



PROTECTED DISCLOSURE ACT 2012

PROCEDURES

1. Preamble

The Protected Disclosure Act 2012 facilitates the disclosure of corrupt or improper conduct. It also provides protection to people who disclose this information.

The Act commenced operation on 10 February 2013, replacing the Whistleblowers Protection Act and establishing **IBAC** - Independent Broad-based Anti-Corruption Commission - as part of a new integrity system for Victoria.

2. Commitment

Eastern Regional Libraries Corporation (ERLC) is committed to the aims and objectives of the Protected Disclosure Act (the Act).

ERLC recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

ERLC will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

Note

For these procedures the term employee is taken to mean an officer, staff member or employee of ERLC. Likewise the term Public Officer means Councillor/s who are appointed to ERLC's Board.

3. Purpose of These Procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by ERLC or the employees of ERLC. The system enables such disclosures to be made to the Protected Disclosure Coordinator. Disclosures may be made by employees or members of the public.

Note that:

- Disclosures relating to Councillors are to be made to IBAC, or the Ombudsman.
- Disclosures relating to the Chief Executive are encouraged to be made directly to IBAC.

These procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

4. Objects of the Act

The objects of the Act are:

- 1) to encourage and facilitate of disclosures of:
 - a) improper conduct by public officers and public bodies and other person; and
 - b) detrimental action taken in reprisal for a person making a disclosure under this Act; and
- 2) to provide protection for:
 - a) persons who make those disclosures; and
 - b) persons who may suffer detrimental action in reprisal for those disclosures.
- 3) to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

4. Definitions of Key Terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

4.1 Improper Conduct

A disclosure may be made about improper conduct engaged in by a public body or public official.

Improper conduct means:

- 1) corrupt conduct;
- 2) specified conduct as per section 4(2) of the Act that would constitute:
 - a) a criminal offence; and
 - b) reasonable grounds for dismissing, dispensing with, or otherwise terminating the services of the staff member engaged in such conduct.

Specified conduct includes, amongst other things, conduct of:

- 1) any person that adversely affects the honest performance of a public officer's or public body's functions;
- 2) a public officer or public body that constitutes or involves the dishonest performance of a public officer's or public body's functions; and
- 3) a public officer or public body that involves:
 - a) a substantial mismanagement of public resources;
 - b) a substantial risk to public health or safety; or
 - c) a substantial risk to the environment.

4.2 Corrupt Conduct

Corrupt conduct means conduct:

- 1) of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;
- 2) of a public officer or public body that constitutes or involves the dishonest performance of his or hers or its functions as a public officer or public body;
- 3) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- 4) of a public officer or public body that constitutes or involves the misuse of information or material acquired in the course of the performance of his or hers or its official 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
- 5) that could constitute a conspiracy or an attempt to engage in any of the above conduct.

4.3 Detrimental Action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:

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

5. The Reporting System

5.1 Contact Persons & Contact Details within Eastern Regional Libraries Corporation.

Disclosures of improper conduct or detrimental action by employees of ERLC, may be made to the following officer:

- Protected Disclosure Coordinator: Ms Christine Smith, Corporate Manager Employee Relations

In the absence for the Protected Disclosure Coordinator, or is implicated in the disclosure, the Relief Protected Disclosure Coordinator is: Mr Joseph Cullen, Chief Executive.

All correspondence, phone calls and emails from internal or external persons who make disclosures will be referred in the first instance to the Protected Disclosure Coordinator.

Where a person is contemplating making a disclosure and is concerned about approaching the Protected Disclosure Coordinator in the workplace, he or she can call the relevant officer and request a meeting in a discrete location away from the workplace.

Written Material - to be enclosed within an envelope clearly marked:

"CONFIDENTIAL — Attention Protected Disclosure Coordinator — Ms Christine Smith"
Eastern Regional Libraries Corporation
1350 Ferntree Gully Road, Scoresby, VIC 3179

Emails — to be addressed to protected.disclosures@erl.vic.gov.au

Notes

This email address is secure being solely accessible by the Protected Disclosure Coordinator.

Disclosures relating to Councillors or the Chief Executive are to be made directly to either IBAC or the Ombudsman.

5.2 Alternative Contact Persons

A disclosure about improper conduct or detrimental action engage in by ERLC or its employees, may also be made directly to the Independent Broad-based Anti-Corruption Commission (IBAC):

IBAC Contact Details

Street Address: Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000

Postal Address: GPO Box 24234 Melbourne VIC 3001

Internet: www.ibac.vic.gov.au

Email: Online complaints form on website

Telephone: 1800 555 677

Fax: (03) 8635 6444

6. Roles and Responsibilities

6.1 Employees

Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of ERLC have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

6.2 Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a pivotal 'clearinghouse' role in the internal reporting system. They will:

- Be the main contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action;
- Commit to writing any disclosure made orally;
- Receive all disclosures forwarded from the Protected Disclosure Officers;
- Receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- Impartially assess each disclosure to determine whether it is a protected disclosure;
- Notify IBAC of all protected disclosures;
- Appoint a welfare manager to support the person making the disclosure and to protect him or her from any reprisals;
- Advise the whistleblower of the progress of an investigation into the disclosed matter;
- Establish and manage a confidential filing system;
- Collate and publish statistics on disclosures made as required by the Act;
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential; and
- Liaise with the Chief Executive Officer.

6.4 Relief Protected Disclosure Coordinator

The Relief Protected Disclosure Officer will have a central "backup role" by carrying out the full powers, duties and functions of the Protected Disclosure Coordinator in their absence.

6.5 Welfare Manager

The welfare manager is responsible for looking after the general welfare of the person making the disclosure. The welfare manager will:

- Examine the immediate welfare and protection needs of a person who has made a disclosure and seek to foster a supportive work environment;
- Advise a person making a 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 disclosure; and
- Ensure the expectations of the person making a disclosure are realistic.

7. Confidentiality

ERLC will take all reasonable steps to protect the identity of a person making a disclosure. Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a disclosure.

The Act prohibits any person who receives information via a disclosure, from disclosing content or information except in certain limited circumstances.

Disclosure of information in breach of sections 52 and 53 of the Act constitutes an offence that is punishable by a maximum fine of 120 penalty units or 12 months imprisonment or both for an individual or 600 penalty units for a body corporate.

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- Where it is necessary to do so in exercising the functions of the public body under the Act;
- When obtaining legal advice in relation to the rights, liabilities, obligations and privileges under the Act; and
- When an interpreter is required to assist a person who does not have sufficient knowledge of the English language.

While ERLC is required to include certain information about protected disclosures in its Annual Report, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making the disclosure.

ERLC will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Protected Disclosure Coordinator, Relief Protected Disclosure Coordinator, or the Welfare Manager (in relation to welfare matters).

All printed material will be kept in files that are clearly marked as "Protected Disclosure Act 2012 Matter", and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All electronic files will be produced and stored on a secure network location and be given password protection. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the disclosure files.

ERLC will not send email documents relevant to a person making a disclosure matter and will ensure all phone calls and meetings are conducted in private and confidentiality maintained.

8. Collating and Publishing Statistics

The Protected Disclosure Coordinator will establish a secure register to record the information required to be published in the Annual Report, and to generally keep account of the status of protected disclosures. The register will be confidential and will not record any information that may identify the person making the disclosure.

The register will contain the following information:

- The number and types of disclosures made to ERLC during the year; and
- The number of disclosures referred to IBAC for determination as to whether they are protected disclosure complaints.

9. Receiving and Assessing Disclosures

9.1 Has the Disclosure Been Made in Accordance the Act? i.e. is it a Protected Disclosure?

Where a disclosure has been received it will be assessed as to whether the disclosure has been made in accordance with the Act and is, therefore, a protected disclosure.

9.1.1 Has the disclosure been made to the appropriate person?

For the disclosure to be responded to it must concern an employee, member or officer of ERLC.

If the disclosure concerns a Councillor on the Board of ERLC then the disclosure must be made to IBAC or the Ombudsman. If a disclosure concerning a Councillor is made to ERLC, the person who has made the disclosure will be advised of the correct person to whom, or body to which, the disclosure should be directed.

If the disclosure relates to, an employee, officer or member of another public body (e.g. a Member Council), the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed.

If the disclosure has been made anonymously, it should be referred to IBAC.

If the person making the disclosure is an employee or officer of ERLC the disclosure may be made to an employee who directly or indirectly supervises or manages the person making the disclosure. The employee who directly or indirectly supervises or manages the person making the disclosure must immediately forward the disclosure to the Protected Disclosure Coordinator — confidentiality must be strictly maintained.

9.1.2 Does the disclosure contain the essential elements of a protected disclosure?

To be a protected disclosure, a disclosure must satisfy the following criteria:

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- Is the alleged conduct either:
 - improper conduct? or
 - detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

The Protected Disclosure Coordinator will make a determination whether the disclosure is a protected disclosure.

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. For instance, the matter can be dealt with under ERLC's normal complaint procedures.

9.2 Is the Disclosure a Protected Disclosure?

The Protected Disclosure Officer will make an assessment and determination within 45 days of the receipt of the disclosure.

In reaching a conclusion as to whether a protected disclosure is a protected disclosure, the Protected Disclosure Coordinator will consider whether the disclosure shows, or tends to show, that the public officer to whom the disclosure relates:

- Has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer; or
- Has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure.

Where the Protected Disclosure Coordinator concludes that the disclosure amounts to a protected disclosure, he or she will:

1. Notify the person who made the disclosure of that the disclosure has been notified to IBAC for assessment; and
2. Notify the disclosure to IBAC for assessment under Part 3 of the Act to determine whether it is a protected disclosure complaint.

Where the Protected Disclosure Coordinator concludes that the disclosure is not a public interest disclosure, he or she will notify the person who made the disclosure that:

1. ERLC considers that the disclosure is not a protected disclosure;
2. The disclosure has not been notified to IBAC for assessment under the Act; and
3. The protections under Part 6 of the Act (relating to liability of the person making the disclosure and reprisal against that person) continue to apply.

10. Managing the Welfare of the Person Making the Disclosure

10.1 Commitment to Protecting Person Making the Disclosure

ERLC is committed to the protection of genuine disclosure against detrimental action taken in reprisal for the making of protected disclosures. The Protected Disclosure Coordinator is responsible for ensuring a person making a disclosure is protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Protected Disclosure Coordinator will appoint a Welfare Manager to all persons who have made a protected disclosure. The Welfare Manager will:

- Examine the immediate welfare and protection needs of a person who has made a disclosure and, where the person making the disclosure is an employee, seek to foster a supportive work environment;
- Advise the person making the disclosure of the legislative and administrative protections available to him or her;
- Listen and respond to any concerns about, or allegations 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 the disclosure including all contact and follow-up action; and
- Ensure the expectations of the person making the disclosure are realistic.

All employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units or two years imprisonment or both under section 45 of the Act. The taking of detrimental action in breach of the Act can also be grounds for making a disclosure under the Act and can result in an investigation.

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).

A person making a disclosure will also have the following statutory protections — Part 6 of the Act:

- Immunity from civil and criminal liability and disciplinary action for the making of the disclosure;
- Immunity from liability for breaching a confidentiality provision;
- Protection from actions in defamation;
- Right to sue for damages for reprisals made; and
- Right to apply to the Supreme Court for an injunction or order requiring detrimental action to be remedied.

Note

A person making a disclosure implicated within any improper conduct is not immune from liability or prosecution from his or her own conduct. Refer to section 10.4

10.2 Keeping the Person Making the Disclosure Informed

The Protected Disclosure Coordinator will ensure a person making a disclosure is kept informed of any and all action taken in relation to his or her disclosure, and the time frames that apply. The person making the disclosure will be informed of the assessment of the disclosure and, if relevant, its referral to IBAC. The person making the disclosure will be given reasons for decisions made by ERLC in relation to a protected disclosure. All communication with the person making the disclosure will be in plain English.

10.3 Occurrence of Detrimental Action

If a person making a disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the Welfare Manager will:

- Record details of the incident;
- Advise the person making the disclosure of his or her rights under the Act; and
- Advise the Protected Disclosure Coordinator or the Chief Executive Officer of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. Where the Protected Disclosure Coordinator is satisfied that the disclosure is a protected disclosure, he or she will refer it to IBAC. If IBAC subsequently determines the matter to be a protected disclosure complaint, IBAC may investigate the matter or refer it to another body for investigation as outlined in the Act.

10.4 Person making the Disclosure Implicated in Improper Conduct

Where a person who makes a disclosure is implicated in misconduct, ERLC will handle the disclosure and protect the person making the disclosure from reprisals in accordance with the Act. ERLC acknowledges that the act of disclosure should not shield the person making the disclosure from the reasonable consequences flowing from any involvement in improper conduct.

The Chief Executive Officer will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action will be taken against a person making a disclosure. Where disciplinary or other action relates to conduct of the person making the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that it has been clearly demonstrated that:

- The decision to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- There are good and sufficient grounds that would fully justify action against any non-person making the disclosure in the same circumstances; and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Protected Disclosure Coordinator will thoroughly document the process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Protected Disclosure Coordinator will clearly advise the person making the disclosure of the proposed action to be taken, and of any mitigating factors that have been taken into account.

11. Management of the Person against Whom a Disclosure has Been Made

ERLC recognizes that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures.

ERLC will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment process.

The Protected Disclosure Coordinator will ensure the person who is the subject of any disclosure which is assessed as being a protected disclosure is:

- Informed as to the substance of the allegations;
- Given the opportunity to answer the allegations before a final decision is made;
- Informed as to the substance of any adverse comment that may be included in any report arising from the disclosure; and
- Is given the opportunity to have his or her defense set out fairly in any report.

ERLC will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. . If the matter has been publicly disclosed, the Chief Executive Officer will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

12. Criminal Offences

ERLC will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units or two years imprisonment or both.
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority. The Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both.
3. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 120 penalty units or one year's imprisonment or both.

13. Review

These procedures will be reviewed on a regular basis to ensure they meet the objectives of the Act and are in accord with the guidelines issued by IBAC.

Note

Copies of these procedures have been placed on the ERLC Internet web site and the Intranet accessible by ERLC staff.