



## **Whistleblower Policy and Procedures**

(Including Whistleblower Protections under the Corporations Act and Tax Administration Act)

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## Important contacts

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Please see section 4.1.3(c)

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# 1 Policy

## 1.1 Summary

A whistleblower policy which incorporates appropriate protections for whistleblowers is an important element in detecting and deterring corrupt, illegal or other undesirable conduct. It is designed to:

- encourage the reporting of matters that may cause financial and non-financial loss or reputational damage;
- enable the effectively management of reports from whistleblowers in a way that protects their identity and provides for secure and appropriate consideration of their information;
- protect whistleblowers against retaliatory action by any person (internal or external); and
- provide the appropriate infrastructure to support the policy.

In addition, the *Corporations Act 2001* (Cth) (**Corporations Act**) and *Tax Administration Act 1953* (Cth) (**Tax Administration Act**) set out requirements (including whistleblower protections) in relation the reporting of specified misconduct or improper states of affairs (**Statutory Disclosures**).

## 1.2 Commitment

Crestone treats any case of alleged misconduct or wrongdoing with the utmost seriousness. It is committed to promoting and maintaining the highest standards of legal, ethical and moral behaviour.

This Policy outlines our commitment to maintaining an environment in which Eligible Whistleblowers are able, without fear of retaliatory action, to report concerns about any serious instances of wrongdoing that they believe may be occurring within Crestone.

## 1.3 Policy objective

It is important to have a Whistleblower Policy so Eligible Whistleblowers know there is a framework in which they can disclose identified misconduct or wrongdoing, without facing victimisation or reprisal. It is also acknowledged that the Whistleblower Policy is a practical tool to help Crestone identify wrongdoing (which may not be uncovered unless there is a safe and secure means for disclosing wrongdoing) and encourage Eligible Whistleblowers to have the confidence to raise identified misconduct.

The purpose of this Policy is to achieve:

- more effective compliance with relevant laws;
- more efficient fiscal management;
- a healthier and safer working environment;
- more effective management;
- improved morale; and
- an enhanced perception and the reality that we are taking concerns seriously.

This Policy is not intended to replace other reporting processes, such as those for dispute resolution or incident and breach management except where the issue is of a serious matter and existing reporting systems have failed to address the issue or addressed it in an inadequate manner, or where anonymity is sought by the Eligible Whistleblower.

## 1.4 Who this Policy applies to

This Policy applies to an Eligible Whistleblower who makes a Statutory Disclosure in the form and manner set out in Annexure A and to Crestone staff involved in the management of such disclosures.

Crestone staff may also be eligible to report matters which are not covered by the Corporations Act or Tax Administration Act and should refer to the separate internal policy available on the Crestone SharePoint site.

## 2 Definitions

**Crestone** means Crestone Holdings Limited ACN 606 011 974 or any of its subsidiaries.

**Disclosure** means a Statutory Disclosure made to Crestone.

**Eligible Whistleblower** is an individual who is, or has been, any of the following in relation to Crestone:

- an employee (including contractors) or officer;
- a supplier of goods or services (whether paid or unpaid), including their employees;
- an associate; and
- a relative<sup>1</sup>, a dependent or dependent of a spouse of any of the above individuals.

**Statutory Disclosure** is a disclosure concerning misconduct or an improper state of affairs or circumstances regarding Crestone as set out in section A.2 of Annexure A.

<sup>1</sup> In relation to Statutory Disclosures under the Tax Administration Act, only a spouse or child of one of the above individuals (or a dependent of one of the above individuals or their spouse) is an Eligible Whistleblower.

## 3 Roles and responsibilities

### 3.1 Whistleblower Protection Officer

The Head of Human Resources is the Whistleblower Protection Officer. The primary role of the Whistleblower Protection Officer is to ensure that the rights of the Eligible Whistleblower are respected and that the protective measures outlined in this Policy are abided by, from the moment the Eligible Whistleblower makes a Disclosure.

### 3.2 Whistleblower Investigation Officer

The Chief Risk Officer is the Whistleblower Investigation Officer. The Whistleblower Investigation Officer is responsible for reviewing the Disclosure made by the Eligible Whistleblower, undertaking the necessary investigations, liaising with the Chief Executive Officer in relation to the Disclosure and reporting to regulators and to the Audit, Risk & Compliance Committee (**ARCC**) and/or the Board (as required).

The Whistleblower Investigation Officer will also liaise with the Whistleblower Protection Officer in relation to communications with the Eligible Whistleblower, as required.

### 3.3 Role of Human Resources

Human Resources must:

- ensure that Crestone's Human Resources policies and guidance are consistent with this Policy;
- ensure that Crestone's employment policies including any disciplinary procedures, are consistent with this Policy; and
- assist the Whistleblower Investigation Officer to ensure that the Eligible Whistleblower is protected and provide counselling and support to the Eligible Whistleblower, as required.

## 4 Ways to make a disclosure

### 4.1 Who to escalate to

#### 4.1.1 Statutory Disclosures

Eligible Whistleblowers who wish to make a Statutory Disclosure are encouraged to use the reporting channels set out under section 4.1.3 below, which are consistent with the reporting procedures permitted under the Corporations Act. In addition, Annexure A sets out other ways an Eligible Whistleblower may make a Statutory Disclosure, should they decide this is more appropriate.

#### 4.1.2 Seeking information before Disclosure

If an Eligible Whistleblower wishes to seek additional information before formally making a Statutory Disclosure, the Eligible Whistleblower may contact Crestone through one of the reporting channels set out in section 4.1.3 below.

#### 4.1.3 Whistleblower reporting channels

An Eligible Whistleblower may make a Disclosure in any of the following ways:

(a) **Line Manager**

Eligible Whistleblowers may make a Disclosure with the line manager of the relevant business unit. The line manager must pass on the matter to the Whistleblower Protection Officer and the Whistleblower Investigation Officer, while keeping the identity of the Eligible Whistleblower confidential.

(b) **Whistleblower Protection Officer and/or Whistleblower Investigation Officer**

Whistleblowers may wish to make a Disclosure by approaching the Whistleblower Protection Officer and/or Whistleblower Investigation Officer who will keep the Disclosure and their identity confidential.

(c) **Anonymous Disclosure**

Eligible Whistleblowers wishing to make an anonymous Disclosure may use an encrypted, disposable email address to contact the Whistleblower Protection Officer and/or the Whistleblower Investigation Officer. For example, ProtonMail is a free, secure, end-to-end emailing service that shields identifiable metadata which exists on normal emailing platforms. When signing up, the Eligible Whistleblower should choose a username that does not identify his or her identity. Please email the Disclosure to [whistleblowing@crestone.com.au](mailto:whistleblowing@crestone.com.au). The Eligible Whistleblower should retain the password securely, and check the email regularly in case we have any questions or would like to advise the progress or result of the investigation.

Disclosure maybe made during or outside business hours. An Eligible Whistleblower is entitled to remain anonymous in making a Disclosure and may refuse to answer questions that they feel could reveal their identity. However, Eligible Whistleblowers that choose to remain anonymous should note that this may make an investigation more difficult or impracticable (as the Whistleblower Investigation Officer cannot ask further questions) and we will not be able to advise as to progress or results of the investigation.

### 4.2 Reporting concerns

When making a Disclosure, the Eligible Whistleblower should consider the following:

- stay calm;
- remember that you are a witness and not a complainant;
- provide facts that support the reason for the Disclosure;
- let the facts speak for themselves – do not make allegations;
- remember that you may be mistaken or that there may be an innocent or good explanation; and
- do not become a private detective.

## 5 Investigation of disclosures

### 5.1 Overview

All Disclosures will be thoroughly investigated by the Whistleblower Investigation Officer with the objective of locating evidence that either substantiates or refutes the issues raised by the Eligible Whistleblower. Consideration will be given to whether an outside investigator should be appointed to manage the process.

The investigation will be conducted in a fair and impartial way, following principles of natural justice. This means the investigation will be conducted without bias and independently of the Eligible Whistleblower and the business unit and person(s) the subject of the alleged misconduct or wrongdoing.

In addition, the person(s) against whom an allegation of wrongdoing is made will be given the opportunity to comment. The Whistleblower Investigation Officer will also ensure that an appropriate audit trail is maintained of the evidence that has been collected and decisions made during the investigation.

Following the investigation, the Whistleblower Protection Officer and Whistleblower Investigation Officer will convene to determine an appropriate response. Where issues of discipline arise, the response will follow normal disciplinary procedures.

The findings will also be shared (as appropriate) with the Eligible Whistleblower and the person(s) the subject of the allegations of wrongdoing or misconduct. All information shared must be kept strictly confidential.

### 5.2 Investigation process

The high-level process for investigating a Disclosure is described below. Unless otherwise specified, each step is performed or oversighted by the Whistleblower Investigation Officer. Each step of the investigation must be carried out in a timely manner.

#### Step 1: Receive Eligible Whistleblower Disclosure

- Accept incoming Disclosure;
- Screen Disclosure;
- Acknowledge to the Eligible Whistleblower receipt of Disclosure; and
- Document Disclosure.

#### Step 2: Analyse Disclosure

- Identify the key allegations of misconduct and/or wrongdoing;
- Determine an appropriate investigation plan;
- Determine the timeframe for the investigation; and
- Determine who will conduct the investigation.

#### Step 3: Investigate

- Appoint investigation team (as necessary); and
- Conduct the investigation.

#### Step 4: Resolve the issues

- Document and implement a corrective action plan (as required);
- Determine any disciplinary action in accordance with normal disciplinary procedures; and
- Determine if the alleged misconduct/wrongdoing requires reporting to regulators or the AFP.

#### Step 5: Communicate the investigation outcomes

- The alleged wrongdoer;
- The Eligible Whistleblower; and
- The CEO/Board as appropriate.



## **6 Whistleblower's Rights**

### **6.1 Protections available**

Protections which are available to an Eligible Whistleblower making a Disclosure are explained in A.5 of Annexure A.

### **6.2 Whistleblower immunity**

Eligible Whistleblower are afforded statutory protections under the Corporations Act and Tax Administration Act, as set out in Annexure A of this Policy. However, Crestone has no power to provide immunity from criminal prosecution.

### **6.3 Communication with the Eligible Whistleblower**

Each Disclosure will be acknowledged within a reasonable time of receipt, where contact details for the Eligible Whistleblower have been provided.

An Eligible Whistleblower also has the right to feedback of the progress of the investigation where contact details are provided. The type and complexity of the investigation will inform the feedback of progress in the investigation.

Generally, updates will be provided verbally on a quarterly basis by the Whistleblower Protection Officer.

Once the investigation is completed, a verbal report will be made to the Eligible Whistleblower. This report will explain the findings and actions taken within commercial, legal and confidentiality constraints. There may be some circumstances where Crestone cannot fully share information with the Eligible Whistleblower.

Where the Eligible Whistleblower chooses to remain anonymous but provides contact details, alternative arrangements may be made for providing a verbal report of the outcome of the investigation.

All Eligible Whistleblowers must maintain confidentiality of all such reports, and not disclose the information to any person.

### **6.4 Management of a person against whom a report is made**

Crestone recognises that individuals against whom a Disclosure is made must also be supported during any investigation. Crestone will take reasonable steps to fairly treat the person who is the subject of a Disclosure, particularly during the assessment and investigation process. If counselling is required, this will be provided.

Generally, the Whistleblower Investigation Officer must ensure that the person who is the subject of a Disclosure that is investigated:

- is informed as to the substance of the allegations;
- is given the opportunity to answer the allegations before any investigation is finalised;
- is informed about the substance of any adverse comments that may be included in any report arising from the investigation before it is finalised;
- has had their defence set out fairly in any report; and
- is advised of the outcome of the investigation.

Exceptions may arise where the subject matter of the investigation is required by law to be treated in confidence. Examples may include allegations of money laundering, terrorism financing, fraud and other criminal activity.

## Further information

Eligible Whistleblowers who would like further information concerning this Policy (including how it works and what it covers), should contact the Whistleblower Protection Officer in the first instance.

## Annexure A – Processes Relating To Statutory Disclosures

*Note: There are certain differences between the whistleblower protections that exist under the Corporations Act and those under the Taxation Administration Act. An Eligible Whistleblower must read this Annexure carefully before making a Disclosure to ensure that they understand what is required in order to be afforded adequate protection.*

### A.1 Who is a Whistleblower under the Corporations Act and Tax Administration Act?

Under the Corporations Act and Tax Administration Act, an “Eligible Whistleblower” is an individual who is, or has been, any of the following in relation to Crestone Holdings Limited or any of its subsidiaries (**Crestone**):

- an employee (including contractors) or officer;
- a supplier of goods or services (whether paid or unpaid), including their employees;
- an associate; and
- a relative<sup>2</sup>, a dependent or dependent of a spouse of any of the above individuals.

### A.2 What Disclosures are protected under the Corporations Act?

Disclosures made by an Eligible Whistleblower are protected under the Corporations Act where s/he has reasonable grounds to suspect that any of the following matters have occurred (**Reportable Conduct**) and they are reported in the prescribed form and manner (see A.4 below):

- (a) misconduct, or an improper state of affairs or circumstances in relation to Crestone;
- (b) contravention by Crestone (or one of its employees or officers) of the Corporations Act or the *Australian Securities and Investments Commissions Act 2001* (Cth) or an instrument made under one of those Acts<sup>3</sup>;
- (c) an offence by Crestone (or one of its employees or officers) against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or
- (d) conduct by Crestone (or one of its employees or officers) that represents a danger to the public or the financial system.

For guidance purposes, examples of Reportable Conduct include:

- insider trading;
- insolvent trading;
- dishonest conduct in relation to financial services;
- the provision of defective disclosure documents (including FSGs and SOAs);
- fraud, money laundering or misappropriation of funds;
- offering or accepting a bribe;
- falsification of accounts;
- failure of a director or other officer of a Crestone company to act in good faith; and
- failure of a director to give notice of any material personal interest in a matter relating to the affairs of the company.

2 In relation to Statutory Disclosures under the Tax Administration Act, only a spouse or child of one of the above individuals (or a dependent of one of the above individuals or their spouse) is an Eligible Whistleblower.

3 The Corporations Act protections also extend to disclosures relating to contraventions of the following Commonwealth legislation (and related instruments): *Banking Act 1959*, *Financial Sector (Collection of Data) Act 2001*, *Insurance Act 1973*, *Life Insurance Act 1995*, *National Consumer Credit Protection Act 2009* and *Superannuation Industry (Supervision) Act 1993*. However, none of those Acts currently applies to Crestone.

Importantly, the Reportable Conduct noted in a) and d) above does not necessarily need to involve a contravention of any particular law. In addition, protection remains afforded to Disclosures that turn out to be incorrect, provided there were reasonable grounds for suspicion.

However, Disclosures that concern 'personal work-related grievances' do not generally qualify for protection under the Corporations Act<sup>4</sup>. Personal work-related grievances are those that relate to the discloser's current or former employment and have, or tend to have, implications for the discloser personally, but do not (i) have any other significant implications for Crestone, or (ii) relate to the Reportable Conduct noted at b), c) or d) above. However, a personal work-related grievance may still qualify for protection if it includes information about misconduct.

For example, a Disclosure relating to a conflict between the discloser and another employee would not ordinarily be protected under the Corporations Act. However, if that conflict related to misconduct that had significant implications for Crestone or involved the victimisation of an Eligible Whistleblower, protection may be available.

### **A.3 What Disclosures are protected under the Tax Administration Act?**

Disclosures made by an Eligible Whistleblower are protected under the Tax Administration Act where s/he has reasonable grounds to suspect misconduct, or an improper state of affairs or circumstances, in relation to the 'tax affairs'<sup>5</sup> of Crestone, and the information provided may assist the recipient to perform functions or duties in relation to those tax affairs (**Reportable Tax Conduct**), provided the Disclosure is made in the prescribed form and manner (see A.4 below). Once again, Reportable Tax Conduct does not necessarily need to involve a contravention of law.

In addition, an Eligible Whistleblower may make a Disclosure to the Commissioner of Taxation where the information may assist the Commissioner to perform his or her functions or duties under a taxation law in relation to Crestone.

### **A.4 Prescribed form and manner of Disclosure to obtain protections under Corporations Act and Tax Administration Act**

#### **A.4.1 Disclosure to a Crestone eligible recipient**

An Eligible Whistleblower may make a Statutory Disclosure of Reportable Conduct and Reportable Tax Conduct to any of the following "eligible recipients":

- a person authorised by Crestone to receive a Disclosure under the Policy (i.e. line manager, Whistleblower Protection Officer or Whistleblower Investigation Officer);
- an officer or senior manager<sup>6</sup> of Crestone; and
- an auditor or member of an audit team conducting an audit on Crestone.

In addition, a Statutory Disclosure of Reportable Conduct may be made to an actuary of Crestone, while a Statutory Disclosure of Reportable Tax Conduct may also be made to i) a registered tax agent or BAS agent that provides tax agent or BAS services to Crestone, and ii) any other Crestone employee or officer who has functions or duties that relates to Crestone's tax affairs (for example, the ATO Public Officer).

Please note that the Reportable Conduct and Reportable Tax Conduct can be anonymously disclosed using an encrypted, disposal email address.

#### **A.4.2 Disclosure to regulators**

An Eligible Whistleblower may make a Statutory Disclosure of the Reportable Conduct to ASIC, APRA or any other prescribed Commonwealth authority<sup>7</sup>.

While no specific regulator has been nominated for Reportable Tax Conduct, the general capacity for an Eligible Whistleblower to make a Disclosure to the Commission of Taxation (noted at A.3 above) is noted.

4 A disclosure concerning a personal work-related grievance that is made to a solicitor per A.4.5 may qualify for protection.

5 'Tax affairs' means affairs relating to any tax imposed by or under, or assessed or collected under, a law administered by the Commissioner Of Taxation (including income and payroll tax, GST and PAYG withholding).

6 The definition of "Senior Manager" is in accordance with the Corporations Act, which includes any Crestone representative that makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of Crestone, or who has the capacity to affect significantly Crestone's financial standing.

7 As at 1 September 2019, no other Commonwealth Authority has been prescribed for this purpose.

### A.4.3 Public interest disclosure (Reportable Conduct only)

An Eligible Whistleblower may make a Statutory Disclosure of Reportable Conduct to a journalist<sup>8</sup> or a member of a Commonwealth, State or Territory Parliament provided the following process is followed:

- (a) the Eligible Whistleblower first makes a Statutory Disclosure of Reportable Conduct to a regulator in accordance with A.4.2 above (**previous disclosure**);
- (b) at least 90 days must have passed since the previous disclosure to the regulator was made;
- (c) the Eligible Whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the Reportable Conduct;
- (d) the Eligible Whistleblower has reasonable grounds to believe that making a further disclosure of the information would be in the public interest;
- (e) the Eligible Whistleblower makes a written notification to the recipient of the previous disclosure that the Eligible Whistleblower intends to make a public interest disclosure and includes sufficient information to identify the previous disclosure; and
- (f) the disclosure to the journalist or parliamentarian by the Eligible Whistleblower is no greater than is necessary to inform the recipient of the Reportable Conduct.

The Eligible Whistleblower should contact an independent legal adviser before making a public interest disclosure.

### A.4.4 Emergency disclosure (Reportable Conduct only)

An 'emergency disclosure' of Reportable Conduct may be made by an Eligible Whistleblower to a journalist or a member of a Commonwealth, State or Territory Parliament if:

- (a) the Eligible Whistleblower first makes a Statutory Disclosure of the Reportable Conduct to a regulator in accordance with A.4.2 above (**previous disclosure**);
- (b) the Eligible Whistleblower has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment;
- (c) the Eligible Whistleblower makes a written notification to the recipient of the previous disclosure that the Eligible Whistleblower intends to make an emergency disclosure and includes sufficient information to identify the previous disclosure; and
- (d) the emergency disclosure is no greater than is necessary to inform the recipient of the Reportable Conduct.

The Eligible Whistleblower should contact an independent legal adviser before making an emergency disclosure.

### A.4.5 Disclosure to solicitor

An Eligible Whistleblower may make a Statutory Disclosure of Reportable Conduct or Reportable Tax Conduct to a legal practitioner for the purposes of obtaining legal advice or legal representation about the operation of the whistleblower provisions in the Corporations Act and Tax Administration Act. Disclosures to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the relevant Act are protected, even in the event that the legal practitioner concludes that a disclosure does not relate to a disclosable matter.

<sup>8</sup> 'Journalist' means a person who is working in a professional capacity as a journalist for any of the following:

- (a) 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.

## **A.5 What protections are available to an Eligible Whistleblower if a Disclosure is made in accordance with the Corporations Act or Tax Administration Act?**

An Eligible Whistleblower who makes a Statutory Disclosure in accordance with the Corporations Act or Tax Administration Act receives the following protections, from the time they make the disclosure.

### **A.5.1 Identity protection (confidentiality)**

Neither the identity nor information likely to lead to the identification of an Eligible Whistleblower who has made a Statutory Disclosure in accordance with the Corporations Act or Tax Administration Act, may be disclosed, except in the following circumstances:

- (a) consent to disclosure is provided by the Eligible Whistleblower;
- (b) the disclosure is made to a member of the Australian Federal Police;
- (c) the disclosure is made to a legal practitioner, for the purposes of obtaining legal advice or legal representation about the whistleblower provisions in the Corporations Act or Tax Administration Act (as applicable);
- (d) for Reportable Conduct only, the disclosure is made to ASIC or APRA; and
- (e) for Reportable Taxation Conduct only, the disclosure is made to the Commission for Taxation.

Nonetheless, Crestone may disclose information concerning a Statutory Disclosure if:

- (a) the information does not include the Eligible Whistleblower's identity;
- (b) it is reasonably necessary to investigate the issues raised in the Statutory Disclosure; and
- (c) all reasonable steps have been taken to reduce the risk that the Eligible Whistleblower will be identified from the information.

Eligible Whistleblowers should also note that unless consent to the disclosure of their identity is given, there may be limits to the extent to which an investigation under section 5 of the Policy can be undertaken.

***Note: Failure to comply with this section is a criminal offence.***

### **A.5.2 Protection from victimisation**

An Eligible Whistleblowers must not be subject to victimisation (being conduct (or the threat of conduct) which causes (or would cause) them to suffer detriment), as a result of them making, or potentially making, a Statutory Disclosure.

Examples of such victimisation include:

- dismissal;
- demotion;
- any form of harassment;
- discrimination;
- current or future bias; or
- threats of any of the above.

***Note: Failure to comply with this section is a criminal offence.***

It should be noted that certain conduct will not constitute victimisation including reasonable actions to protect an Eligible Whistleblower from detriment (for example, when the Statutory Disclosure relates to wrongdoing in their immediate work area) and appropriate disciplinary action.

An Eligible Whistleblower who believes they, or their family, have been the victim of any of the above or otherwise penalised due to their Statutory Disclosure, should immediately report the issue to the Whistleblower Protection Officer. They may also seek legal advice or contact ASIC if they believe they have been penalised or disadvantaged as a result of making a Statutory Disclosure.

### **A.5.3 Civil, criminal and administrative liability protection**

An Eligible Whistleblower has immunity from any civil, criminal or administrative liability for making the Statutory Disclosure. This means that no contractual or other remedies may be enforced against an Eligible Whistleblower for making the Statutory Disclosure (including for breach of confidentiality).

In addition, where the Statutory Disclosure is made in accordance with A.4.2, A.4.3 or A.4.4, the information contained in that Statutory Disclosure is not admissible in evidence against the Eligible Whistleblower in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

Importantly however, an Eligible Whistleblower may still be subject to civil, criminal or administrative liability in relation to their conduct as revealed by the Statutory Disclosure.

### **A.5.4 Compensation and other remedies**

An Eligible Whistleblower may seek compensation and other remedies through the courts if they are not afforded the protections noted above. This may include seeking compensation from Crestone for failing to take reasonable precautions or steps to ensure those protections were afforded to the Eligible Whistleblower.

Eligible Whistleblowers should seek independent legal advice in relation to any claim for compensation or other remedy.

## Contact us

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