

Eildon Boat Club

ABN 33 004 411 956

Phone (03) 5774 2040

office@eildonboatclub.com.au

www.eildonboatclub.com.au



WHISTLEBLOWER POLICY

The Eildon Boat Club is committed to adhering to its statutory obligations, its rules, and values, which includes this Whistleblower Policy.

We are committed to providing a safe environment for EBC employees, suppliers, and members to report misconduct safely and confidentially.

The purpose of this policy is to set out:

- (a) information about the types of disclosures that **qualify** for protection under the Whistleblower Protection Scheme;
- (b) information about the **protections** available to whistleblowers, including protections under the Whistleblower Protection Scheme;
- (c) information about **to whom** disclosures that qualify for protection under the Whistleblower Protection Scheme may be made, and how they may be made;
- (d) information about how EBC will **support whistleblowers** and protect them from detriment;
- (e) information about how EBC will **investigate** disclosures that qualify for protection;
- (f) information about how EBC will ensure **fair treatment** of employees who are mentioned in disclosures that qualify for protection, or to whom such disclosures relate; and
- (g) information about how this policy is to be **made available** to officers, employees, contractors, and members of EBC.

This policy was ratified by the Eildon Boat Club Board of Directors on the 21st June 2023.

This policy was formally included into the EBC Policy Document as Policy 30.0.

WHISTLEBLOWER POLICY

Section 1.01 WHISTLEBLOWER OVERVIEW

- Clause (1) The Eildon Boat Club ('EBC') is committed to adhering to its statutory obligations, its rules, and values, which includes this Whistleblower Policy ('Policy'). We are committed to providing a safe environment for EBC employees, suppliers, and members to report misconduct safely and confidentially.
- Clause (2) The **purpose** of this policy is to set out:
- (a) information about the types of disclosures that qualify for protection under the Whistleblower Protection Scheme;
 - (b) information about the protections available to whistleblowers, including protections under the Whistleblower Protection Scheme;
 - (c) information about to whom disclosures that qualify for protection under the Whistleblower Protection Scheme may be made, and how they may be made;
 - (d) information about how Eildon Boat Club (EBC) will support whistleblowers and protect them from detriment;
 - (e) information about how EBC will investigate disclosures that qualify for protection;
 - (f) information about how EBC will ensure fair treatment of employees who are mentioned in disclosures that qualify for protection, or to whom such disclosures relate; and
 - (g) information about how this policy is to be made available to officers, employees, contractors, and members of EBC.

Section 1.02 STATUTORY OBLIGATIONS

- Clause (1) The Corporations Act 2001 (Cth) and the Tax Administration Act 1953 (Cth) provide for protections for eligible whistleblowers (Whistleblower Protection Scheme).

Section 1.03 SCOPE OF THE WHISTLEBLOWER PROTECTION SCHEME

- Clause (1) What disclosures are protected?
- (a) The following are the primary types of disclosures that 'qualify' for protection under the Scheme:
 - (i) disclosures by an 'eligible whistleblower' to ASIC, APRA, the Commissioner of Taxation, a prescribed Commonwealth authority or a legal practitioner; or
 - (ii) disclosures by an 'eligible whistleblower' to an 'eligible recipient',
if:

- (b) the disclosure has 'reasonable grounds' to 'suspect' that the disclosed information concerns:
 - (i) misconduct or an improper state of affairs or circumstances in relation to EBC or one of its related bodies corporate; or
 - (ii) indicates that EBC, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against the Corporations Act or other specified financial services legislation, an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more or represents a danger to the public or the financial system.

Clause (2) The misconduct or an improper state of affairs can be in respect of tax affairs. Examples of conduct which might be the subject of a protected disclosure may include conduct on the part of any EBC employee or contractor or other personnel engaged by EBC that constitutes:

- (a) dishonest behaviour;
- (b) fraudulent activity;
- (c) unlawful, corrupt, or irregular use of company funds or practices;
- (d) illegal activities (including theft, dealing in or use of illicit drugs, violence or threatened violence and criminal damage against property);
- (e) unethical behaviour, including anything that would breach Eildon Boat Club Policies;
- (f) improper or misleading accounting or financial reporting practices;
- (g) a breach of any legislation requirements under the Corporations Act 2001 (Cth);
- (h) behaviour that is oppressive, discriminatory, or grossly negligent;
- (i) an unsafe work-practice;
- (j) any behaviour that poses a serious risk to the health and safety of any person at the workplace;
- (k) a serious risk to public health, public safety, or the environment; or
- (l) any other conduct which may cause loss to or be otherwise detrimental to the interests of EBC.

Clause (3) Personal work-related grievances

- (a) A disclosure does not qualify for protection under the Whistleblower Protection Scheme to the extent that the information disclosed:
 - (i) concerns a personal work-related grievance of the eligible whistleblower; and
 - (ii) does not concern a contravention, or an alleged contravention of clause 30.08 of this policy.

- (b) For the purposes of the Whistleblower Protection Scheme, a disclosure is a 'personal work-related grievance' if:
 - (iii) the information concerns a grievance about any matter in relation to the eligible whistleblower's employment, or former employment, having (or tending to have) implications for the eligible whistleblower personally; and
- (c) the information:
 - (i) does not have significant implications for EBC, or another regulated entity, that do not relate to the discloser; and
 - (ii) does not concern conduct, or alleged conduct, referred to in Section 1.03 Clause (1) or Clause (2) of this policy.

Clause (4) Public interest and Emergency disclosures

- (a) There are additional categories of disclosures called 'public interest disclosures' and 'emergency disclosures' that qualify for protection under the Whistleblower Protection Scheme. These can be made to journalists and members of Parliament but only if the eligible whistleblower complies with the following strict requirements. These requirements are detailed at Appendix 1.

Section 1.04 WHO IS AN 'ELIGIBLE WHISTLEBLOWER'?

Clause (1) The following persons are capable of being '**eligible whistleblowers**' under the Whistleblower Protection Scheme:

- (a) any officer of EBC;
- (b) any past or present employee of EBC; and
- (c) any person who supplied goods or services to EBC or its employees.

Clause (2) The concept of 'eligible whistleblowers' extends to any persons who previously held any of the above positions of functions. It also extends to family members of these persons.

Clause (3) Aside from the above, EBC extends this policy to current and former **EBC members**. Whilst not an eligible whistleblower for the purposes of protection under the Act, EBC undertakes to treat any disclosure made by a member relating to misconduct (as described at Section 1.03 Clause (1) or Clause (2)) with the strictest confidentiality.

Section 1.05 WHO IS AN 'ELIGIBLE RECIPIENT' WITHIN EBC?

Clause (1) An eligible recipient will be:

- (a) any of EBC's officers or senior management;
- (b) EBC's auditors (Daniel Allison & Associates Ph:03 9006 5400) or
- (c) any person authorised by EBC to receive qualifying disclosures ('Authorised Person'). For the purposes of the Policy, the persons authorised to receive qualifying disclosures and those made by members are:

- (i) Position: General Manager
Phone: (03) 5774 2040
Email: manager@eildonboatclub.com.au
- (ii) Position: Commodore
Phone: (03) 5774 2040
Email: commodore@eildonboatclub.com.au

Clause (2) EBC encourages eligible whistleblowers and members to contact the authorised persons in the first instance using the contact details provided. By doing so, appropriate action will be initiated in a timelier manner.

Clause (3) Where a concern of misconduct relates to a member of EBC senior management, the disclosure should be made to the EBC Commodore. Where the concern relates to an EBC Board member, the disclosure should be made to the EBC General Manager.

Section 1.06 PROTECTIONS

Clause (1) Confidentiality

- (a) Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the Whistleblower Protection Scheme.
- (b) Unless the eligible whistleblower consents, their identity or any information that may lead to the disclosure of their identity must not be disclosed by the recipient to any other person (subject to the exceptions set out below).
- (c) To avoid inadvertent breaches of confidentiality obligations, under the Whistleblower Protection Scheme, eligible whistleblowers are encouraged to consent to their identity being disclosed (if they feel comfortable to do so). Being able to share an eligible whistleblower's identity will also assist in an efficient investigation of the matters that an eligible whistleblower discloses. However:
 - (i) Anonymous disclosures are still capable of being protected (though it may be difficult to investigate these disclosures effectively).
 - (ii) If a discloser does not consent to their identity being disclosed to any other person, it will still be lawful to:
 - (iii) disclose their identity to:
 - ASIC, APRA, the AFP, or the Commissioner of Taxation;
 - a legal practitioner for the purpose of obtaining advice about the disclosure; or
 - a body prescribed by the regulations, and
 - (iv) disclose information that may lead to the identification of the individual if this is reasonably necessary for the purpose of investigating the qualifying disclosure.

Section 1.07 EBC CANNOT PURSUE ACTION AGAINST THE DISCLOSER.

Clause (1) EBC will be prohibited from pursuing any civil, criminal, administrative or contractual action against an eligible whistleblower in relation to any protected disclosure that they make.

Section 1.08 DETRIMENTS AND THREATS OF DETRIMENT PROHIBITED.

- Clause (1) The Whistleblower Protection Scheme makes it unlawful for a person to engage in conduct against another person that causes or will cause a detriment:
- (a) in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make, or could make a qualifying disclosure; and
 - (b) in the belief that the person is the reason or part of the reason for their conduct.
- Clause (2) Threats of detriments will also be unlawful if:
- (a) the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out; and
 - (b) the threat was made because the person makes or may make a qualifying disclosure.
- Clause (3) The meaning of 'detriment' is very broad and includes:
- (a) dismissing an employee;
 - (b) injuring an employee in their employment;
 - (c) altering an employee's position or duties to their disadvantage;
 - (d) discriminating between an employee and other employees;
 - (e) harassing or intimidating a person;
 - (f) harming or injuring a person;
 - (g) damaging a person's property, reputation, business, or financial position; and
 - (h) any other damage to a person.

Section 1.09 COURT ORDERS

- Clause (1) Courts are given broad scope to make orders remedying a detriment or threatened detriment. These include making/ordering injunctions, compensation orders (including against individual employees and their employers), reinstatements, exemplary damages, and the making of apologies. Civil and criminal sanctions also apply to breaches of the Whistleblower Protection Scheme.

Section 1.10 ARE THERE ANY OTHER PROTECTIONS THAT ARE AVAILABLE?

- Clause (1) If a disclosure qualifies for protection under the Whistleblower Protection Scheme, that disclosure may also amount to the exercise of a workplace right by either an EBC employee or contractor.

- Clause (2) EBC and its employees are prohibited under the Fair Work Act 2009 (Cth) from taking adverse action against employees or contractors because they exercised or propose to exercise any workplace rights.

Section 1.11 RESPONSIBILITIES

- Clause (1) It is the responsibility of all EBC personnel to be aware of and understand the scope of the Whistleblower Protection Scheme and the protections that are afforded to eligible whistleblowers, and to comply with the Whistleblower Protection Scheme's requirements.

Section 1.12 SUPPORT, INVESTIGATIONS AND FAIR TREATMENT

- Clause (1) If a protected disclosure is made it must be allocated to an authorised office, generally within 14 days, and the discloser must be informed. An investigation should be completed within 90 days after allocation to an authorised officer unless the timeframe is extended by the authorised officer. Where this occurs, the discloser must be informed of the reason and new completion date.
- Clause (2) Whenever an eligible disclosure under the Whistleblower Protection Scheme is made, the EBC Authorised Person will reiterate the requirements of this policy with any person against whom a disclosure may be made or with whom the discloser may work directly to ensure that the protections afforded under the Whistleblower Protection Scheme are not undermined. Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against a whistleblower.
- Clause (3) At the same time, it is critical that due process is observed before any action is taken against a person against whom a disclosure is made. Such action will only occur where there is evidence of the alleged misconduct or improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.
- Clause (4) Eligible disclosures will often be investigated internally by the EBC. However, it may sometimes be appropriate for investigations to be carried out externally on behalf of EBC. Whether an investigation is carried out externally will depend on the seriousness of the allegations.

Section 1.13 VEXATIOUS DISCLOSURES

- Clause (1) A discloser will only be protected if they have objectively reasonable grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.
- Clause (2) The protections under the Whistleblower Protection Scheme will not extend to vexatious complaints. If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.
- Clause (3) Depending on the circumstances, it may be appropriate for EBC to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

Section 1.14 OTHER MATTERS

- Clause (1) Any breach of this policy may result in disciplinary action, up to and including termination of employment.
- Clause (2) This policy is not intended to go beyond the legislation. This policy is not a term of any contract, including any contract of employment and does not impose any contractual duties, implied or otherwise, on EBC. This policy may be varied by EBC from time to time.
- Clause (3) This policy will be made available through the induction process for officers, employees, contractors, and members of EBC. It is also available via the website and the EBC Policy Documents in the members portal.

References

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APPENDICIES

APPENDIX 1. PUBLIC INTEREST AND EMERGENCY DISCLOSURE REQUIREMENTS

Clause (1) Public Interest Disclosure

- (a) The eligible whistle-blower has made a qualifying disclosure to ASIC, APRA, or a prescribed Commonwealth authority;
- (b) At least 90 days has passed since the qualifying disclosure was made;
- (c) The eligible whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the qualifying disclosure related;
- (d) The eligible whistleblower has reasonable grounds to believe that making a public interest disclosure would be in the public interest;
- (e) After 90 days have passed, the eligible whistleblower must give the body to which the qualifying disclosure was originally made, a written notification that:
 - (i) includes sufficient information to identify the qualifying disclosure; and
 - (ii) states that the eligible whistleblower intends to make a public interest disclosure;and
- (f) the extent of the information disclosed in the public interest disclosure is no greater than to inform the journalist or member of Parliament of the misconduct or improper state of affairs or circumstances, or other conduct falling within the scope of the Whistleblower Protection Scheme.

EMERGENCY DISCLOSURES

Clause (1) the discloser must have first made a qualifying disclosure to ASIC, APRA, or a prescribed Commonwealth authority;

Clause (2) the discloser 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 the natural environment; and

Clause (3) the discloser gave notice to the body to which the qualifying disclosure was made that states:

- (i) that they intend to make an emergency disclosure; and
- (ii) includes sufficient information to identify the qualifying disclosure; and

Clause (4) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.