



Public Interest Disclosures Policy

Policy Category: Corporate

ESSSuper

EMERGENCY SERVICES SUPERANNUATION BOARD
PUBLIC INTEREST DISCLOSURES POLICY

POLICY DETAILS

Policy Name	Public interest Disclosures Policy
Responsible Person	Manager Risk & Compliance
Accountable Person	GM Trustee Services
Effective Date	1 January 2020
Review Date	1 January 2022
Approved By	Executive Team

VERSION HISTORY

Version	Date	Author(s)	Nature of Amendment (if applicable)	Reviewed by:
1.	4 April 2019	Waruni Hetti Arachchige David Mah	Incorporate a finding from the IBAC State Government Integrity Framework review performed in 2018 in relation to the acceptance and determination of a protected disclosure.	Alison Anthony
2.	23 August 2019	Waruni Hetti Arachchige Allan Ogilvie	Change the owner of the Policy and Protected Disclosure Coordinator	Ian Lancaster
3.	30 Nov 2019	Waruni Hetti Arachchige Allan Ogilvie	Incorporate Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 (Vic)	Ian Lancaster

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1. PURPOSE

1.1 The purpose of the Public Interest Disclosures Policy (the Policy) is to outline ESSSuper's commitment to comply with:

- the Public Interest Disclosures Act 2012 as amended by the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 Vic (the Act); and
- the Guidelines (the Guidelines) issued by the Independent Broad-Based Anti-Corruption Commission (IBAC).

In addition, the Policy is 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 Public Interest Disclosures. The Australian Standard Whistleblower Protection Programs for Entities (AS 8004-2003) has also been aligned in developing this Policy.

3. POLICY TYPE

3.1. This is a Corporate Policy as required by the Policy Management Framework and applies to all staff.

4. DEFINITION

4.1. Policy Terms and definitions are provided at Appendix A.

5. POLICY

ESSSuper's Commitment

5.1. Our Commitment to the Public Interest Disclosure Legislation includes:

- Since its inception, ESSSuper has taken seriously its responsibilities in respect of the proper conduct of its staff. We will investigate any Public Interest Disclosure complaints advised by IBAC in a way that protects the confidentiality and privacy of the parties involved.
- ESSSuper fully supports the Public Interest 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:

- Disclosure of Improper Conduct committed by Public Officers, Public Bodies and other persons.
- 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 Public Interest Disclosure Procedure was developed 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, obligations and consequences of a breach under the Public Interest Disclosures Legislation.

Preliminary review, Assessment & Disclosure

5.5. ESSSuper has established a secure and confidential process for:

- the preliminary review of a potential Public Interest Disclosure complaint to assess if the matter may be a Public Interest Disclosure and should be referred to IBAC;
- assessment and investigation of disclosures, where advised by IBAC; and
- storage of disclosure information.

5.6. Phone numbers and email addresses contained in this document (and which is placed on the website) 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. ESSSuper 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 Public Interest Disclosures to IBAC. In the event that, based on a preliminary review, the disclosure is assessed by ESSSuper to not be a Public Interest disclosure, ESSSuper will advise the person who has made the disclosure of his rights.

Roles and Responsibilities

5.10. The following appointments support this Policy:

- The Manager, Risk and Compliance is the Public Interest Disclosure Coordinator. In their absence, this role is to be performed by the General Manager, Trustee Services.
- The Public Interest Disclosure Coordinator is:
 - 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 perform a preliminary review of the Public Interest Disclosure complaint, to assess if it may be a Public Interest Disclosure and should be referred to IBAC; and
- to be responsible for the management of such disclosure.

- Contact details of the Public Interest Disclosure Coordinator
 - Manager, Risk and Compliance
 - Level 16, 140 William Street
 - MELBOURNE VIC 3000
 - Telephone: (03) 8684 4547
 - Email: Allan.Ogilvie@esssuper.com.au

- In the Manager, Risk and Compliance's absence, disclosures may be made to:
 - General Manager, Trustee Services
 - Level 16, 140 William Street
 - MELBOURNE VIC 3000
 - Telephone: (03) 8684 4604
 - Email: Ian.Lancaster@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
 - Tel: 1300 735 135

- 5.11. The General Manager, Corporate Services is the Welfare Officer (unless otherwise determined). In his absence, this role is to be performed by a person acting in the position of General Manager, Corporate Services.
- 5.12. The role of the Welfare Officer is to look after the general welfare of the person making the Public Interest 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 Legal Counsel.
- 5.14. The role of the Investigation Officer is to investigate and make recommendations regarding the matter disclosed.
- 5.15. IBAC's role is to review the Potential Public Interest Disclosures and determine if it is a Public Interest Disclosure.
- 5.16. For further detail regarding the responsibilities of the above roles, staff are referred to the ESSSuper Public Interest Disclosures Act 2012 Procedures.

Reporting Obligations

- 5.17. Once a preliminary review is conducted by ESSSuper, and assessed as potentially a Public Interest Disclosure, it will be referred to IBAC for determination no later than 28 days after the Disclosure is made.
- 5.18. Where a Disclosure is made, ESSSuper will advise the person who made the disclosure that IBAC has been advised.
- 5.19. Where ESSSuper or IBAC has determined that a Public Interest Disclosure complaint is not a Public Interest Disclosure, it must advise the person in writing no later than 28 days after the Disclosure is made to ESSSuper.
- 5.20. IBAC should be contacted before the release of any document originating from IBAC or relating to a Public Interest Disclosure if required under Freedom of Information.
- 5.21. 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 Public Interest Disclosure Coordinator will immediately inform the CEO.
- 5.22. The CEO will notify IBAC of any matter that ESSSuper suspect on reasonable grounds involves 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 57 of the IBAC Act).

Penalties

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. REVIEW

7.1. This Policy is effective from 1 January 2020 and must be reviewed by January 2022.

7.2. This Policy is to be reviewed by every two years.

8. ACCOUNTABLE OFFICER

8.1. The owner of this Policy is the General Manager, Trustee Services.

9. 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.
- Complaints Management Policy.
- Public Interest Disclosures Procedure.

Appendix A: Terms and Definitions

The following terms relating to the Policy are defined below:

'Public Body' means:

- a public body within the meaning of Section 6 of the Independent Broad-based Anti-corruption Commission (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
- the Victorian Inspectorate

'Public Officer' means:

- a Public Officer within the meaning of the Section 6 of the IBAC Act 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
- an IBAC Officer;
- a Victorian Inspectorate Officer;
- a Public Interest Monitor.

'Detrimental Action' includes:

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

‘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
- of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - a financial benefit or real or personal property; or
 - any other direct or indirect monetary or proprietary gain — that they would not have otherwise obtained; or
- that could constitute a conspiracy or an attempt to engage in any conduct referred to in the bullet points in this paragraph, being conduct that would constitute a relevant offence.

‘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.

‘Improper Conduct’ means conduct that is:

- Corrupt Conduct; or conduct of a Public Officer or Public Body engaged in by the Public Officer or Public Body in their capacity as a Public Officer or a Public Body that constitutes:
 - a criminal offence; or
 - serious professional misconduct; or
 - dishonest performance of public functions; or
 - an intentional or reckless breach of public trust; or
 - an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the Public Officer or Public Body; or
 - a substantial mismanagement of public resources; or
 - a substantial risk to the health or safety of one or more persons; or
 - a substantial risk to the environment; or
- 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

- is intended to adversely affect the effective performance or exercise by a Public Officer or Public Body of the functions or powers of the Public Officer or Public Body and results in the person, or an associate of the person, obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - an appointment to a statutory office or as a member of the board of any Public Body under any Act or subordinate instrument; or
 - a financial benefit or real or personal property; or
 - any other direct or indirect monetary or proprietary gain, that the person or associate would not have otherwise obtained; or
 - conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in the bullet points above.
- Less serious or trivial conduct is excluded from the definition of Improper Conduct.

‘Public Interest Disclosure’ is a disclosure by a natural person of:

‘Public Interest Disclosure’ is a disclosure by a natural person of:

- information that shows or tends to show:
 - a person, Public Officer or Public Body has engaged, is engaging or proposes to engage in Improper Conduct; or
 - a Public Officer or Public Body has taken, is taking or proposed to take Detrimental Action against a person in reprisal for making a Public Interest Disclosure; or
- information that the person reasonably believes shows or tends to show:
 - a person, Public Officer or Public Body has engaged, is engaging or proposes to engage in Improper Conduct; or
 - a Public Officer or Public Body has taken, is taking or proposes to take detrimental action against a person in reprisal for making a Public interest disclosure.

Public Interest Disclosure does not include a disclosure regarding the conduct of, or actions taken by, the following;

- the Office of the Special Investigations Monitor;
- the Special Investigations Monitor;
- a court;
- an investigating panel;
- a member of an investigating panel.

ii.

‘Public Interest Disclosure Legislation’ means the Act, any regulations to the Act and the Guidelines.

‘Reasonable Suspicion’ (section 57 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.