

# WHISTLEBLOWER PROCEDURE

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## 1. PURPOSE

This procedure sets out the protections available to whistleblowers under the *Corporations Act 2001* (Cth) and the *Tax Administration Act 1953* (Cth) (the **Whistleblower Protection Scheme**). It also sets out procedures for the disclosure and investigation of wrongful or illegal behaviour, including fraud and corruption, whether by ActewAGL Joint Venture employees or non-employees.

All ActewAGL Joint Venture workers, operating within or for ActewAGL, including Evoenergy, must be aware of and commit to applying the principles and processes of this procedure. As defined in the Work Health and Safety Act 2011 (ACT), a worker is a person who carries out work in any capacity including an employee, contractor, employee of sub-contractors, labour hire worker, apprentice, student or volunteer.

In particular, the purpose of this policy is to set out:

- information about the types of disclosures that qualify for protection under the Whistleblower Protection Scheme;
- information about the protections available to whistleblowers, including protections under the Whistleblower Protection Scheme;
- information about to whom disclosures may be made, and how they may be made;
- information about how ActewAGL will support whistleblowers and protect them from detriment;
- information about how ActewAGL will investigate disclosures;
- information about how ActewAGL will ensure fair treatment of employees of who are mentioned in disclosures, or to whom such disclosures relate; and
- information about how this policy is to be made available to officers and employees of ActewAGL.

## 2. SCOPE

### 2.1 What disclosures are protected?

The following are the primary types of disclosures that 'qualify' for protection under the Whistleblower Protection Scheme:

- a. disclosures by an 'eligible whistleblower' to ASIC, APRA, the Commissioner of Taxation, a prescribed Commonwealth authority or a legal practitioner; or
- b. disclosures by an 'eligible whistleblower' to an 'eligible recipient' if the discloser has reasonable grounds to suspect that the disclosed information concerns:
  - i. misconduct or an improper state of affairs or circumstances in relation to ActewAGL or one of its related bodies corporate; or
  - ii. indicates that ActewAGL, a related body corporate or one of its or their officers or employees has engaged in conduct that constitutes an offence against the Corporations Act or other specified financial services legislation, an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more, or represents a danger to the public or the financial system. The misconduct or an improper state of affairs can be in respect of tax affairs.

## EXAMPLE

Disclosures that will be eligible for protection under the Whistleblower Protection Scheme include conduct that the whistleblower has reasonable grounds to suspect concerns:

- a breach of the ActewAGL Code of Conduct;
- fraud<sup>1</sup> or other criminal or disciplinary offences, providing false and misleading information, failing to provide information when there is an obligation to do so, bribery, and corruption or abuse of office. The benefit obtained may be tangible or intangible;
- interference with the honest, or efficient, or impartial performance of ActewAGL;
- a breach of trust or a misuse of information held by ActewAGL;
- an immediate threat to public health or safety;
- negligent or incompetent operations leading to substantial waste of funds;
- misconduct of an ActewAGL employee likely to warrant disciplinary action, or reveal unlawful behaviour by outsiders which causes damage to ActewAGL; and
- an unlawful reprisal against someone who has made a whistleblower disclosure.

## 2.2 Public interest disclosures

The Whistleblower Protection Scheme provides for 'public interest disclosures' to be made to journalists and members of Parliament, but only if the eligible whistleblower complies with the following strict requirements:

- a. the eligible whistleblower has made a qualifying disclosure to ASIC, APRA, or a prescribed Commonwealth authority;
- b. at least 90 days has passed since the qualifying disclosure was made;
- c. the eligible whistleblower does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the qualifying disclosure related;
- d. the eligible whistleblower has reasonable grounds to believe that making a public interest disclosure would be in the public interest;
- e. after 90 days have passed, the eligible whistleblower must give the body to which the qualifying disclosure was originally made, a written notification that:
  - i. includes sufficient information to identify the qualifying disclosure; and
  - ii. states that the eligible whistleblower intends to make a public interest disclosure; and
  - iii. the extent of the information disclosed in the public interest disclosure is no greater than to inform the journalist or member of Parliament of the misconduct or improper state of affairs or circumstances, or other conduct falling within the scope of the Whistleblower Protection Scheme.

## 2.3 Emergency disclosures

'Emergency disclosures' to journalists and members of Parliament are also protected under the Whistleblower Protection Scheme, but only if the discloser complies with the following strict requirements:

- a. the discloser must have first made a qualifying disclosure to ASIC, APRA or a prescribed Commonwealth authority;
- b. the discloser has reasonable grounds to believe that information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and
- c. the discloser gave notice to the body to which the qualifying disclosure was made that states:

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<sup>1</sup> **Internal fraud** is committed by an employee against ActewAGL. **External fraud** is committed by someone from outside the organisation.

Fraud can also be committed jointly between an ActewAGL employee and someone from outside the organisation. For example, employee assistance could take the form of creating or accepting a false identity, unlawfully providing the payment of monies or provision of benefits, or certifying that goods or services have been delivered when they have not.

- i. that they intend to make an emergency disclosure; and
- ii. includes sufficient information to identify the qualifying disclosure; and
- d. the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the journalist or member of Parliament of the substantial and imminent danger.

## 2.4 Who is an 'eligible whistleblower?'

The following persons are capable of being 'eligible whistleblowers':

- a. any officer of ActewAGL;
- b. any employee of ActewAGL; and
- c. any person who supplied goods or services to ActewAGL or its employees.

The concept of 'eligible whistleblowers' extends to any persons who previously held any of the above positions or functions. It also extends to family members of these persons.

## 2.5 Who is an 'eligible recipient' within ActewAGL?

An 'eligible recipient' will be:

- a. any of ActewAGL's Executives or Group Managers; or
- b. ActewAGL's auditors or actuaries; or
- c. any person authorised by ActewAGL to receive qualifying disclosures.

## 2.6 Disclosures that are not protected

### Personal work related grievances

A disclosure does not qualify for protection under the Whistleblower Protection Scheme to the extent that the information disclosed concerns a 'personal work-related grievance' of the eligible whistleblower.

A disclosure is a 'personal work-related grievance' if:

- d. the information concerns a grievance about any matter in relation to the eligible whistleblower's employment, or former employment, having (or tending to have) implications for the eligible whistleblower personally; and
- e. the information:
  - i. does not have significant implications for ActewAGL, or another regulated entity, that do not relate to the discloser; and
  - ii. does not concern conduct, or alleged conduct, referred to in paragraph 2.1 of this policy.

Disclosures of personal work-related grievances should be raised with the General Manager People and Legal or the Group Manager People Solutions and Support.

### Vexatious disclosures

The protections under the Whistleblower Protection Scheme will not extend to vexatious complaints.

A discloser will only be protected if they have **objectively reasonable** grounds to suspect that the information that they disclose concerns misconduct or an improper state of affairs or circumstances or other conduct falling within the scope of the Whistleblower Protection Scheme.

If any investigation of a disclosure demonstrates that it was not made on objectively reasonable grounds, it will not be protected.

Depending on the circumstances, it may be appropriate for ActewAGL to take disciplinary action against any person who does not have objectively reasonable grounds for their disclosure. Such action may include the termination of employment.

## 3. PROTECTIONS

### 3.1 Confidentiality

Strict confidentiality obligations apply in respect of any disclosures that qualify for protection under the Whistleblower Protection Scheme.

Unless the eligible whistleblower consents, their identity or any information that may lead to the disclosure of their identity must not be disclosed by the recipient to any other person (subject to the exceptions set out below).

To avoid inadvertent breaches of confidentiality obligations under the Whistleblower Protection Scheme, eligible whistleblowers are encouraged to consent to their identity being disclosed (if they feel comfortable to do so). Being able to share an eligible whistleblower's identity will also assist in an efficient investigation of the matters that an eligible whistleblower discloses.

However:

- a. Anonymous disclosures are still protected (though it may be difficult to investigate these disclosures effectively).
- b. If a discloser does not consent to their identity being disclosed to any other persons, it will still be lawful for ActewAGL to:
  - i. disclose their identity to:
    - (1) ASIC, APRA, the AFP or the Commissioner of Taxation;
    - (2) a legal practitioner for the purposes of obtaining advice about the disclosure; or
    - (3) to a body prescribed by the regulations,
  - ii. disclose information that may lead to the identification of the individual if this is reasonably necessary for the purpose of investigating the qualifying disclosure.

### **3.2 ActewAGL cannot pursue action against the whistleblower**

ActewAGL cannot pursue any civil, criminal, administrative or contractual action against an eligible whistleblower in relation to any protected disclosure that they make.

By way of example, the type of action that ActewAGL is prevented from undertaking may include commencing proceedings for breach of contract as a result of a person making a qualifying disclosure.

### **3.3 Detriments and threats of detriment**

The Whistleblower Protection Scheme also contains protections against detriment and threats in relation to a disclosure.

The Whistleblower Protection Scheme makes it unlawful for:

- c. a person to engage in conduct against another person that causes or will cause a detriment:
  - i. in circumstances where the person believes or suspects that the other person or a third person made, may have made, proposes to make or could make a qualifying disclosure; and
  - ii. if the belief held by that person is the reason or part of the reason for their conduct.

Threats of detriments are also unlawful if:

- a. the person making the threat intended to cause fear that a detriment would be carried out or was reckless as to whether the person against who it was directed would fear the threatened detriment being carried out; and
- b. the threat was made because the person makes or may make a qualifying disclosure.

## MEANING OF 'DETRIMENT'

The meaning of 'detriment' is very broad and includes:

- dismissing an employee;
- injuring an employee in their employment;
- altering an employee's position or duties to their disadvantage;
- discriminating between an employee and other employees;
- harassing or intimidating a person;
- harming or injuring a person;
- damaging a person's property, reputation, business or financial position; and
- any other damage to a person.

If a person has reasonable grounds to suspect that detrimental action is being threatened, or has been taken, against a person who has made a qualifying disclosure, and the disclosure is the reason or part of the reason for the detrimental conduct, these concerns can be reported to an eligible recipient at ActewAGL or to ASIC, APRA, the Commissioner of Taxation, a prescribed Commonwealth authority or a legal practitioner. A discloser of these concerns will be protected in the same way as a qualifying discloser under the Whistleblower Protection Scheme.

Courts are given broad scope to make orders remedying a detriment or threatened detriment. These include, to order injunctions, compensation orders (including against individual employees and their employers), reinstatements, exemplary damages, and the making of apologies. Civil and criminal sanctions also apply to breaches of the Whistleblower Protection Scheme.

### 3.4 Other protections

Disclosures may also amount to the exercise of a 'workplace right' by either a ActewAGL employee or contractor. ActewAGL and its employees are prohibited under the *Fair Work Act 2009* (Cth) from taking adverse action against employees or contractors because they exercised or propose to exercise any workplace rights.

## 4. RESPONSIBILITIES

It is the responsibility of all ActewAGL personnel to be aware of and understand the scope of the Whistleblower Protection Scheme and the protections that are afforded to eligible whistleblowers, and to comply with the Whistleblower Protection Scheme's requirements.

Although whistleblower reports may be made to a range of ActewAGL representatives (see paragraph 2.5 above), the following have special responsibilities under this policy.

## MEANING OF 'DETRIMENT'

All staff	All Staff are encouraged to report suspected incidents of unlawful or wrongful behaviour. No one must cause or threaten to cause harm to a person making a disclosure. Anyone attempting to victimise or make an unlawful reprisal against a person for making the disclosure may be liable to subsequent disciplinary action or prosecution under the law.
General Managers and Group Managers	General Managers and Group Managers responsible for ensuring that all ActewAGL personnel receive training in the operation of this policy and are aware of the process available to them for reporting criminal and/or disciplinary matters. They are also responsible for enforcing this policy on a day to day basis and passing on any reports that they believe may be eligible for protection under the Whistleblower Protection Scheme to the Group Manager Internal Audit and Fraud Control.

	General Managers and Group Managers are also expected to ensure no frivolous gossip in regards to any investigation takes place.
Group Manager Internal Audit and Fraud Control	Is responsible for: Receiving and recording disclosures Ensuring employee protection Maintaining confidentiality Investigating disclosures when required to do so Liaising with the Federal/ACT Police where required
Contract Managers	Contract managers should provide a copy of the Code of Conduct and this policy to external contractors, consultants or suppliers so that they are fully aware of ActewAGL's approach to whistleblowers. The contract manager retains responsibility for the services delivered by third parties to our customers, and need to have arrangements so that the services are delivered in line with our Code of Conduct and ethical standards, including requirements in relation to this policy. Purchasing officers and/or contract managers need to ensure that no conflict of interest issues arise from the appointment of external service providers.

## 5. MAKING A DISCLOSURE

The Whistleblower Protection Scheme applies to any form of disclosure, including disclosures made orally or in writing. If a person intends to make a disclosure, they can do it in any form they wish, including by telephone, email or otherwise in writing. The disclosure can be made anonymously.

If a person makes an oral disclosure, they are encouraged to also provide a written statement regarding the disclosure, however this is not required.

A disclosure may be made to any eligible recipients at ActewAGL, including persons authorised to receive a disclosure. However, a person making a disclosure is encouraged to report it to the Group Manager Internal Audit and Fraud Control, noting that if a disclosure is made to another person who is an eligible recipient, that person will generally forward the disclosure to this officer as they have responsibility for receiving and managing disclosures. However, if the person making the disclosure does not wish for their disclosure to be forwarded to this officer, they should state this in this disclosure.

A disclosure can also be made using via the ActewAGL intranet home page via an independent avenue managed by Deloitte. This will ensure that any incidents are promptly investigated for appropriate evaluation and remedial action. All allegations will be recorded by the Investigations Section.

Incidents relating to Human Resources issues that are not intended to be disclosures under the Whistleblower Protection Scheme should be reported to the General Manager People and Legal or the Group Manager People Solutions and Support or a senior manager. Disclosures can be made to:

- Group Manager Internal Audit and Fraud Control
- General Manager People and Legal
- Group Manager People Solutions and Support
- A senior manager within ActewAGL.

Deloitte, an independent avenue for reporting by:

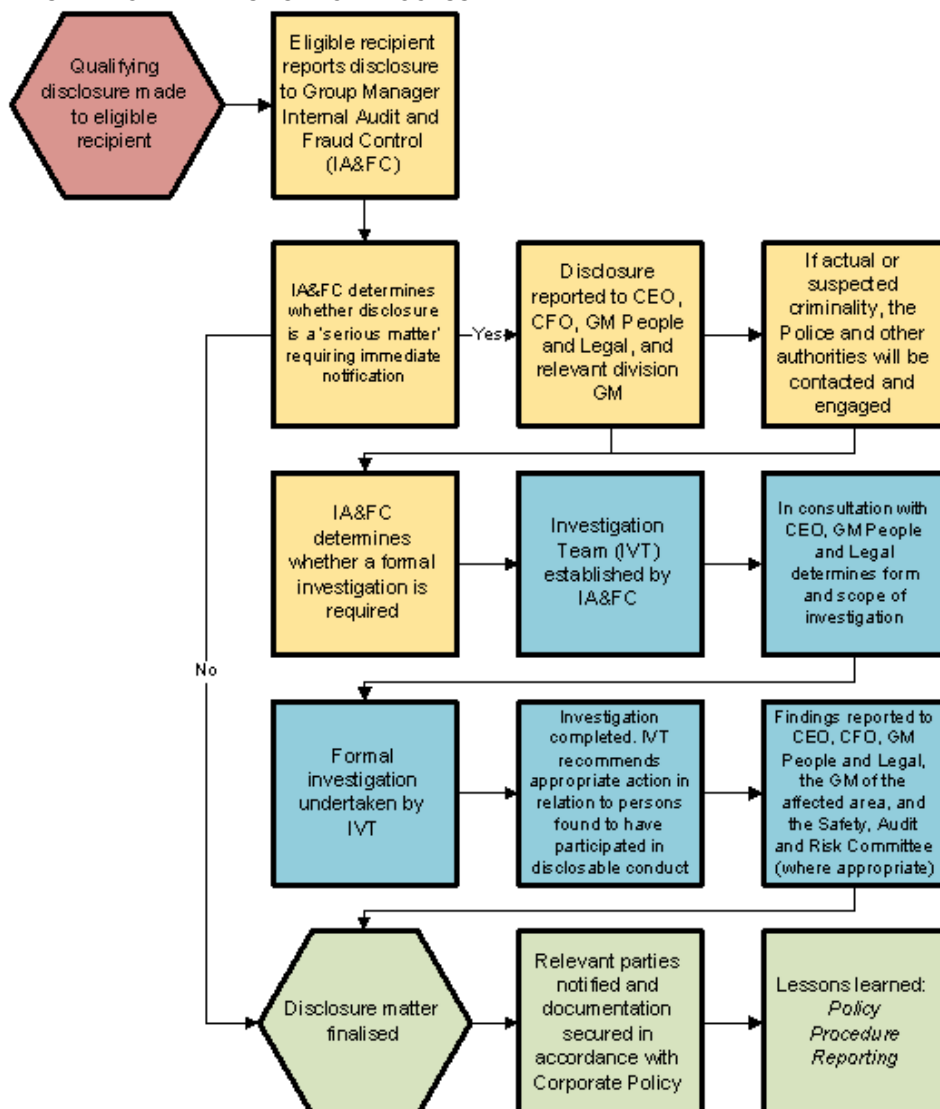
- Calling 1800 233 285
- Emailing a disclosure to [actewagl@deloittedigital.com](mailto:actewagl@deloittedigital.com)
- Logging on to [www.actewagl.deloittedigital.com](http://www.actewagl.deloittedigital.com)

## 6. INVESTIGATIONS PROCEDURE

Where a disclosure qualifying for protection under the Whistleblower Protection Scheme is made, ActewAGL may conduct an internal investigation of the disclosure. Disclosures related to bullying, harassment or vilification will be investigated in accordance with the bullying, harassment or vilification procedure. The Chief Executive Officer in conjunction with the Internal Audit team will lead investigations related to the People and Legal Division or in the event a conflict of interest is identified. The Internal Audit team report directly to the Chair of the Safety Audit and Risk Committee ('SARC') to ensure the neutrality of Internal Audit and any investigations undertaken.

The procedure for investigating a qualifying disclosure is set out at **Figure 1**:

**FIGURE 1.** WHISTLEBLOWER INVESTIGATION PROCESS



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## 6.1 Documenting disclosures

The particulars of the disclosure should be documented (both in hard copy and on the corporate information management system) by the person receiving the disclosure on the “Receiving Allegations Form” and submitted to the Group Manager Internal Audit and Fraud Control with the identifying details of the discloser removed, unless the discloser consents to their identity being disclosed. A copy of the Receiving Allegations Form is at **Attachment A**.

## 6.2 Immediate notification

Subject to any sensitivities in relation to the particular matter, and any privacy considerations, the Group Manager Internal Audit and Fraud Control should report matters of a serious nature to the Chief Executive Officer, Chief Finance Officer, General Manager People and Legal, and the relevant General Manager.

### WHAT IS A ‘SERIOUS MATTER’ REQUIRING IMMEDIATE NOTIFICATION?

As a guide, a serious matter would include one or more of the following:

- the potential for criminal charges or litigation; or
- the potential for reputation or public interest impact; or
- serious and wilful misconduct by an employee (cl. 66.1 of the ActewAGL and Combined Unions Enterprise Agreement as amended or replaced);
- the relevant organisational area(s) should be confidentially briefed on the nature of the allegation and provided with appropriate details, including:
  - Group managers – matters involving their Group’s employees;
  - Legal – matters with a potential for prosecution or litigation, particularly those that may impact ActewAGL’s reputation; and
  - Relevant HR group manager – workplace relations, injury management, etc.

Where suspected or actual criminality is identified, the Chief Finance Officer will determine in conjunction with the General Manager People and Legal, the relevant General Manager and the Group Manager Internal Audit and Fraud Control when and how the Police and/or other authorities are contacted and engaged.

If it is decided there is sufficient information to warrant a formal investigation an Investigation Team (IVT) will be established.

## 6.3 Establishment of an Investigation Team

The Group Manager Internal Audit and Fraud Control is responsible for investigations within ActewAGL in terms of forming the appropriate investigations team when required and/or providing specialist investigations advice. An Investigation Team (IVT) will be established to conduct the formal investigation. Advice from People and Legal will always be sought when forming the IVT.

The composition of the IVT is dependent upon the nature of the allegations made and the position of the person against whom the allegations are made, but would generally include a minimum of two members.

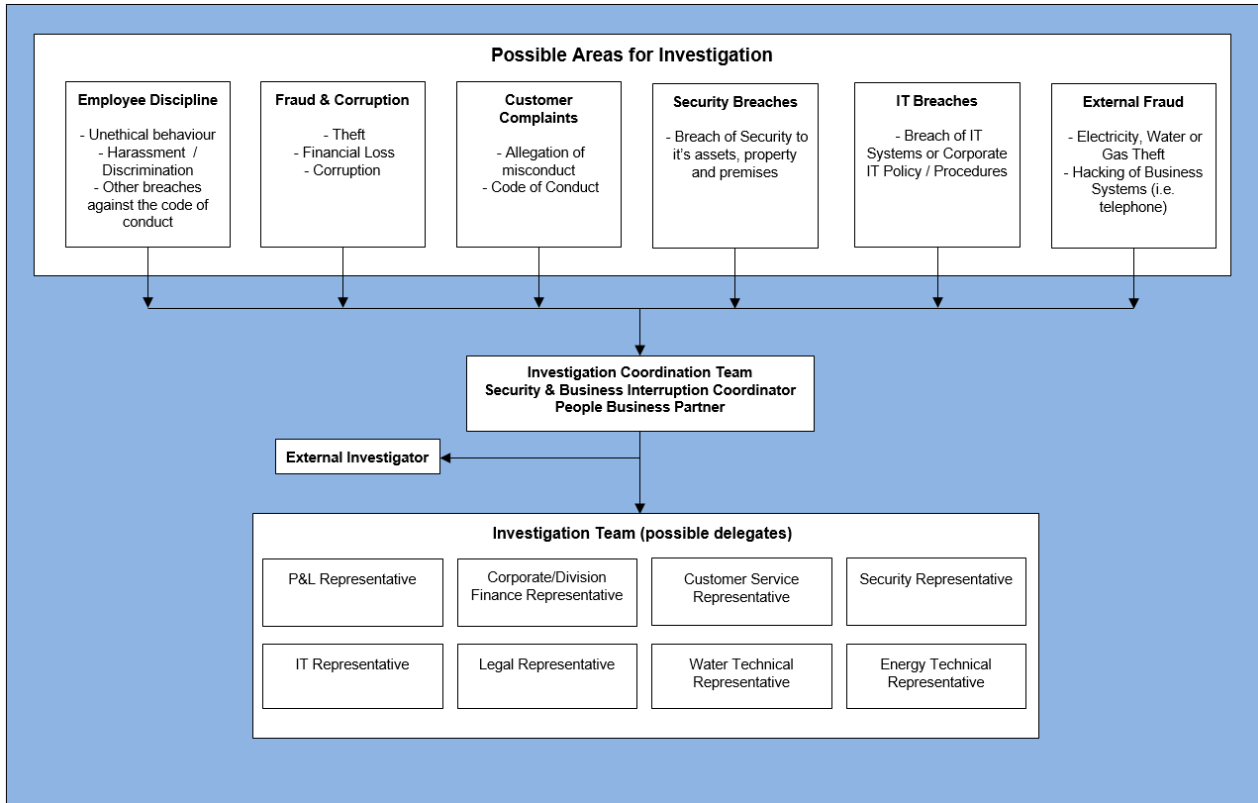
Disclosures relating to staff misbehaviour or abuse of position may be discussed with the General Manager People and Legal. Investigators will assist the General Manager People and Legal in relevant investigations. If the matter relates to a personal work-related grievance, it will not be protected under the Whistleblower Protection Scheme. The IVT may consider referring the matter to the People and Legal team for further action.

## 6.4 Investigation approach

Upon review of the particulars of the alleged disclosable conduct, the Group Manager Internal Audit and Fraud Control, in consultation with the Chief Finance Officer, General Manager People and Legal, or with their delegated authority, will determine the appropriate form of any investigation using **Figure 2**:



**FIGURE 2. FORMS OF INVESTIGATION**



The investigative strategy and plan should be documented by the IVT, including the proposed scope and approach of the investigation, the nature, timing and circulation of reporting required during the conduct of the investigation and identification of the appropriate internal and/or external resources necessary to undertake the investigation. The investigation strategy should take into account any related investigation being conducted by either the Police or another external authority and be endorsed by the Chief Finance Officer and the General Manager People and Legal for serious matters.

## 6.5 Investigative resources

The issues involved in investigating misconduct, unlawful activity, or an action constituting an improper state of affairs within ActewAGL are complex. The investigator needs to be aware of:

- Their rights to undertake investigations and the limits of those rights
- The principles governing the conduct of investigations, and
- The legal and procedural aspects of conducting investigations
- Any conflicts of interest that may exist

Failure to do so may compromise the investigation.

The Group Manager Internal Audit and Fraud control may offer professional advice on relevant matters for investigations undertaken. External investigative resources may be engaged where specialist investigative skills or knowledge is required.

## 6.6 Disclosures not warranting significant investigation

There is no obligation on ActewAGL to investigate a disclosure which is frivolous, or vexatious, or lacking substance, or which has already been dealt with. However, ActewAGL reserves the right to investigate disclosures where the seriousness and apparent credibility of the disclosure makes investigation seem advisable.

## 6.7 Support and fair treatment

ActewAGL is committed to transparency and to building an environment in which personnel feel free to raise legitimate issues relating to ActewAGL's operations.

Whenever an eligible disclosure under the Whistleblower Protection Scheme is made, ActewAGL People and Legal will reiterate the requirements of this policy with any person against whom a disclosure has been made or with whom the discloser may work directly to ensure that the protections afforded under the Whistleblower Protection Scheme are not undermined.

Disciplinary action up to and including dismissal may be taken against any person who causes or threatens to cause any detriment against a whistleblower.

In addition, ActewAGL's usual EAP services will be available to all whistleblowers and other employees affected by the disclosure, should they require that support.

At the same time, it is crucial that due process be observed before any action is taken against a person against whom a disclosure is made.

## 6.8 Access results

Upon completion of the investigation and enquiries, the IVT will consider and recommend appropriate action in relation to persons found to have participated in disclosable conduct.

This may include:

- Disciplinary action pursuant to the ActewAGL and Combined Unions Enterprise Agreement, ActewAGL's policies and procedures as they relate to employees

- Possible termination of contracts

- Legal action

The Police may separately pursue criminal charges against persons who appear to have participated in criminal acts.

## 6.9 Recovery of the proceeds of disclosable conduct

ActewAGL's policy is to pursue those who have committed conduct covered by the Whistleblower Protection Scheme, including fraud and corruption, to recover any assets lost or stolen, and to pursue, or assist authorities in pursuing, legal remedies if there has been a breach of the law.

## 6.10 Assess Results

The findings of all investigations will be reported to the Chief Finance Officer, General Manager People and Legal and the General Manager of the affected area. Further reporting may be required in order to highlight areas of deficiency that may also exist in other Divisions.

The findings of the report should address the following:

- The financial impact

- The reputational impact

- The business impact

- The circumstances surrounding the investigation

- Management's response to the allegations including timeliness and appropriateness

- Actions taken by ActewAGL or Icon Water<sup>1</sup> and third parties such as the Police, other authorities, Investigators etc.

- Recovery of any stolen or misappropriated assets/cash etc.

- Assessment of control weaknesses and any improvements implemented.

- Any other question raised in the investigation Terms of Reference.

Investigation reports should not be kept on personnel files.

## **6.11 Internal control review following discovery of disclosable conduct**

Should conduct covered by the Whistleblower Protection Scheme be discovered and substantiated by appropriate investigation, the IVT will conduct a review of the relevant controls associated with conduct. The review will determine where the system of internal control broke down, and the remedial action necessary.

## **7. OTHER MATTERS**

Any breach of this Policy may result in disciplinary action, up to and including termination of employment. This policy is not intended to go beyond the legislation. This policy is not a term of any contract, including any contract of employment and does not impose any contractual duties, implied or otherwise, on ActewAGL. This policy may be varied by ActewAGL from time to time.

## **8. RELATED DOCUMENTS**

- [Code of Conduct](#)

Crimes Act 1900

Corporations Act 2001 (Cth)

Public Interest Disclosure Act 1994

Utilities Act 2000

Water and Sewerage Act 2000

# ATTACHMENT A - RECEIVING ALLEGATIONS FORM

## Receiving Allegations Form

This form can be sent to the Group Manager Internal Audit and Fraud Control via email (internalauditandfraudcontrol@actewagl.com.au) or internal mail, and can be anonymous. ActewAGL may use this form when receiving allegations via telephone. Once received by the Group Manager Internal Audit and Fraud Control, all information contained within this form shall be treated as confidential.

**1. Details of suspected fraud, corruption or wrongful behaviour:** (Name and details of people involved; Includes people both within and external to the organisation)

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**2. Description of suspected fraud, corruption or wrongful behaviour:** (Includes: What happened? Where did it happen? When did it happen? How did it happen?)

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**3. Details about evidence:** (Includes what evidence exists? Where is the evidence? Does the caller have any evidence? Who else has any evidence?)

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**4. Details of others who may have information: (Includes any potential witnesses or complicit parties)**

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**5. Details of person making allegation:** (leave blank if you wish to be anonymous)

Name: .....

Position and Location: .....

Address: .....

Telephone (work): ..... (mobile): .....

6. How did the person become aware of the reported incident?

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**Date and Time of Call:** (if allegation received via phone).....

**Filled in by:** ..... **Date:** .....