

Protected Disclosures Operational Procedures

1. Introduction

- 1.1 State Trustees is committed to the aims and objectives of the *Protected Disclosures Act 2012 (Vic)*. The Act applies to State Trustees as a public body, and therefore any person may make a protected disclosure regarding improper conduct by State Trustees' directors, employees, contractors or service providers.
- 1.2 However, protected disclosures cannot be made to State Trustees, its employees or any member of its board. Protected disclosures regarding State Trustees may only be made to the Victorian Independent Broad-Based Anti-Corruption Commission (IBAC).
- 1.3 Additional information on making a protected disclosure can be found in the IBAC Guidelines.

2. What is a protected disclosure

- 2.1 A protected disclosure is a confidential report of improper conduct by a public officer within State Trustees. For the purposes of the Act, State Trustees directors, employees, contractors and service providers are public officers.
- 2.2 Improper conduct means:
- Conduct by any person that adversely affects the honest performance of the functions of a public officer.
 - Conduct by a public officer that constitutes or involves the dishonest performance of their functions.
 - Conduct by a public officer that constitutes or involves misconduct in public office.
 - Conduct by a public officer that knowingly or recklessly breaches public trust.
 - Conduct by a public officer that involves the misuse of official information or materials, mismanagement of public resources, a substantial risk to public health or safety, or a substantial risk to the environment.
 - Conduct in the course of the performance of the public officer's or public body's functions which, if proven, would constitute a criminal offence or provide reasonable grounds for the dismissal of the person engaged in that conduct.
 - Detrimental action taken against a person in response to the making of a protected disclosure.
 - A conspiracy or attempt to engage in any of these.
- 2.3 A disclosure will not be a protected disclosure if it is made to a body that cannot receive protected disclosures (for State Trustees' purposes, anyone other than IBAC), if the person making the disclosure requests that it not be a protected disclosure, or if the disclosure fails to meet all of the requirements of the Act.

3. How a protected disclosure may be made

3.1 Any person, including a State Trustees director, employee, client, contractor or service provider, may make a disclosure about improper conduct within State Trustees. If they wish for their disclosure to be protected then they must make it to IBAC.

IBAC Contact details

Phone: 1300 735 135

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Post: IBAC, GPO Box 24234, Melbourne, VIC, 3000

Web: www.ibac.vic.gov.au

3.2 A disclosure can be made:

- Verbally; in person or by telephone.
- In writing; by personal delivery, mail or email.

3.3 A disclosure may be made anonymously, although doing so may make it more difficult for IBAC to investigate it. A disclosure will not be protected if the person making the disclosure requests in writing that it not be a protected disclosure.

3.4 When a disclosure has been made regarding State Trustees, IBAC is required to make an assessment of the disclosure and determine if it is a protected disclosure. IBAC is required to advise both State Trustees and the person making the disclosure of the outcome of this assessment.

3.5 If IBAC determines that a disclosure is not a protected disclosure but is of the view that the matter may be able to be dealt with by another entity, IBAC may advise the person who made the disclosure to contact that entity.

4. If State Trustees receives information that may be a protected disclosure

4.1 State Trustees is committed to identifying and dealing with improper conduct within the organisation.

4.2 If State Trustees is contacted by people wishing to make a protected disclosure of improper conduct, then they should be advised that State Trustees is not an entity to which a protected disclosure can be made, and that the person must make the disclosure to IBAC if they would like it to receive the protection of the Act.

4.3 However, State Trustees can and will investigate all allegations of improper conduct that are not frivolous or vexatious in accordance with its own internal procedures and policies. In the course of carrying out such an investigation, State Trustees will protect the confidentiality of the person making the disclosure (unless the person requests otherwise, or consents to their identity

being disclosed), and give them the support or assistance that is appropriate in the circumstances. Complainants should also be advised of this.

- 4.4 Not every potential protected disclosure will be initially identified as such. Complaints about employee misconduct or the misuse of corporate funds might meet the threshold to be considered a protected disclosure if disclosed to IBAC. People likely to receive such complaints should be prepared to raise them with the Protected Disclosures Coordinator.
- 4.5 If the CEO of State Trustees becomes aware of actual or suspected corrupt conduct, then he or she is under a legal obligation under Section 57 of the *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic) to report it to IBAC.
- 4.6 Additionally, a disclosure of non-compliance with the *Corporations Act 2001* (Cth) made to a senior manager, secretary or director of STL will attract legal protections under Part 9.4AAA of that Act.

5. Investigations of protected disclosures

- 5.1 There may be an occasion where IBAC investigates or directs another body to investigate a protected disclosure; this may require information to be obtained from State Trustees. Confidentiality in any investigation is paramount to protect the identity of a person making a protected disclosure and the identity of the person about whom the protected disclosure is made.
- 5.2 The body that conducts the investigation will do so under their own powers. If, for example, the Victorian Ombudsman was to conduct an investigation, it would be done under the powers contained within the *Ombudsman Act 1973* (Vic). The investigating body will contact State Trustees when an investigation is required.
- 5.3 Additionally, the Victorian Ombudsman has the power to conduct investigations on its own motion.
- 5.4 State Trustees, its board and its employees will co-operate with any investigation. If multiple agencies are involved, legal advice may be needed to assist STL in meeting its obligations to each.
- 5.5 The Protected Disclosures Coordinator, or whomever is investigating the disclosure and/or liaising with IBAC on behalf of STL, shall have the authority to do anything necessary to fulfil the aims and objectives of the Act.

6. Confidentiality

- 6.1 State Trustees directors, employees, contractors or service providers who receive information due to the handling or investigation of a disclosure must not disclose that information except as required by law. This includes the content of any disclosures and the identity of a person making a disclosure.

6.2 A person making a disclosure is not bound by these obligations, but they must not disclose that their disclosure has been notified to IBAC for assessment, or that it has been assessed as a protected disclosure, or that their disclosure is to be investigated by IBAC or referred to another investigating entity.

7. Preventing detrimental action

7.1 People who make a protected disclosure, regardless of whether or not they are a director, employee, contractor, service provider or client of State Trustees, are protected from detrimental action and may not be sued in defamation regarding the disclosure.

7.2 Detrimental action is defined as:

- Action causing injury, loss or damage.
- Intimidation or harassment.
- Discrimination, disadvantage or adverse treatment in relation to a person's employment or career, including the taking of disciplinary action.

7.3 Detrimental action may include:

- The demotion, transfer, or isolation in the workplace of an employee due to the making of a disclosure.
- The direct or indirect abuse or harassment of the person making a disclosure or his or her family or friends.
- Discrimination against the person making the disclosure or his or her family and friends in subsequent applications for jobs, permits or tenders.

7.4 Detrimental action does not include legitimate management action, for example, disciplining an employee for misconduct or placing them on performance management due to their work performance.

7.5 People who make protected disclosures about themselves are still liable for their own misconduct.

7.6 State Trustees should proactively manage the risk of detrimental action and document the measures it has taken.

8. Managing the welfare of the person making the protected disclosure

8.1 State Trustees management is responsible for ensuring that persons making a protected disclosure are protected from direct and indirect detrimental action, and maintaining a workplace culture that is supportive of protected disclosures being made.

8.2 State Trustees may appoint a Welfare Manager to monitor the needs of the person making a protected disclosure, regardless of whether they are internal or external to the organisation, and to provide advice and support. The Welfare Manager may also be required to manage the needs of friends, family or associates of the discloser, as well as witnesses and other people involved in an investigation as appropriate. A Welfare Manager will only be required where a protected disclosure proceeds to investigation.

8.3 The Welfare Manager should be a person that:

- In the event of a disclosure from a person within State Trustees, is close enough in the organisation to that person to be able to maintain supervision of their welfare needs.
- Has sufficient authority within State Trustees to protect them and report any instances of detrimental action.
- Is not the subject of the disclosure or otherwise involved in the investigation.
- Is familiar with the protected disclosures regime and is able to advise the discloser on what is likely to happen.

8.4 The role of the State Trustees welfare manager is to:

- Examine the immediate welfare and protection needs of a person making a protected disclosure and seek to foster a supportive work environment.
- Advise the person making the protected disclosure of the legislative and administrative protections available to him or her.
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making the disclosure.
- Keep a contemporaneous record of all aspects of the case management of the person making a protected disclosure, including all contact and follow-up action.
- Endeavour to ensure that the expectations of the person making the protected disclosure are realistic.

8.5 A State Trustees Welfare Manager must not divulge any details relating to the disclosed matter to any person other than the Protected Disclosures Coordinator, the investigator, or the Chief Executive Officer. All meetings with the welfare manager and the person making the protected disclosure must be conducted discreetly to protect the confidentiality of the person making a protected disclosure.

8.6 STL may choose to engage an external welfare management organisation such as Courtpsych.

9. Collating and Publishing Statistics

9.1 State Trustees is required to include in its Annual Report information on these procedures.

10. Offences

10.1 It is a Criminal Offence to:

- Take detrimental action against a person who makes a protected disclosure.
- Breach the confidentiality of a person who makes a protected disclosure.
- Knowingly provide false information with the intention that it be acted on as a protected disclosure.

10.2 A State Trustees director, employee, contractor or service provider who takes detrimental action against a person in reprisal for a protected

disclosure may be found liable in damages to that person. State Trustees may also be found to be vicariously liable.

10.3 It is an offence for the person making the protected disclosure to:

- Make a false disclosure.
- Provide false further information.
- Falsely claim that a disclosure is protected.
- Disclose that a matter has been notified to IBAC, has been determined to be a protected disclosure, is being investigated by IBAC or has been referred to another organisation.

11. Protected disclosures and freedom of Information

11.1 Section 78 of the Act excludes the application of the *Freedom of Information Act 1982* to any document that relates to a disclosure made under the Act. State Trustees should contact IBAC prior to allowing any document to be released which originates from IBAC or relates to a protected disclosure.

12. Protected Disclosures Coordinator

12.1 Any questions regarding protected disclosures may be directed to the Protected Disclosures Coordinator, being the Senior Compliance Consultant. The Protected Disclosures Coordinator is also responsible for maintaining this procedure.

| Date | Author | Version No. | Change Summary |
|----------------|---|--------------------|---|
| August 2013 | Protected Disclosure Policy Group | 1.0 | Initial procedures |
| September 2014 | Adam Wakeling, Compliance Consultant & Protected Disclosures Coordinator | 2.0 | Comprehensive revision |
| January 2015 | Adam Wakeling, Compliance Consultant & Protected Disclosures Coordinator | 2.1 | Amendments in response to IBAC report . |
| August 2016 | Adam Wakeling, Senior Compliance Consultant & Protected Disclosures Coordinator | 2.2 | Annual update with minor changes |
| September 2016 | Adam Wakeling, Senior Compliance Consultant & Protected Disclosures Coordinator | 2.3 | Update to add “misconduct in public office” to definition of corrupt conduct in line with 2016 amendment to Act. Other minor amendments. |
| December 2016 | Adam Wakeling, Senior Compliance Consultant & Protected Disclosures Coordinator | 2.4 | Updated to add the mandatory reporting requirement in s. 57 of the IBAC Act, which came into force on 1 December 2016 (see section 4.4 of the procedure). |
| September 2017 | Adam Wakeling, Senior Compliance Consultant & Protected Disclosures Coordinator | 2.5 | Annual update with minor changes |
| September 2018 | Adam Wakeling, Senior Compliance Consultant & Protected Disclosures Coordinator | 2.6 | Annual update with changes from attending IBAC workshop. |