

## PROTECTED DISCLOSURE POLICY

### 1. PURPOSE

- 1.1 To outline ESSSuper's commitment to comply with the *Protected Disclosure Act 2012 (Vic)* (the Act) and the Guidelines (the Guidelines) issued by the Independent Broad-Based Anti-Corruption Commission (IBAC) and to provide guidance to staff in respect of the application of the Act and the Guidelines at ESSSuper.

### 2. SCOPE

- 2.1 This policy outlines ESSSuper's approach to the application of the Act, including its obligation to establish procedures regarding Protected Disclosures. The Australian Standard 8004-2003 Whistleblower Protection Programs for entities has also been considered in developing this policy.

### 3. POLICY TYPE

- 3.1 This a corporate policy as required by the Protected Disclosure Act and applies to all staff.

### 4. DEFINITION

- 4.1 Detrimental Action includes:

- action causing injury, loss or damage;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment concerning a person's employment, career, profession, trade or business, including the taking of disciplinary action.

- 4.2 Corrupt Conduct means conduct:

- of any person that adversely affects the honest performance by a Public Officer or Public Body of their functions as a Public Officer or Public Body; or
- of a Public Officer or Public Body that constitutes or involves the dishonest performance of their functions as a Public Officer or Public Body; or
- of a Public Officer or Public Body that constitutes or involves knowingly or recklessly breaching public trust; or
- of a Public Officer or a Public Body that involves the misuse of information or material acquired in the course of the performance of their functions

as a Public Officer or Public Body, whether or not for the benefit of the Public Officer or Public Body or any other person; or

- that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d) above.

4.3 Disclosure means the disclosure of information by a person in relation to improper conduct by, or detrimental action of, a person, Public Officer or Public Body which has occurred, is occurring or may occur in contravention of the Act. The person making the disclosure must believe on reasonable grounds that the information they are disclosing shows or tends to show, that the contravention has occurred, is occurring or may occur.

4.4 Improper Conduct means conduct that is:

- corrupt; or
- specified conduct that is not corrupt conduct but if proved would constitute a criminal offence or reasonable grounds for dismissal or dispensing with or otherwise terminating the services of the officer who engaged in that conduct.

4.5 Protected Disclosure means disclosure which satisfies the following criteria:

- a natural person (that is, a person rather than a corporation) must make the disclosure;
- the disclosure must relate to the conduct of a Public Body or Public Officer acting in their official capacity;
- the alleged conduct must be either Improper Conduct or Detrimental Action against a person in reprisal for making a protected disclosure; and
- the person making the disclosure must have reasonable grounds for believing the alleged conduct has occurred, is occurring or may occur.

4.6 Specified Conduct is conduct:

- of any person that adversely affects the honest performance by a Public Officer or Public Body of his or her or its functions as a Public Officer or Public Body; or
- of a Public Officer or Public Body that constitutes or involves the dishonest performance of his or her or its functions as a Public Officer or Public Body; or
- of a Public Officer or Public Body that constitutes or involves knowingly or recklessly breaching public trust; or
- of a Public Officer or Public Body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a Public Officer or Public Body, whether or not for the benefit of the Public Officer or Public Body or any other person; or
- that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d) above ; or

- of a Public Officer or Public Body in his or her capacity as a Public Officer or its capacity as a Public Body that involves substantial:
  - mismanagement of public resources; or
  - risk to public health or safety; or
  - risk to the environment.

4.7 Protected Disclosure Legislation means the Act, any regulations to the Act and the Guidelines.

4.8 Public Body means:

- a public body within the meaning of the Section 6 of the IBAC Act 2011(Vic) including but not limited to :
  - government departments and agencies;
  - statutory authorities;
  - officers of municipal councils;
  - government-appointed boards and committees;
  - government-owned companies;
  - universities;
  - TAFE colleges;
  - public hospitals;
  - State-funded residential care services; or
- the IBAC.

4.9 Public Officer means:

- a Public Officer within the meaning of the Section 6 of the IBAC Act 2011(Vic) including but not limited to:
  - a person employed in any capacity or holding any office in the public sector within the meaning of Section 4(1) of the Public Administration Act 2004 e.g. public sector employee, the holder of a statutory office and a director of a public entity;
  - an ongoing employee or temporary employee in the teaching service;
  - a member of police personnel; and
  - a judge, a magistrate, a coroner or a member of VCAT.

4.10 Reasonable Suspicion (section 57A of the IBAC Act) means:

Something less than belief, but requires more than idle speculation. It must be based on facts and circumstances that would be sufficient to make a reasonable person suspect corrupt conduct had occurred or was occurring.

## 5. POLICY

### ESSSuper's Commitment

#### 5.1 Our Commitment to the Protected Disclosure legislation

- Since its inception, ESSSuper has taken very seriously its responsibilities in respect of the proper conduct of its entire staff. We will investigate any protected disclosure claims in a way that protects the confidentiality and privacy of the parties involved.
- ESSSuper fully supports the Protected Disclosure Legislation and will ensure that its objectives are fully observed, not the least because those objectives reinforce our long standing commitment to integrity, honesty, fair practice and openness.

#### 5.2 ESSSuper encourages and facilitates the following:

- disclosure of improper conduct committed by Public Officers, Public Bodies and other persons; and
- protection of persons who make a disclosure about improper conduct from detrimental action taken as reprisal for their complaint irrespective of whether this is the person making the disclosure, a witness or person who is subject to an investigation.

### Detailed Procedures

5.3 A detailed Protected Disclosure Procedure has been established to outline and explain in detail the facilitation of persons making disclosures, the handling of disclosures as well as the reporting to internal and external parties.

5.4 Training is provided to all staff to ensure that they are aware of their rights and, obligations and consequences of a breach under the legislation.

### Receipt, Assessment & Disclosure

5.5 ESSSuper has established a secure and confidential process for receipt, assessment and investigation of disclosures, as well as storage of disclosure information.

5.6 Phone numbers and email addresses are provided for staff to report disclosures confidentially.

## Ensuring Confidentiality

- 5.7 ESSSuper will take all reasonable steps to protect the identity of the person making the disclosure as well as the confidentiality of the information they disclose.
- 5.8 The organisation also recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. To this end, all reasonable steps will be taken to ensure the confidentiality of the person who is the subject of the disclosure during the assessment process.
- 5.9 ESSSuper will report protected disclosures to IBAC and will advise the person who has made the disclosure of his rights in the event that the disclosure is assessed by ESSSuper to be not a protected disclosure.

## Roles and Responsibilities

5.10 The following appointments support this Policy:

- The Manager, Risk and Audit is the Protected Disclosure Co-ordinator. In his/her absence, this role is to be performed by the General Manager, Governance and Product.
- These roles are responsible for the following:
  - to be the contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct;
  - to receive all disclosure; and
  - to be responsible for the management of such disclosure.
- Contact details of the Protected Disclosure Coordinator  
Manager, Risk and Audit  
Level 16, 140 William Street  
MELBOURNE VIC 3000  
Telephone: (03) 8684 4546  
Email: [David.Mah@esssuper.com.au](mailto:David.Mah@esssuper.com.au)
- In the Manager, Risk and Audit's absence, disclosures may be made to:  
General Manager, Governance & Product  
Level 16, 140 William Street  
MELBOURNE VIC 3000  
Telephone: (03) 8684 4604  
Email: [Alison.Anthony@esssuper.com.au](mailto:Alison.Anthony@esssuper.com.au)

## Alternative contact persons

- A disclosure about improper conduct or detrimental action by ESSSuper or its officers, employees, members or agents may also be made directly to IBAC:

IBAC  
GPO Box 24234  
Melbourne Victoria 3000

Internet: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Tel: 1300 735 135

- 5.11 The General Manager, People and Culture is the Welfare Officer (unless otherwise determined). In his absence, this role is to be performed by a person in the People and Culture team acting in the position of General Manager, People and Culture.
- 5.12 The role of the Welfare Officer is to look after the general welfare of the person making the protected disclosure as it pertains to the making of the disclosure.
- 5.13 The Head of Legal is to be the Investigation Officer (unless otherwise determined). In his absence, this role is to be performed by the Senior Legal Officer.
- 5.14 The role of the Investigation Officer is to investigate and make recommendations regarding the matter disclosed.
- 5.15 For further detail regarding the responsibilities of the above roles, staff are referred to the ESSSuper Protected Disclosure Act 2012 Procedures.

### Reporting Obligations

- 5.16 A disclosure that is determined as a Protected Disclosure will be reported to IBAC for assessment no later than 28 days after the disclosure is made.
- 5.17 Where a disclosure is made, ESSSuper will advise the person who made the disclosure that IBAC has been advised.
- 5.18 Where ESSSuper has determined that a disclosure is not a Protected Disclosure, it must advise the person in writing no later than 28 days after the disclosure is made to ESSSuper.
- 5.19 IBAC should be contacted before the release of any document originating from IBAC or relating to a Protected Disclosure if required under Freedom of Information.
- 5.20 If detrimental action is of a serious nature and likely to amount to a criminal offence, consideration will be given to reporting the matter to the Police or IBAC. In these circumstances, the Protected Disclosure Coordinator will immediately inform the CEO.

5.21 The CEO will notify IBAC of any matter that ESSSuper suspect on reasonable grounds involve corrupt conduct occurring or having occurred as soon as practicable. Prior to reporting to IBAC, Management must ensure that a reasonable suspicion is formed (Section 57A of the IBAC Act).

### Penalties

5.22 All parties concerned should be aware of the penalties in place for criminal offences committed under the Act.

## 6. HUMAN RIGHTS IMPLICATIONS

6.1 In developing this policy Management has considered the Human Rights and Responsibilities Act 2006 (the Charter) and determined that there is no identified incompatibility with the Charter.

## 7. IMPLEMENTATION

7.1 This Policy is applicable from 23 August 2018.

## 8. REVIEW

8.1 This Policy is to be reviewed on a biennial basis. The next Review is due in August 2020.

## 9. APPROVAL PROCESS

9.1 The policy is approved by the Governance, Risk & Compliance Committee.

9.2 Prior to approval by the Governance, Risk and Committee, this policy is approved by the Executive Team.

## 10. OWNER

10.1 The owner of this Policy is the General Manager, Governance & Product.

## 11. RELATED POLICIES AND PROCEDURES

- Fraud, Corruption and Other Losses Policy and Plan.
- Standard Anti-Money Laundering and Counter- Terrorism Financing Program.
- Fit and Proper Policy.
- Protected Disclosure Procedure.