



# Whistleblower Policy

Version 4.0B

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# 1. Introduction

## 1.1 Policy overview

ERM Power Limited (“ERM Power” or “Company”) has a strong commitment to corporate governance and the ERM Board is responsible for:

- actively promoting ethical and responsible decision-making;
- approving and maintaining a Code of Business Conduct to guide its Directors and employees in the practices necessary to maintain confidence in ERM Power’s integrity; and
- monitoring the effectiveness of the system of accountability for unethical practices.

In carrying out this responsibility, the ERM Board and ERM Power are committed to protecting its Personnel from reprisal within the full extent of the law if they report a Wrongful Act.

The purpose of this Policy is to strengthen ERM Power’s core values by empowering Personnel who wish to report any Wrongful Act (examples of which are provided below) without fear of retaliation or punishment. This document outlines, at a high level, the way in which ERM Power will respond to reports of Wrongful Acts.

# 2. Definitions and Interpretation

## 2.1 Definitions

In this document, each term identified below in the left column has the meaning set out opposite in the right column:

Term	Definition
<b>Act</b>	means the <i>Corporations Act (Cth) 2001</i>
<b>ARC</b>	means the Audit & Risk Committee
<b>Australian Standard</b>	means the Australian Standard on Whistleblower Protection Programs for Entities (AS 8004 – 2003)
<b>Corruption</b>	means but is not limited to the definition in the Australian Standard, namely “dishonest activity in which a director, executive, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity”
<b>Entity</b>	means ERM Power Limited and any company that is a Related Body Corporate within the meaning of the Act
<b>Fraud</b>	means but is not limited to the definition in the Australian Standard, namely “dishonest activity causing actual, or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity. It also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position”

Term	Definition
<b>Policy</b>	means this Whistleblower Policy
<b>Whistleblower</b>	has the definition in the Australian Standard, namely “a person being a director, manager, employee or contractor of an entity who, whether anonymously or not, makes, attempts to make or wishes to make a report in connection with reportable conduct and where the Whistleblower wishes to avail themselves of protection against reprisal for having made the report”
<b>Whistleblower Investigations Officer</b>	has the definition in the Australian Standard, namely “a person or persons being a director, manager, employee or contractor of an entity who has responsibility for conducting preliminary investigations into reports received from a Whistleblower”
<b>Whistleblower Protection Officer</b>	has the definition in the Australian Standard, namely “a person or persons being a director, manager, employee, or contractor, of an entity who has responsibility for protecting a Whistleblower”
<b>Wrongful Act</b>	means an act as described in item 3.4 of the Policy

## 3. Policy

### 3.1 Policy coverage

This Policy is intended to complement ERM Power’s usual reporting avenues for raising issues of concern (such as discussing with your manager). This Policy may be invoked where those existing avenues appear to have failed or may be inappropriate (eg. the Whistleblower wishes to keep their identity confidential).

In this Policy, the term Personnel (Personnel) refers not only to directors, officers, and employees, but to contractors, consultants and any other person who might be engaged by ERM Power to perform services for or on behalf of ERM Power.

This Policy does not apply to personal work-related grievances, namely where:

- the information concerns a grievance about any matter in relation to the disclosing Personnel's employment, or former employment, having (or tending to have) implications for that Personnel personally; and
- the information:
  - does not have significant implications for ERM Power, another Entity, or any other company; and
  - does not concern conduct, or alleged conduct, that is unlawful or that represents a danger to the public or the financial system.

### 3.2 Policy guidelines

In keeping with the spirit of ERM Power’s Code of Business Conduct, ERM Power encourages Personnel who have witnessed, or who are aware of, a suspected Wrongful Act to report it in accordance with this Policy. If Personnel need clarification about whether a complaint should be addressed under this Policy or not, they should contact ERM Power’s Group General Counsel.

### 3.3 Corruption and fraud

An act of Fraud or Corruption is considered a Wrongful Act in accordance with this Policy.

## 3.4 What is a wrongful act?

For the purposes of this Policy, a Wrongful Act is any misconduct or improper state of affairs or circumstances. This includes but is not limited to the following:

- Unlawful conduct (including non-compliance with legislation, regulation, codes, guidelines and other regulatory instruments);
- Conduct that is in breach of any ERM Power policy including the Code of Business Conduct;
- Conduct that is in breach of ERM Power's regulatory compliance obligations;
- Unethical or improper conduct;
- Misuse of ERM Power's funds or assets;
- Conduct that endangers Personnel, or the public generally;
- Conduct that represents a danger to the financial system;
- Conduct that jeopardises the safety of Personnel, or of the environment in which they are working;
- Wasteful conduct;
- An abuse of authority;
- Suppression or concealment of any information relating to any of the above types of actions;
- Taking, or threatening to take, detrimental action against anyone who reports suspected Wrongful Conduct in reprisal for making that report.

ERM Power is strongly committed to providing Personnel with the opportunity to use the whistleblowing process outlined in this Policy for genuine disclosures where the Whistleblower has reasonable grounds to suspect a Wrongful Act. The whistleblowing process must not be used for vexatious matters and the Whistleblower Protection Officer and Whistleblower Investigations Officer retains discretion to determine whether this Policy applies to the disclosure. The Whistleblower Protection Officer and Whistleblower Investigations Officer will make any decision as to the application of this Policy in accordance with the intent and principles set out herein and in the Act.

Please note that specific reporting requirements apply if an alleged Wrongful Act relates to a contravention or suspected contravention of the Act.

## 3.5 How will ERM Power protect a whistleblower?

### 3.5.1 What protection will be given to a whistleblower?

ERM Power will not tolerate any form of harassment, retaliation or detrimental treatment against Personnel who report a Wrongful Act or who report information with reasonable grounds to suspect that the information concerns a Wrongful Act. ERM Power will protect a Whistleblower, including their identity to the extent permitted by law. ERM Power will not allow any detrimental treatment, including any of the following to happen to a Whistleblower because of the Whistleblower's report of a Wrongful Act:

- Any type of harassment or bullying;
- Any type of disciplinary action;
- A decision not to promote the Whistleblower;
- A decision not to grant a salary increase to the Whistleblower;
- Rejection during probation;
- A performance evaluation in which the Whistleblower's performance is judged as being unsatisfactory solely on account of reporting the matter;
- Involuntary demotion or reassignment to a position with demonstrably less responsibility than the one held prior to the reassignment;
- Unfavourable change in the general terms and conditions of employment or contract;

- Involuntary resignation;
- Involuntary retirement;
- Termination of employment or contract; or
- Any other conduct that is discriminatory towards the Whistleblower or that damages the Whistleblower's health, reputation, business/employment or financial position.

Threats to cause detriment to the Whistleblower (whether express, implied, conditional or unconditional) are also prohibited. Under this Policy, it is irrelevant whether or not the person threatened actually fears that the threat will be carried out.

### 3.5.2 What if a Whistleblower is implicated in the wrongful act?

Even though a Whistleblower may be implicated in the Wrongful Act, that person must not be subjected to any actual or threatened detrimental action taken in reprisal for reporting that Wrongful Act.

However, reporting a Wrongful Act will not necessarily shield the Whistleblower from the consequences flowing from involvement in the Wrongful Act itself. A person's liability for their own conduct is not affected by their disclosure of that conduct under this Policy (though in some circumstances, an admission of complicity in the Wrongful Act may be a mitigating factor when considering disciplinary or other action).

## 3.6 Reporting and investigations

### 3.6.1 How to report a wrongful act

It is important that a Whistleblower reports suspected Wrongful Acts appropriately. ERM Power Personnel who have any suspicions about Wrongful Acts in the workplace should advise:

- the Whistleblower Protection Officer (Group General Counsel, and, in instances where either the Whistleblower or the person/s who are the subject of the Whistleblower's report are members of the ERM Power Executive Management Team, the Chair of the ARC); or
- the Whistleblower Investigations Officer (Group General Counsel or nominated delegate, who may be an external resource).

If the person/s who are the subject of the Whistleblower's report include the Whistleblower Protection Officer or Whistleblower Investigations Officer, the report should be made to the Chair of the ARC. The Chair of the ARC would then be the Whistleblower Protection Officer or Whistleblower Investigations Officer, as relevant and appropriate.

Reports can be made by letter, email, telephone call or in person. ERM Power will accept reports that are made anonymously, and a Whistleblower will obtain protection under this Policy even if the report is made anonymously. However, it is difficult to investigate reports which consist of anonymous 'tip-offs' or that otherwise lack detail. Therefore, Whistleblowers are encouraged to identify themselves and to provide all known details of any alleged Wrongful Act to the Whistleblower Protection Officer or the Whistleblower Investigations Officer. Even for anonymous reports, it will assist the investigation if the Whistleblower is contactable (eg. via an anonymous email address set up for the purpose of making the report).

If a report is made to the Whistleblower Protection Officer that person will report to the Whistleblower Investigations Officer, providing only such information as the Whistleblower has authorised him/her to provide. Likewise, if a report is made to the Whistleblower Investigations Officer, that person will report to the Whistleblower Protection Officer, providing only such information as the Whistleblower has authorised him/her to provide. The Whistleblower Investigations Officer and the Whistleblower Protection Officer will maintain the strictest confidentiality of the Whistleblower.

### 3.6.2 Confidentiality

ERM Power will to the fullest extent possible and in accordance with the law, protect the identity of the Whistleblower and keep the statement or report made by the Whistleblower confidential. The Whistleblower's identity may be disclosed:

- If the Whistleblower consents. The Whistleblower may consent to limited disclosure of their identity (eg. to the investigator or the Whistleblower's manager);
- To report a matter to ASIC, APRA or the Australian Federal Police;
- To a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblowing provisions in the Act; or
- As otherwise required by law.

It may be necessary to disclose information in the statement or report even if this may lead to the identification of the Whistleblower. This would only occur if it is reasonably necessary for the purposes of investigating the report and after all reasonable steps are taken to reduce the risk of the Whistleblower being identified.

### 3.6.3 What type of information should be reported?

All relevant details of a Wrongful Act should be reported, including the following information where available:

- Identity of suspected Personnel;
- Nature of the allegation;
- Date of alleged fraudulent activity;
- Duration of alleged activity;
- Involvement of any other Personnel;
- Any witnesses to activity; and
- Location of any physical evidence (soft/hard copy).

## 3.7 Actions following receipt of report of wrongful act

Following the receipt of the report of a Wrongful Act (including a breach of the Act) the Whistleblower Investigations Officer is to:

- Make a detailed record of the report without revealing the identity of the Whistleblower, unless the Whistleblower consents to his/her identity being revealed. If the Whistleblower does not consent to his/her identity being revealed. The Whistleblower Investigations Officer should keep a separate record of the Whistleblower's identity and contact information (if known) and store that information securely in a location only accessible by the Whistleblower Investigations Officer. This information will be required as the investigation progresses and is finalised;
- Liaise with the Chair of the ARC on all matters relating to the investigation of the report, including whether to disclose the report and/ or the outcome of the investigation to a relevant regulator (eg. ASIC, APRA or the Australian Federal Police);
- Undertake preliminary enquiries into the report to determine the nature and extent of any Wrongful Act. The Whistleblower Investigations Officer should not assume there has been a Wrongful Act. The Whistleblower Investigations Officer may conclude that the report is frivolous or vexatious, or lacking in substance after undertaking preliminary enquiries, in which case the investigation should be discontinued;
- If required, appoint an investigator (who might be another employee of ERM Power, or an external party). Where another employee is appointed as investigator, he or she should not be an employee who works closely with the Whistleblower or the person being investigated in relation to the Wrongful Act;
- Ensure that any investigation is commenced promptly and discretely;

- Prepare a full report on the findings and recommendations of the investigation, without revealing the identity of the Whistleblower;
- If requested by the Whistleblower, and subject to item 3.6.2 (Confidentiality) of the Policy, keep the identity of the Whistleblower confidential, including from the investigator as required;
- Where appropriate, notify the Whistleblower in general terms of the progress of the investigation, subject to considerations of the privacy of those against whom the allegations have been made;
- Ensure that the person accused of committing the Wrongful Act is given details of the allegation and afforded an opportunity to respond to the allegation before the investigation is concluded;
- Provide a copy of the report of any investigation to the person accused of committing the Wrongful Act; and
- Provide a full report on the findings and recommendations of the investigation, without revealing the identity of the Whistleblower.

### 3.7.1 Conduct of investigation

All reports will be investigated discretely, and only those persons who need to know the fact, and the details, of a report, will be informed of it. Where necessary, ERM Power might employ external resources to assist with an investigation.

### 3.7.2 Outcome of investigation

An investigation can result in one of three outcomes:

- The Wrongful Act is proven.
- The Wrongful Act cannot be proven, but there is enough suspicion to warrant further ongoing surveillance or investigation.
- The Wrongful Act is unproven.

Both the Whistleblower (in cases where the Whistleblower is known to the Whistleblower Investigations Officer) and the person accused of committing the Wrongful Act shall be informed independently of the result. The Whistleblower Investigations Officer may decide the level of information to be provided to the Whistleblower and the person accused of committing the Wrongful Act, as they consider reasonable in the circumstances.

ERM Power's employment policies (available on ERM Power's intranet) will govern what further action ERM Power will take in respect of Personnel involved in committing a Wrongful Act, where it is proved that a Wrongful Act has been committed. In other cases, the relevant contract shall govern. Please note that where the Wrongful Act involves a possible criminal offence, police involvement will be necessary.

ERM Power will give its full support to Personnel who are the subject of an investigation where the allegations contained in a report of a Wrongful Act appear to be wrong or unsubstantiated. Where an investigation does not substantiate the report, ERM Power will use reasonable endeavours to keep confidential the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the investigation. In such circumstances, no record of the report or the investigation is to be kept in any human resources or employment related record of the person who was investigated in relation to the alleged Wrongful Act. Any record of the report or the investigation that is retained, including any human resources or employment related record, should be retained in a way that ensures future compliance with the confidentiality obligations in this Policy.

## 3.8 What happens if the report was made maliciously?

If, at the conclusion of an investigation (either internally, or by the appropriate authorities), it is concluded that the Whistleblower did not reasonably believe, or could not have reasonably believed, the contents of the report to be true, ERM Power may respond in accordance with ERM Power's employment policies in the case of employees. In other cases, the relevant contract shall govern.



## 3.9 Operation of the Act

As a public company, ERM Power is required to have and maintain this Policy to comply with the Act. The Act includes protections for Whistleblowers who make reports that qualify for those protections under the Act. The protections are similar to those in this Policy and also apply to Whistleblowers who are "associates" of ERM Power, as well as relatives, dependents and spouses of Whistleblowers or "associates" of ERM Power.

ERM Power will conduct any investigations into disclosures that qualify for protection under the Act in accordance with item 3.7 of this Policy, and will apply the protections and will ensure fair treatment as set out in this Policy.

This Policy also nominates persons to whom disclosures may be made that qualify for protection under the Act and how those disclosures may be made. In addition to the Whistleblower Investigations Officer and the Whistleblower Protection Officer, Personnel may make disclosures that qualify for protections under the Act to ASIC or APRA, as well as ERM Power's officers, auditors or senior managers (as defined in the Act). Reports to ERM Power's officers, auditors or managers will be referred to the Whistleblower Investigations Officer for consideration. In very limited circumstances, public interest disclosures or emergency disclosures to members of parliament or journalists qualify for protections under the Act. Personnel should consider seeking independent advice before making a public interest disclosure or an emergency disclosure.

## 3.10 Training and awareness

The Legal & Company Secretarial Group is responsible for implementing and overseeing the provision of the Whistleblower Policy training program to Personnel. This training program should be reviewed regularly to ensure that it is relevant to Personnel and ERM Power's business.

ERM Power recognises that the level of awareness of Wrongful Acts, amongst all Personnel, must be high so that Personnel can identify, prevent and control Wrongful Acts. This Policy will be made available to Personnel on the intranet.

## 3.11 Ongoing review of Whistleblower Policy

ERM Power will review this Policy every three years to ensure that its strategy remains suitable for the business.

# 4. Questions?

Personnel should discuss any queries arising out of this Policy with their immediate supervisor/manager, or the Group General Counsel & Company Secretary.

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# 5. Policy Information

<b>Date Policy Released:</b>	V1.0: 23 February 2011
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<b>Approval Body</b>	ERM Power Board
<b>Endorsement Body</b>	Group General Counsel & Company Secretary
<b>Related Policies</b>	Code of Business Conduct
<b>Policy Maintained by:</b>	Group General Counsel & Company Secretary <a href="mailto:cosec@ermpower.com.au">cosec@ermpower.com.au</a>



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