



# **Whistleblowing Policy**

AEI GROUP

## Control Sheet

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### Modifications

<b>Authority to Approve Modifications</b>	AEI Board	
<b>Date of Modification</b>	<b>Brief Description of Modification</b>	<b>Drafted By</b>
It is intended that this AEI Group Whistleblowing Policy will replace all original whistleblowing documentation.		
7 March 2008	Formatting changes	
27 August 2008	Inclusion of material relevant to disclosure of identity. Deletion of material covered in the Code of Conduct.	
February – May 2015	Significant updates to include definition of reportable conduct, responsibilities and reporting procedures as well as protection of Whistleblower. Also updated to apply to the AEI Group.	Janet Sabet Legal Counsel  Tom May General Counsel/Company Secretary  Simone Thompson Risk and Compliance Manager
October - 2016	Annual Review	Rebecca Davies

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# AEI Group – Whistleblowing Policy

## 1. Introduction

### 1.1 Overview

1.1.1 Australian Ethical Investment Limited (**AEI**) and Australian Ethical Superannuation Pty Ltd (**AES**), together known as the **AEI Group**, are committed to a culture of high ethical standards and behaviour. The values of the AEI Group are set out in a **Code of Conduct** and the **Australian Ethical Charter**.

### 1.2 Purpose

1.2.1 The purpose of this Policy is to establish:

- a. A system for the reporting, investigation and resolution of ‘Reportable Conduct’; and
- b. Guidelines for the support and protection of individuals who wish to report Reportable Conduct but are apprehensive of doing so or fear retribution.

### 1.3 Application

1.3.1 This Policy can be used by:

- a. Directors of AEI and AES;
- b. Employees and former employees of AEI; and
- c. Contractors and service providers of AEI or AES, and their employees.  
(hereby referred to as **stakeholders of the AEI Group**).

1.3.2 Members of the Australian Ethical Retail Superannuation Fund, investors in the Australian Ethical Managed Investment Funds and shareholders of AEI who have complaints or objections regarding decisions of the Boards or the service they have received from employees or representatives of the AEI Group should continue to raise these issues under in accordance with the AEI Group **Enquiries and Complaints Handling Policy**.

1.3.3 Contractors and service providers who are in dispute with the AEI Group or any part thereof over compliance with the terms of their contracts are required to take up their disputes through means other than this Policy.

1.3.4 This Policy and the procedures outlined herein are not designed to deal with general grievances or complaints by Directors or employees of the AEI Group, which should be dealt with by the employee’s respective manager or the Chair of the relevant Board.

## 1.4 Definitions

### Reportable Conduct

- 1.4.1 'Reportable Conduct' is conduct by a person or persons connected to the AEI Group which, in the view of a Whistleblower acting in good faith, is:
- a. Seriously harmful or potentially seriously harmful to an AEI Group stakeholder, such as deliberate unsafe work practices with willful disregard to the safety of others.
  - b. Unethical (e.g. acting dishonestly, altering company records, willfully making false entries in books and records, engaging in questionable accounting or other practices, knowingly and willfully breaching the AEI Group Code of Conduct or other AEI Group policies).
  - c. Potentially damaging to the AEI Group (e.g. gross mismanagement, serious or substantial waste of company resources or repeated breaches of administrative procedures).
  - d. Fraudulent or corrupt (including misuse of a person's position for personal gain).
  - e. A criminal offence (including theft, drug sale/use, discrimination, harassment, violence or threatened violence and criminal damage against property).
  - f. Any other conduct which may cause financial or non-financial loss to the AEI Group or be otherwise detrimental to the interests of the AEI Group or any of its employees or Directors, or damage its reputation.
  - g. Deliberate concealment of any of the above.
  - h. Involves any other kind of serious impropriety including retaliatory action against a Whistleblower for having disclosed Reportable Conduct.

### Whistleblower

- 1.4.2 A 'Whistleblower' is a stakeholder of the AEI Group who discloses or reports Reportable Conduct in accordance with this Policy.

## 1.5 Statement of Support

- 1.5.1 The Board of Directors of Australian Ethical Investment Limited and the Board of Directors of Australian Ethical Superannuation Pty Ltd hereby declare their support for a Whistleblower, whether internal or external to the AEI Group.
- 1.5.2 The AEI Group prides itself on its adherence to the **Australian Ethical Charter** in its relations with all stakeholders. Stakeholders of the AEI Group are encouraged to express concerns, to ask questions about the ethics of any practice, and to report potential violations.
- 1.5.3 The Boards recognise the importance of a relationship based on trust between the AEI Group and its stakeholders, and support the making of disclosures that reveal Reportable Conduct. The AEI Group encourages stakeholders to discuss any matters about which there are concerns or uncertainties with direct Line Managers or the HR Manager.

## 2. Responsibilities and Reporting Procedure

### 2.1 Responsibilities – Whistleblower

- 2.1.1 To facilitate investigations of Reportable Conduct, the AEI Group prefers that Whistleblowers, where possible, make a report openly and disclose their identity. It is understood that any person who has reasonable grounds to suspect that Reportable Conduct has occurred and is apprehensive about raising his/her concern because of the fear of possible adverse repercussions can make a report anonymously; however protection measures under the *Corporations Act 2001* and the *Superannuation Industry (Supervision) Act 1993* (as articulated in Sections 4.5 and 4.6 below) will not apply to anonymous disclosures.
- 2.1.2 A stakeholder of the AEI Group considering making a report is obliged to act in good faith and in the absence of malice and have reasonable grounds for believing the disclosure is Reportable Conduct. A Whistleblower must provide information to assist any investigation of the Reportable Conduct.
- 2.1.3 This Policy is intended to apply to Reportable Conduct which is serious in nature. Unsubstantiated reports that are trivial, vexatious, made maliciously or known to be false will be viewed seriously and may be subjected to disciplinary action.
- 2.1.4 Even though a Whistleblower may be implicated in the wrongdoing, they must not be subjected to any actual or threatened retaliation or victimization in reprisal for making a report under this Policy.
- 2.1.5 Making a report may not protect the Whistleblower from consequences flowing from involvement in the Reportable Conduct; however active cooperation in the investigation, admission and remorse may be taken into account when considering any disciplinary action.

### 2.2 Responsibilities – Protection Officer

- 2.2.1 The Protection Officer is appointed to provide protection to the Whistleblower according to this Policy. The Protection Officer is named in Appendix 1.
- 2.2.2 The Protection Officer is responsible for providing the Whistleblower who has acted in good faith with protection against being personally disadvantaged. The Protection Officer will act impartially without any pre-conceived opinion on the Whistleblower or the subject matter, or any conflict of interest.
- 2.2.3 If the Whistleblower has a concern about the Protection Officer, the Whistleblower can contact the staff counselling service, the Employee Assistance Program (**EAP**), on 1300 361 008. The helpline provides employees with immediate confidential phone counselling support Australia wide.

### 2.3 Reporting Procedure

- 2.3.1 The Whistleblower should report their suspicions by contacting the Protection Officer who is available for confidential consultation, representation and support. The report should be made in writing and addressed to the Protection Officer. It should be signed by the

Whistleblower and provide their contact details. It should also indicate whether the Whistleblower wishes their identity to remain confidential.

2.3.2 The report should provide as much detail as possible regarding the concern. As a minimum it should provide:

- The names of any employees or Directors involved;
- A specific statement of the concern/improper conduct;
- Dates and times of when any improper conduct was observed;
- Specific details of any transactions involved; and
- Copies of any documents which are evidence of the improper conduct.

## **2.4 Escalation Procedure**

2.4.1 The Protection Officer is required to immediately escalate the Whistleblower's report on Reportable Conduct to the Managing Director, unless the concerns relate to the Managing Director, in which case the report should be escalated to the Chair of the AEI Board.

# **3. Procedures Following Disclosure**

## **3.1 Investigation**

- 3.1.1 Once a report has been accepted and the Managing Director or Chair of the AEI Board considers that the alleged Reportable Conduct is something that needs to be investigated further, the Managing Director or Chair of the AEI Board may appoint an investigator.
- 3.1.2 The Managing Director or Chair of the AEI Board has the discretion, taking into consideration all the circumstances, to determine that it is not appropriate or necessary to conduct an investigation and that the Reportable Conduct can be dealt with appropriately through other means.
- 3.1.3 If an investigator is appointed to investigate the Reportable Conduct, the investigator may be internal (so long as they are independent of line management of the area affected by the wrongdoing) or external to the AEI Group. The Investigator may seek the expertise of other officers of the AEI Group or external experts (e.g. lawyers, accountants) as required.
- 3.1.4 The object of the investigation is to collate information relating to the allegations of Reportable Conduct as quickly as possible, to consider the information collected, and to draw a conclusion as to whether or not the Reportable Conduct is legitimate based on the evidence provided in an objective and impartial manner.
- 3.1.5 The rules of natural justice shall be observed in any investigation. It shall be conducted without bias and the person against whom the allegation is made should be given the right to respond. The investigation must be fully documented.
- 3.1.6 All stakeholders of the AEI Group are required to cooperate with the investigation and to treat the investigation in absolute confidence. Any stakeholder of the AEI Group revealing the presence of an investigation or details contrary to this Policy may be subject to disciplinary action.

3.1.7 Any individual who is the subject to an allegation of Reportable Conduct and is under investigation must be given a fair opportunity to respond to the allegation/s.

## **3.2 Reporting**

3.2.1 Subject to any statutory confidentiality limitations, at the conclusion of the investigation the investigator must prepare a written report detailing the matter, the findings, the reasons for the findings, and the rectification actions implemented or recommended for implementation, and provide it to the Managing Director or Chair of the AEI Board.

3.2.2 Where the report indicates that Reportable Conduct has not occurred, the matter will be referred to the Managing Director or Chair of the AEI Board for formal conclusion and the implementation of any actions that may be required in light of the report.

3.2.3 Where the report indicates that Reportable Conduct has occurred, the report must include recommendations for steps to be taken to prevent the conduct from occurring in the future, as well as any action that should be taken to remedy any harm or loss arising from the conduct (including disciplinary proceedings or referral of the matter to the appropriate authorities).

3.2.4 Any documents pertaining to a Whistleblower Report, including subsequent investigations, findings, recommendations and meeting minutes will be kept securely by the investigator.

## **3.3 Communications to the Whistleblower**

3.3.1 Unless it is considered inappropriate to do so, the Protection Officer will ensure that the Whistleblower is kept informed of the outcomes of the investigation of the allegations, subject to the considerations of privacy of those against whom allegations are made and any other issues of confidentiality.

# **4. Protection of Whistleblower**

## **4.1 General Protection**

4.1.1 Disclosures of serious wrongdoing may be protected by law and the AEI Group will strive to ensure that protection is given to the Whistleblower.

4.1.2 The types of protection that the AEI Group will make available will depend on the situation but may include:

- a. Ensuring confidentiality in the investigation and protecting the Whistleblower's identity;
- b. Monitoring and managing the behaviour of other AEI Group stakeholders who are related to the Reportable Conduct;
- c. Offering a paid leave of absence while a matter is investigated;
- d. Rectification of any detriment a Whistleblower may have suffered as a result of the report/investigation.



4.1.3 A Whistleblower, acting honestly and in good faith, and who has not engaged in serious misconduct or illegal conduct, shall not be subject to any form of personal disadvantage resulting from having made a disclosure of Reportable Conduct, such as:

- Termination of employment/contract;
- Demotion;
- Any form of harassment;
- Discrimination; or
- Current or future bias.

4.1.4 If the Whistleblower has been involved in improper conduct, he/she may be subject to disciplinary or remedial action as a result of any investigation. Although the act of making a disclosure of Reportable Conduct will not in itself protect the Whistleblower from the consequences of improper conduct in which they may have been involved, it may be taken into account and may potentially mitigate any action that may be taken against the Whistleblower.

## 4.2 Protection of Identity

4.2.1 The AEI Group will not disclose the Whistleblower's identity unless:

- a. The Whistleblower consents to the disclosure of his or her identity;
- b. The disclosure is required or authorised by law <sup>1</sup>; and/or
- c. The disclosure is necessary to further the investigation.

## 4.3 Confidentiality

4.3.1 Maintaining confidentiality is critical in ensuring that no reprisal or recriminatory actions are taken against the Whistleblower.

4.3.2 Accordingly, all disclosures of Reportable Conduct by a Whistleblower will be treated in the strictest of confidence and all reasonable steps will be taken to protect the identity of the Whistleblower where a report of Reportable Conduct is made in good faith.

4.3.3 It is important to note, however, that in order to effectively carry out investigations, it may be necessary to reveal, on a confidential basis, the nature of the Reportable Conduct disclosed by the Whistleblower to those with a 'need to know' – including those involved in the investigation process. It may also be necessary in most cases to disclose the facts of the matter to any and all person(s) who may be the subject of the allegation, thereby ensuring that they are afforded an opportunity to defend themselves against the allegations. This does not include the identity of the Whistleblower.

4.3.4 The AEI Group will take reasonable precautions to store any records relating to Reportable Conduct securely and to permit access by authorised personnel only.

<sup>1</sup> Under the *Corporations Act 2001*, reports of alleged breaches of the Corporations Act cannot be made anonymously. The person making the disclosure must have reasonable grounds for suspecting the reportable conduct and the report must be made in good faith. See **Section 1317AA of the Corporations Act 2001**.

4.3.5 Unauthorised disclosure of information relating to a report about Reportable Conduct or of the identity of the Whistleblower will be regarded seriously and may result in disciplinary action.

## 4.4 No Retaliation

4.4.1 No person who in good faith reports Reportable Conduct to the AEI Group shall suffer harassment, retaliation or adverse consequences.

## 4.5 Corporations Act Protection of Whistleblowers<sup>2</sup>

4.5.1 To be protected as a Whistleblower under the *Corporations Act 2001* an individual must be:

- a. A Director, officer or employee of the Company;
- b. A person who has a contract for the supply of services or goods to the Company; or
- c. An employee of a person who has a contract for the supply of services or goods to the Company.

4.5.2 The disclosure of information qualifies for protection under the Corporations Act if all of the following conditions are met:

- a. The disclosure is made to:
  - A person authorised by the Company to receive disclosures of that kind;
  - A Director of the Company;
  - ASIC; or
  - The Company's External Auditor.
- b. The discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure (i.e. – does not disclose on an anonymous basis); and
- c. The discloser has reasonable grounds to suspect that the information indicates that the Company, or an officer or employee of the Company, has, or may have, contravened a provision of the Corporations Act or Regulations; and
- d. The disclosure is made in good faith.

4.5.3 In such cases the Whistleblower has qualified privilege<sup>3</sup> in respect of the disclosure.

4.5.4 If the Whistleblower qualifies for protection under the Corporations Act:

- a. The Whistleblower is not subject to civil or criminal liability for making the disclosure;
- b. No contractual or other remedy may be enforced or exercised on the basis of the disclosure;
- c. A contract to which the Whistleblower is a party must not be terminated;

<sup>2</sup> See Part 9.4AAA of the Corporations Act 2001.

<sup>3</sup> Qualified privilege is where a person, in making a disclosure, is not liable for defamation unless they are guilty of malice. Malice is an act done intentionally without just cause or excuse.

- d. If the Whistleblower's employment is terminated on the basis of the disclosure it can be reinstated by a Court;
- e. The disclosure is not admissible in evidence in criminal proceedings against the Whistleblower other than in respect of the falsity of the information;
- f. Victimization of the Whistleblower is prohibited;
- g. The Whistleblower has a right to compensation if they suffer damage due to victimization; and
- h. A person who makes an unauthorised disclosure of protected information or the identity of the Whistleblower is guilty of an offence under the Act.

## 4.6 Act Protection of Whistleblowers<sup>4</sup>

4.6.1 To be protected as a Whistleblower under the *Superannuation Industry (Supervision) Act 1993, (SIS Act)* (also known as the Whistleblower Protection Provisions) an individual must be:

- a. A Director, officer, employee or contractor of the Trustee; or
- b. An officer, employee or contractor of the Super Fund's Custodian or Investment Manager; or
- c. An employee of a contractor to the Trustee, Custodian or Investment Manager

4.6.2 The disclosure of information qualifies for protection under the SIS Act if all of the following conditions are met:

- a. The disclosure is made to:
  - A person authorised by the Trustee to receive disclosures of that kind;
  - A Director of the Trustee;
  - APRA; or
  - The Fund's External Auditor.
- b. The discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure (i.e. – does not disclose on an anonymous basis); and
- c. The information concerns misconduct, or an improper state of affairs or circumstances in relation to the Trustee or Fund; and
- d. The discloser considers that the information may assist a person referred to in (a) above to perform their functions in relation to the Trustee or Fund; and
- e. The disclosure is made in good faith.

4.6.3 If a person makes a disclosure that qualifies for protection under the SIS Act:

- The person is not subject to any civil or criminal liability for making the disclosure;
- No contractual remedy may be enforced against the person on the basis of the disclosure;

<sup>4</sup> See Part 29A of the *Superannuation Industry (Supervision) Act 1993*.

- The person has qualified privilege in respect of the disclosure;
- The person's contract must not be terminated on the basis that the disclosure constitutes a breach of contract; and
- The information disclosed is not admissible in evidence against the person in criminal proceedings other than proceedings in respect of the falsity of the information.

4.6.4 A person who actually causes or threatens detriment to a Whistleblower commits an offence under the SIS Act which is subject to a penalty of imprisonment for 6 months.

## APPENDIX 1

### Protection Officer:

Fiona Horan  
Human Resources Business Partner  
Australian Ethical Investment

**t** 02 8276 6290  
**m** 0423 016 267  
**e** [fhoran@australianethical.com.au](mailto:fhoran@australianethical.com.au)