigation and the party conducting the investigation will notify the whistleblower of the outcome of the investigation.

ERFA will protect the confidentiality of a Whistleblower's identity by:

- Reducing the risk that the Whistleblower will be identified from the information contained in the disclosure by:
  - redacting all personal information or reference to the identity of the Whistleblower witnessing an event;
  - referring to the Whistleblower in gender-neutral terms;
  - contacting the Whistleblower to help identify certain aspects of the disclosure that could inadvertently identify them; and
  - ensuring that disclosures are handled and investigated by qualified individuals.
- Ensuring that its record-keeping and information sharing processes are adequate to ensure the protection of a Whistleblower's identity, such as by:
  - storing all records securing;
  - ensuring access to all records and information relating to the disclosure is limited to those directly involved in managing and investigating the disclosure;
  - ensuring that only a restricted number of individuals directly involved in the handling and investigation of a disclosure will be aware of the Whistleblower's identity (subject to the Whistleblower's consent) or information which may identify the Whistleblower;
  - ensuring that material relating to the matter will not be sent to an email address or left in a situation (such as, at a communal printer) that can be accessed by other individuals; and
  - reminding all individuals involved in the handling and investigation of a matter are regularly reminded of their confidentiality requirements, including that in the circumstances set out in Annexures A and B, the unauthorised disclosure of an individual's identity may be a criminal offence.

### **10.2 Whistleblower Rights & Obligations**

Whistleblowers must be informed that as far as lies within the power of ERFA, a Whistleblower will not be disadvantaged or suffer adverse employment consequences for the act of making a Whistleblowing report where that report has been made on objectively reasonable grounds. However, reporting a breach does not necessarily absolve a Whistleblower from the consequences of any involvement they may have had in the Reportable Conduct being reported.

Where the Whistleblower wishes to remain anonymous, they should be informed of the following:

- ERFA will not disclose a Whistleblower's identity unless the whistleblower consents to the disclosure.
- Their wish will be honoured except insofar as it may be overridden by the due process of law.
- Subject to the circumstances outlined in Annexures A and B, the Whistleblower is required to maintain confidentiality regarding the breach(es) reported and to refrain from discussing them with any unauthorised third parties.

The Whistleblower is not authorised to inform social media of their report and this policy does not offer protection to any whistleblower who does so.

### **10.3 False Disclosures**

While under this policy protection is provided to whistleblowers, and ERFA encourages individuals to make reports of Reportable Conduct, ERFA will not tolerate deliberate false reports and personnel found making a deliberate false report may be subject to disciplinary action, which could include dismissal.

### **10.4 Relevant Australian Federal Legislation**

[Corporations Act 2001 Part 9.4AAA](#)

[Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019](#)

## 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 ERFA (**Whistleblower**) if the following conditions are met:

1. The Whistleblower is or has been:
  - (1) an officer or employee of ERFA;
  - (2) an individual who supplies services or goods to ERFA, whether paid or unpaid (including volunteers);
  - (3) an employee of a person that supplies services or goods to ERFA, whether paid or unpaid;
  - (4) an individual who is an associate of ERFA 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:
  - (1) an ERFA Disclosure Recipient;
  - (2) ASIC – see how ASIC handles whistleblower reports [here](#);
  - (3) APRA – see how APRA handles whistleblower reports [here](#); or
  - (4) an officer or senior manager of ERFA;
  - (5) ERFA’s auditor (or a member of that audit team), namely Pitcher Partners via:  
Joe Shannon, Partner, Pitcher Partners Sydney – [joe.shannon@pitcher.com.au](mailto:joe.shannon@pitcher.com.au)  
GPO Box 1615, Sydney NSW 2001  
Phone: +61 2 8236 7865
  - (6) 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 duty<sup>1</sup>) or an improper state of affairs or circumstances in relation to ERFA;

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<sup>1</sup> Section 9, Corporations Act.

- (2) information which indicates that ERFA, or an officer or employee of ERFA, has engaged in conduct which:
  - (a) is an offence against, or a contravention of, a provision of the Corporations Act or ASIC Act;
  - (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 comes within clause 1 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 comes within clause 1 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

- (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.

## PROTECTIONS

When the above conditions are met, the protections given by the Corporations Act, which ERFA 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 penalty<sup>2</sup>;
- (4) anyone who causes or threatens to cause detriment<sup>3</sup> to a Whistleblower or another person in the belief or suspicion that a report has been made, or may have been

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

<sup>3</sup> 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

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.

*However, these protections **do not** grant immunity for any misconduct that a Whistleblower has engaged in that is revealed in their disclosure.*

ERFA will ensure that Whistleblowers are protected against detriment by:

- (1) undertaking an assessment of the risk of detriment against the Whistleblower and other persons (e.g. other personnel who may be suspected to have made a disclosure) as soon as possible after receiving the disclosure;
- (2) where possible, providing support services to the Whistleblower e.g. counselling sessions, to assist the Whistleblower to minimise and manage stress;
- (3) where possible, engaging with the Whistleblower to assist in providing or identifying strategies to minimise and manage time or performance impacts, or other challenges resulting from the disclosure or the investigation, such as by providing other modifications for the Whistleblower to continue to work e.g. reassignment to another role, changes to the their role or the way they perform their duties;
- (4) where possible, informing the Whistleblower that they can lodge a complaint with ERFA if they have suffered detriment, how to lodge a complaint and how it will be responded to.

## **CONFIDENTIALITY**

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 their identity;
- (2) disclosure of details that might reveal the Whistleblower's identity is reasonably necessary for the effective investigation of the matter;

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(including psychological harm), damage to property, damage to reputation, damage to business or financial position or damage to another person.

- (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.

It is illegal for a person to identify a disclosure or disclose information that is likely to lead to the identification of the disclosure, outside these exemptions. A Whistleblower may lodge a complaint with ERFA about a breach of confidentiality in accordance with ERFA's Complaints Handling Policy.

A Whistleblower may lodge a complaint with a regulator, such as ASIC, APRA or the ATO in the event their confidentiality is not protected.

### **COMPENSATION/REMEDIES**

A Whistleblower can seek compensation and other remedies through the courts if:

- (1) they suffer loss, damage or injury because of a disclosure; and
- (2) ERFA failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct.

## 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 ERFA 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 ERFA;
  - (2) an individual who supplies services or goods to ERFA, whether paid or unpaid (including volunteers);
  - (3) an employee of a person that supplies services or goods to ERFA, whether paid or unpaid;
  - (4) an individual who is an associate of ERFA 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:
  - (1) an ERFA Disclosure Recipient;
  - (2) a director, secretary or senior manager of ERFA;
  - (3) ERFA's auditor (or a member of that audit team);
  - (4) a registered tax agent or BAS agent who provides tax or BAS services to ERFA such as:

BDO  
Level 10, 12 Creek Street, Brisbane QLD 4000, AUSTRALIA  
Tel: +61 7 3237 5999, Fax: +61 7 3221 9227  
www.bdo.com.au  
Attention: Paul Gallagher, Partner - [Paul.Gallagher@bdo.com.au](mailto:Paul.Gallagher@bdo.com.au)
  - (5) any other employee or officer of ERFA who has functions or duties relating to tax affairs of the company such as:

ERFA Chief Executive Officer, Bren Arkinstall – [barkinstall@edmundrice.org](mailto:barkinstall@edmundrice.org)  
PO Box 130 Virginia, Queensland, Australia 4014  
Phone: +61 7 3621 9649  
**(Internal Recipient)**
  - (6) the Commissioner of Taxation – see how the ATO handles reports [here](#);

- (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 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 ERFA; or
    - (2) considers that the information may assist the recipient to perform functions or duties in relation to the tax affairs of ERFA.
  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 ERFA or an Associate of ERFA.

## PROTECTIONS

When the above conditions are met, the protections given by the Taxation Administration Act, which ERFA 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 detriment<sup>4</sup> 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.

*However, these protections **do not** grant immunity for any misconduct that a Whistleblower has engaged in that is revealed in their disclosure.*

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<sup>4</sup> 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.

ERFA will ensure that Whistleblowers are protected against detriment by:

- (1) undertaking an assessment of the risk of detriment against the Whistleblower and other persons (e.g. other personnel who may be suspected to have made a disclosure) as soon as possible after receiving the disclosure;
- (2) where possible, providing support services to the Whistleblower e.g. counselling sessions, to assist the Whistleblower to minimise and manage stress;
- (3) where possible, engaging with the Whistleblower to assist in providing or identifying strategies to minimise and manage time or performance impacts, or other challenges resulting from the disclosure or the investigation, such as by providing other modifications for the Whistleblower to continue to work e.g. reassignment to another role, changes to the their role or the way they perform their duties;
- (4) informing the Whistleblower that they can lodge a complaint with ERFA if they have suffered detriment, how to lodge a complaint and how it will be responded to.

### **CONFIDENTIALITY**

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.

It is illegal for a person to identify a disclosure or disclose information that is likely to lead to the identification of the disclosure, outside these exemptions. A Whistleblower may lodge a complaint with ERFA about a breach of confidentiality in accordance with ERFA's **Complaints Handling Policy**.

A Whistleblower may lodge a complaint with a regulator, such as the ATO in the event their confidentiality is not protected.

### **COMPENSATION/REMEDIES**

A Whistleblower can seek compensation and other remedies through the courts if:

- (1) they suffer loss, damage or injury because of a disclosure; and
- (2) ERFA failed to take reasonable precautions and exercise due diligence to prevent detrimental conduct.

**ANNEXURE C**  
**ERFA Whistleblower Report Template**

 <b>Edmund Rice</b> <small>FOUNDATION AUSTRALIA</small> <small>Liberating Lives Through Education</small>	<b>Edmund Rice Foundation Australia</b> <b>Whistleblowing Policy – Annexure A</b> <b>Whistleblower Report</b>
Full Name ( <i>if you do not wish to remain anonymous</i> )	
ERFA Position Title & Location	
Contact Details: Email & Phone	
Describe the nature of the matter you wish to disclose and why you consider it a wrongful act.	
How was this matter discovered?	
Over what period of time has the suspected activity occurred?	
Name all of the people involved in the suspected wrongful act.	
Are there any witnesses? If yes, provide names.	
Can you provide any supporting evidence?	
Is the evidence in danger of being lost or destroyed?	
How could this evidence be retrieved by a person investigating this matter?	
Have you disclosed this matter to any other person(s)?	
Is anyone else aware of this matter?	
Do you have any concerns regarding reprisals or recriminatory action being taken against you?	
Do you have any personal involvement in this matter or could you be advantaged or disadvantaged by the outcome of an investigation?	

**Declaration**

I state that in making this report, the information provided above is to the best of my knowledge true, accurate and correct.

Name (Print) \_\_\_\_\_

Signature \_\_\_\_\_

Date: \_\_\_\_\_