

Public Interest Disclosures

Procedure

Background

We encourage employees and members of the public to report known or alleged incidents of improper conduct. We do not tolerate the taking of reprisals against those who come forward to disclose improper conduct. We will take all reasonable steps to protect those who make disclosures, or who are connected with a disclosure, from any detrimental action in reprisal.

The purposes of the *Public Interest Disclosures Act 2012* (Act) include to:

- Encourage and facilitate reporting and disclosure of improper conduct and detrimental action by public officers and public bodies
- Provide protection for persons who make such disclosures or suffer detrimental action, and
- Provide for the confidentiality of the content of these disclosures and the identity of persons who make these disclosures.

The Independent Broad-based Anti-corruption Commission (IBAC) is Victoria's agency responsible for preventing and exposing public sector corruption. The Public Interest Disclosures Procedure (the Procedure) has been developed in accordance with the Act and guidelines published by IBAC.

Purpose

The purpose of this Procedure is to describe how:

- A person (member of the public or an employee) can make a public interest disclosure about us, or our employees
- We will take reasonable steps to protect persons against detrimental action for making a public interest disclosure, or witnesses or persons cooperating with an investigation into a disclosure (should we have knowledge of the disclosure)
- We will manage the welfare of disclosers and persons connected with disclosures
- We will ensure employees are adequately trained with respect to public interest disclosures.

Who can make a public interest disclosure?

Any individual person or group of individuals can make a public interest disclosure about improper conduct engaged in, or detrimental action taken by us and/or our employees (or any other public sector employee).

We are **not** a body that may receive public interest disclosures. If you wish to make a disclosure about us, or our employees, you should make that disclosure directly to IBAC (www.ibac.vic.gov.au). Information on making a disclosure is included in the further sections of this Procedure.

You can make a public interest disclosure if you are member of the public or one of our employees. A company or business cannot make a public interest disclosure.

You may ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the Act in relation to that disclosure. Your protection may be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'protected disclosure'. You may also advise that you do not want your disclosure to be treated as a 'protected disclosure'.

What can I make a public interest disclosure about?

You may make a public interest disclosure about information that shows or tends to show, or that you believe, on reasonable grounds, shows or tends to show that:

- A public officer or public body
- Is engaging in, or proposing to engage in
- Improper conduct and/or detrimental action in reprisal against a person for making a public interest disclosure.

Public officer and public body

We are a public body and our employees are public officers.

The conduct you are disclosing must be in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

Improper conduct and detrimental action

In assessing whether a complaint should be given public interest disclosure status, specific criteria set out in the Act will be used. A complaint should clearly show or suggest 'improper conduct' or 'detrimental action' by a public officer. People seeking protection under the Act should carefully consider whether their complaint meets these thresholds before reporting.

Improper conduct

Must be either criminal conduct or other conduct specified under the Act. This may include serious professional misconduct, intentional or reckless breach of public trust and conduct adversely affecting the honest performance of a public officer. For example:

- A public officer takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty
- A public officer sells confidential information
- A public office favours unmeritorious applications for jobs by friends and relatives
- A third party attempts to bribe a public officer.

Detrimental action

May include harassment, discrimination or other adverse action taken against the discloser in reprisal for reporting the alleged improper conduct. For example:

- A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure
- A public officer threatens abuses or carries out other forms of harassment directly or indirectly against the person (and his or her family or friends) who makes a disclosure
- A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

What is 'reasonable grounds'?

You must *believe* (as opposed to *know*) that improper conduct or detrimental action has occurred, is occurring or will occur and you must have 'reasonable grounds' for that belief.

This means that you need to have more than a suspicion or allegation. For example, it is not enough to say 'I know that X is corrupt'. You must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

How do I make a public interest disclosure?

We are **not** a body that may receive public interest disclosures. If you wish to make a disclosure about us, or one of our employees, you should make that disclosure directly to IBAC. Information on making a disclosure can be found on the IBAC website www.ibac.vic.gov.au, and is included in the further sections of this Procedure.

IBAC provides a secure online form to make a complaint or provide information about public sector corruption www.ibac.vic.gov.au/reporting-corruption/report.

In addition, you may contact IBAC by telephone 1300 735 135.

A protected disclosure must be made in private so it is important that only the person to whom you are making the disclosure can hear or receive your disclosure.

You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated and you will not be notified of the outcome of any investigation.

If you are making your disclosure verbally, the person receiving your disclosure may take notes of your discussion. The person receiving your disclosure may also want to record the conversation, but will only do so with your permission.

If you cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

What will happen after I make a disclosure?

Disclosures made directly to IBAC will be assessed and handled in accordance with the Act, their guidelines and processes.

If IBAC determines that your complaint is not a disclosure about improper conduct or detrimental action, it may refer you to another agency or refer you back to us (as a complaint to be dealt with according to our standard complaint handling processes).

What protections will I receive?

Pending IBAC assessment of the complaint as having public interest disclosure status, the Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These include:

- Immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- Immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- Immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- Protection from an action for defamation.

The protections in the Act do not apply if you provide false or misleading information or claim that a matter is the subject of a protected disclosure knowing that claim to be false.

In addition to these protections, we recognise that the welfare and protection from detrimental action of persons making genuine protected disclosures is essential for the effective implementation of the Act.

It is relevant to our obligation to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* and the common law.

Internal welfare arrangements

We support a workplace culture where the making of public interest disclosures is valued by the organisation and the right of any individual to make a disclosure that is taken seriously.

We may not know that a person has made a public interest disclosure, and may only become aware if IBAC (or another investigating authority) advises us.

If we become aware of a public interest disclosure, we will:

- Maintain confidentiality
- Examine the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, foster a supportive work environment
- Take precautions to prevent its employees and agents from taking detrimental action in reprisal for a protected disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and/or witnesses
- Advise the discloser and/or witness of the protections available under the Act
- Not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including taking any reasonable steps to protect such persons from such action being taken against them
- Take the appropriate disciplinary and other action against any employee engaged in the taking of detrimental action
- Afford natural justice and treat fairly those who are the subject of allegations contained in disclosures
- Ensure that we handle the welfare of persons connected with public interest disclosure matters consistently and appropriately in accordance with our obligations under the Act and this Procedure
- Ensure this Procedure is publicly accessible on our website.

Training for all employees

We will:

- Ensure that employees have access to this Procedure
- Incorporate into our induction program training about the general obligations under the Act and the rights and obligations of employees, including how to identify if disclosures, reports or allegations made to employees might be public interest disclosures and how to respond to such disclosures
- Periodically provide refresher courses for existing employees about their rights and obligations under the Act.
- Provide additional training assistance to:
 - Any employee with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including our Public Interest Disclosures Coordinator (see below) and people involved in welfare management
 - Any employee with functions and duties under the *Freedom of Information Act 1982 (FOI Act)* or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaison with IBAC or other investigative agencies where required in response to a request for access under the FOI Act.

Compliance context

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

- To take detrimental action against another person in reprisal for a public interest disclosure
- To disclose the content, or information about the content, of a disclosure that has been notified by IBAC to us or information which is likely to lead to the identification of the person who has made that disclosure unless such disclosure is permitted by the Act
- For any person to:
 - Provide false or misleading information, or further information that relates to a disclosure, that the person knows to be false or misleading in a material way, intending that the information be acted on as public interest disclosure
 - Claim that a matter is the subject of a public interest disclosure knowing the claim to be false
 - Falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a complaint
 - Disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act
 - Disclose that a disclosure has been determined to be a public interest complaint unless permitted to do so by the Act.

Public Interest Disclosure Coordinator

Our Public Interest Disclosure Coordinator has a central role with respect to disclosure matters, and in particular, for ensuring that the welfare of any persons connected with a public interest disclosure is properly managed.

The Coordinator will:

- Provide a confidential source of advice for employees who can raise any conduct related concerns about their line managers, colleagues or supervisors.
- Be a contact point for general advice about the Act and for integrity agencies such as IBAC.
- Refer anyone wanting to make a disclosure or report detrimental action to the relevant investigative authority, such as IBAC.
- Be ESV's chief liaison with IBAC in regard to the Act.
- Take all necessary steps to ensure information received or obtained in relation to a disclosure is kept secure, private and confidential.
- Be responsible for arranging any necessary and appropriate welfare support for the discloser, or a person involved with a disclosure, including appointing a welfare manager to support a person entitled to be protected and to protect him or her from any reprisals.
- Report any required statistics under the Act in our Annual Reports.

The Public Interest Disclosure Coordinator for ESV is:

Ms Michelle McCorkell
General Counsel
Energy Safe Victoria
Level 5, 4 Riverside Quay
SOUTHBANK VIC 3006
Telephone: (03) 9203 9702
Email: Michelle.McCorkell@energysafe.vic.gov.au

As is the case for all public interest disclosures about our employees, if you wish to make a disclosure about our Public Interest Disclosures Coordinator you must make your disclosure directly to IBAC.

Alternatives to making a ‘public interest disclosure’

This Procedure is designed to complement the usual methods of submitting complaints to us.

Members of the public are encouraged to use our feedback process to communicate general complaints or concerns about the services provided by us or our employees. More information is available on our website www.esv.vic.gov.au.

Employees are encouraged to raise matters with their Team Leader, Senior Manager and/or General Manager at any time.

Anyone can make a complaint to the Victorian Ombudsman if the complaint has not been resolved by us.

The Ombudsman investigates complaints about administrative actions taken by Victorian government agencies, including us. More information is available on the Ombudsman website www.ombudsman.vic.gov.au/Complaints.

It should be noted, taking differing courses of action may not provide the same protected disclosure protections.

Who we are

We are Victoria’s safety regulator for electricity, gas and pipelines.

Our role is to ensure that Victorian gas and electricity industries are safe and meet community expectations. We are also responsible for licensing and registering electricians, and educating the community about energy safety.

**Note: The information in this document is intended for general use only. We make reasonable efforts to ensure the information in this document is accurate, complete and up to date, however do not accept liability for any loss or damage which may be incurred by any person relying on this document.*

Review of this procedure

This Procedure is reviewed periodically by General Counsel to ensure its continued appropriateness and ensure it meets the objectives of the Act and accords with IBAC’s guidelines.

This document was last reviewed July 2022. The next review date is July 2025.