

# Making and Handling Public Interest Disclosures

## Procedure

### Scope

The purpose of the *Public Interest Disclosures Act 2012* (the Act) is to encourage and facilitate reporting and disclosure of improper conduct and detrimental action by public officers and public bodies. The Act provides certain protections for people who make a public interest disclosure, or who may suffer detrimental action in reprisal for making a disclosure. An essential component of this protection is that information connected with a disclosure remains strictly confidential.

Energy Safe Victoria (ESV) is **not** a body that may receive public interest disclosures. Therefore if you wish to make a disclosure about ESV, or one of its employees, you should make that disclosure directly to the Independent Broad-based Anti-corruption Commission (IBAC) ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

ESV does not tolerate the taking of reprisals against those who come forward to disclose any improper conduct. ESV will take all reasonable steps to protect those who make disclosures, or are connected with a disclosure, from any detrimental action in reprisal.

This procedure has been prepared in accordance with the Act and the guidelines of IBAC.

### Purpose

The purpose of this procedure is to describe how:

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

### Alternatives to making a ‘public interest disclosure’

This procedure is designed to complement the usual methods of submitting complaints to ESV.

Members of the public are encouraged to use ESV’s feedback process to communicate complaints or concerns about the services provided by ESV or its employees. More information is available on ESV’s website ([www.esv.vic.gov.au](http://www.esv.vic.gov.au)).

Employees are encouraged to raise matters with their Team Leader, Line 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 ESV. The Ombudsman investigates complaints about administrative actions taken by Victorian government agencies, including ESV. More information is available on the Ombudsman website (<https://www.ombudsman.vic.gov.au/Complaints>).

## Who can make a public interest disclosure?

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

You can make a public interest disclosure if you are member of the public or an employee of ESV.

A company or business **cannot** make a public interest 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.

The conduct you are disclosing must be in the performance of a person or body’s function as a public officer or public body. ESV is a public body and its employees are public officers.

### Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action. The definitions of ‘improper conduct’ and ‘detrimental action’ are explained in the table below.

Improper conduct is:	Detrimental action is:
<ul style="list-style-type: none"> <li>- Corrupt conduct and/or</li> <li>- any of the following conduct by a public officer or body in their capacity as a public officer or body                             <ul style="list-style-type: none"> <li>o a criminal offence</li> <li>o serious professional misconduct</li> <li>o dishonest performance of public functions</li> <li>o an intentional or reckless breach of public trust</li> <li>o an intentional or reckless misuse of information or material acquired in the course of public functions</li> <li>o a substantial mismanagement of public resources</li> <li>o a substantial risk to the health and safety of one or more persons</li> <li>o a substantial risk to the environment, and/or</li> </ul> </li> <li>- conduct by a third party that adversely affects the honest performance of a public officer or public body or is intended to adversely affect effective performance of a public officer or public body while obtaining advantage for the third party and/or</li> <li>- conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above</li> </ul>	<p>Action taken against a person who has made a disclosure which:</p> <ul style="list-style-type: none"> <li>• causes injury, loss or damage</li> <li>• intimidation or harassment or</li> <li>• discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business (including disciplinary action).</li> </ul> <p><b>Detrimental action is not:</b></p> <ul style="list-style-type: none"> <li>• legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.</li> </ul>

## Examples of improper conduct and detrimental action

Improper Conduct	Detrimental action
<ul style="list-style-type: none"> <li>• 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.</li> <li>• A public officer sells confidential information.</li> <li>• A public office favours unmeritorious applications for jobs by friends and relatives.</li> <li>• A third party attempts to bribe a public officer</li> </ul>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> </ul>

### What is 'reasonable grounds'?

'Reasonable grounds' is your belief that improper conduct or detrimental action has occurred, is occurring, or will occur and does not have to be based on actual proof. It is enough if you *believe* (as opposed to *know*) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have 'reasonable grounds' for your belief.

Mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be considered as reasonable grounds or protected by the Act. 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.

### 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 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 ESV 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.

## How do I make a public interest disclosure?

### Making a disclosure about ESV and/or its employees

If you wish to make a public interest disclosure about ESV or any of its employees you must make your disclosure directly to IBAC.

IBAC provides a secure online form to make a complaint or provide information about public sector corruption. The link to the IBAC website is here <https://www.ibac.vic.gov.au/reporting-corruption/report>.

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

## What will happen after I make a disclosure?

Disclosures made to IBAC will be handled in accordance with 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 ESV (as a complaint to be dealt with according to ESV's standard complaints handling processes).

## Public Interest Disclosure Coordinator

ESV's 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 its Annual Reports.

The Public Interest Disclosure Coordinator for ESV is:

Ms Marnie Williams  
Director of Energy Safety  
Level 5, 4 Riverside Quay  
SOUTHBANK VIC 3006

**Phone:** (03) 9203 9700

**Email:** [Marnie.Williams@energysafe.vic.gov.au](mailto:Marnie.Williams@energysafe.vic.gov.au)

If you wish to make a disclosure about the Director of Energy Safety you must make your disclosure directly to IBAC.

## ESV's internal welfare arrangements

ESV supports 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 taken seriously.

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

ESV will:

- ensure this procedure is publicly accessible on its website
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including to take 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 ESV as a whole handles the welfare of persons connected with public interest disclosure matters consistently and appropriately in accordance with its obligations under the Act, the Regulations, the IBAC's Guidelines and this procedure.

## Training for all employees

ESV will:

- ensure that employees have access to this procedure
- incorporate into its induction program training about ESV's general obligations under the Act and the rights and obligations of its employees
- periodically provide refresher courses for existing employees about their rights and obligations under the Act
- provide additional training assistance to:
  - any ESV employee with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Coordinator and people involved in welfare management
  - any employee with functions and duties under the *Freedom of Information Act 1982* 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.

## References

Title
<b>External references</b>
<i>Freedom of Information Act 1982</i>
<i>Public Interest Disclosures Act 2012</i>
Protected Disclosure Regulations 2013
<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
<i>Guidelines for handling public interest disclosures</i> , IBAC, January 2020
<i>Guidelines for public interest disclosure welfare management</i> , IBAC, January 2020
<b>ESV references</b>
Fraud and Corruption Policy and Control Plan
Complaints Handling Policy
Complaints Handling Procedure

## Document control

The owner of this version-controlled document is the Executive Management Board (EMB). Any update or revision must be authorised prior to its release with the details recorded in the table below.

version	revision information	owner	reviewer	authorised by	date issued
1.0	New procedure	RRPP	-	ESV Legal	February 2018
2.1	Internal update and review	RRPP	GM RRPP	Director	October 2019
2.2	Update for new Director of Energy Safety	RRPP	GM RRPP	Director	April 2020