

1. Purpose

This policy 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 employees or non-employees. 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 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. Overview

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 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.

Internal and/or External Fraud

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.

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:

- the eligible whistleblower has made a qualifying disclosure to ASIC, APRA, or a prescribed Commonwealth authority;
- at least 90 days has passed since the qualifying disclosure was made;
- 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;
- the eligible whistleblower has reasonable grounds to believe that making a public interest disclosure would be in the public interest;
- after 90 days have passed, the eligible whistleblower must give the body to which the qualifying disclosure was originally made, a written notification that:
 - includes sufficient information to identify the qualifying disclosure; and
 - states that the eligible whistleblower intends to make a public interest disclosure; and
 - 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:

- the discloser must have first made a qualifying disclosure to ASIC, APRA or a prescribed Commonwealth authority;
- 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
- the discloser gave notice to the body to which the qualifying disclosure was made that states:
 - 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 Branch 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:

- a. 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
- b. 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 Head 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:

- a. 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.

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.

<p>Division Heads and Branch Managers</p>	<p>Division Heads and Branch 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.</p> <p>Division Heads and Branch Managers are also expected to ensure no frivolous gossip in regards to any investigation takes place.</p>
<p>Group Manager Internal Audit and Fraud Control</p>	<p>Is responsible for:</p> <ul style="list-style-type: none"> • Receiving and recording disclosures • Ensuring employee protection • Maintaining confidentiality • Investigating disclosures when required to do so <p>Liaising with the Federal/ACT Police where required</p>
<p>Contract Managers</p>	<p>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.</p> <p>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.</p> <p>Purchasing officers and/or contract managers need to ensure that no conflict of interest issues arise from the appointment of external service providers.</p>

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 Head People Solutions and Support or a senior manager. Disclosures can be made to:

- Group Manager Internal Audit and Fraud Control
 - Emailing a disclosure to internalauditandfraudcontrol@actewagl.com.au

- General Manager People and Legal
- Head 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
 - Submitting a disclosure on www.actewagl.deloittedigital.com

5.1 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.

5.2 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.

5.3 Disclosure investigation

Where Group Manager Internal Audit and Fraud Control determines further investigation is necessary, an independent Investigation Team (IVT) will be formed. The IVT will conduct the investigation in line with ActewAGL's investigation methodology.

5.4 Disclosure outcome

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 (Retail/Corporate) Enterprise Agreement and Evoenergy 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.

Where appropriate, the IVT may provide updates on progress and inform the discloser of the outcome of the investigation, subject to privacy and sensitivity requirements of the investigation.

5.5 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. 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.

7. 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