

Whistleblower protection and public interest disclosures policy

**State Trustees has no
tolerance for fraud and
corruption.**



Introduction

State Trustees promotes a 'no blame' culture where employees are encouraged to constructively raise problems and concerns without fear of retribution.

As far as the law allows, State Trustees aims for a 'no wrong door' approach where all those who disclose misconduct or corrupt conduct in good faith will have their confidentiality protected and their disclosure investigated.

Whistleblower protection laws are an important safeguard to encourage the reporting of conduct that appears improper or corrupt.

Purpose

This Policy outlines how State Trustees complies with Commonwealth and State laws to protect those who make disclosures of misconduct and corrupt conduct in the public interest and how State Trustees manages disclosures by or against its employees or directors. This includes a description of what matters are reportable, how these matters can be reported without fear of detriment, and how State Trustees will protect you.

Summary

What can I make a disclosure about?

- Corrupt conduct, such as taking bribes or stealing corporate funds.
- A criminal offence.
- Serious professional misconduct.
- Dishonest performance of public functions.
- An intentional or reckless breach of public trust.
- An intentional or reckless misuse of information.
- Substantial mismanagement of public resources.
- A substantial risk to health or safety of a person.
- A substantial risk to the environment.
- Conduct of any person that adversely affects the honest performance by a public officer of their functions.
- Conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.
- Not a trivial matter or a disclosure that relates solely to personal work-related grievances.

Who can I make a disclosure to?

- A State Trustees officer, including Director or Company Secretary.

- A State Trustees Senior Manager.
- The Public Interest Disclosures Coordinator.
- The Client Feedback Manager.
- Independent Broad-based Anti-corruption Commission
- The Australian Securities and Investments Commission (ASIC).
- A legal practitioner.

What protections will I get?

- State Trustees will protect your confidentiality unless the law requires us to release it.
- You will be protected from detrimental action and victimisation. You will not be disadvantaged for making the disclosure, but if you are a State Trustees employee, you may still face consequences for your own misconduct or underperformance. You will not be accused of misconduct or underperformance solely because you made a disclosure.
- State Trustees will manage your welfare.
- State Trustees will investigate your matter in accordance with its procedures.
- You have the right to make a further disclosure to IBAC, an independent body.

What whistleblower protection laws apply to State Trustees?

State Trustees is subject to two whistleblower protection regimes: a State regime and a Commonwealth regime. The two regimes have some important differences, which are explained in more detail below.

The Public Interest Disclosures regime in Victoria is

established by the *Public Interest Disclosures Act 2012* (Vic) (**PID Act**), formerly the *Protected Disclosure Act 2012* (Vic) whilst the main provisions of the Commonwealth regime are found in Part 9.4AAA of the *Corporations Act 2001* (Cwth) (**Pt 9.4AAA**).

Both regimes require State Trustees to have a policy on disclosures of certain types of improper or unlawful conduct.

Who can make a disclosure?

Under the Commonwealth regime, the types of people who can make a disclosure that qualifies for protection under the Commonwealth regime (i.e. an eligible whistleblower) can be a current or former officer or employee, a contractor or supplier to State Trustees (or their employees), as well as relatives, dependents, or spouses of any of these people.

Under the State regime, anyone can make a disclosure about improper conduct or detrimental action. This includes members of the public as well as employees of State Trustees.

In what circumstances would I have the protection of the PID Act or Pt 9.4AAA when disclosing improper conduct?

If you become aware of conduct that you believe is misconduct, corruption, or otherwise illegal within State Trustees or among its contracted service providers, then you may report it:

- Internally, to a director, company secretary, senior manager, the Public Interest Disclosures Coordinator, or the Client Feedback Manager.
- Externally, to IBAC, a legal practitioner, or a regulator.

IBAC contact details

Phone: **1300 735 135**

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

ASIC contact details

Phone: **1300 300 630**

Post: **ASIC, GPO Box 9827, Brisbane, QLD 4001**

Web: **www.asic.gov.au/complain**

In certain circumstances, you can make an emergency or public interest disclosure under the Commonwealth regime. Before making a disclosure of this type, you should contact a legal practitioner to ensure you understand the criteria for making such a disclosure.

Regardless of whether you make the disclosure internally or externally, you will receive certain legal protections. For your

disclosure to be a public interest disclosure under the Victorian regime, you must make your disclosure to IBAC. Disclosures made to eligible recipients such as officers, senior managers and auditors will be protected disclosures for the purposes of the Commonwealth regime.

State Trustees will be obliged to protect your confidentiality and protect you from retribution or victimisation for making the disclosure. Further protections applying to people who qualify for protection as a whistleblower under the Commonwealth regime include compensation and remedies, and civil, criminal and administrative liability protection.

If you report corrupt conduct to State Trustees, State Trustees may be under a legal obligation to report it to IBAC.

Regardless of whether you make the disclosure internally or externally, you may choose to remain anonymous. Whilst, this may make it harder to investigate your disclosure, people who disclose anonymously will still be protected.

More information on making a public interest disclosure to IBAC, including the type of misconduct which can be disclosed, how a disclosure may be made, and how IBAC will handle a disclosure, may be found on the IBAC website.

What will happen if I make a disclosure of misconduct or an improper state of affairs to state trustees?

State Trustees is committed to identifying and dealing with misconduct or an improper state of affairs within the organisation.

If you make a disclosure of improper conduct to State Trustees, we will advise you of your right to make a report to IBAC and receive the protections of the PID Act.

If you make a disclosure of misconduct or an improper state of affairs, the person you make the disclosure to will ask for your consent to on-disclose to one or more of these parties:

- Our Corporate Legal team for advice;
- Our Audit, Risk and Compliance team to investigate the matter;
- Our People and Culture team, to support you.

It may be appropriate for the person to on-disclose to another team.

State Trustees will assess and investigate all allegations of improper conduct that are not frivolous or vexatious in accordance with its own internal procedures and policies and will provide you with updates on the progress and expected timeframes of the investigation.

How will State Trustees protect my confidentiality if I make a disclosure?

If you make a disclosure of misconduct or an improper state of affairs to State Trustees, we will only disclose your identity:

- As you consent
- For the purposes of seeking legal advice
- To a regulator such as ASIC
- In accordance with law

If you make a public interest disclosure to IBAC, and IBAC provides your identity to us, then we will not on-disclose it except as required by law.

If you make a public interest disclosure to IBAC, you must not publicly disclose that your disclosure has been assessed as a public interest disclosure, or that the disclosure is to be investigated by IBAC or referred to another investigating entity.

Will I be protected from detrimental action and victimisation if I make a disclosure?

People who make a 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 victimisation as a result of making a disclosure and may not be sued in defamation regarding the disclosure. Any person who becomes aware of detrimental action or victimisation may make a disclosure about the conduct as described in this policy and receive protection, and the conduct may be a criminal offence.

Detrimental action or victimisation may include:

- 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.
- 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.

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

State Trustees may report detrimental action to IBAC or to the Police if it is serious enough.

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

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

How will State Trustees manage my welfare if I make a disclosure?

State Trustees management is responsible for ensuring that people making disclosures are protected from direct and indirect detrimental action and maintaining a workplace culture that is supportive of disclosures of misconduct and improper conduct being made.

State Trustees may appoint a Welfare Manager to monitor the needs of the person making a 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 person making the disclosure, as well as witnesses and other people involved in an investigation as appropriate. A Welfare Manager will only be appointed where a public interest disclosure proceeds to investigation.

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 legal regime and is able to advise the discloser on what is likely to happen.

The role of the State Trustees Welfare Manager is to:

- Examine the immediate welfare and protection needs of a person making a disclosure and 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 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 public interest disclosure, including all contact and follow-up action.
- Endeavour to ensure that the expectations of the person making the disclosure are realistic.

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

State Trustees may choose to engage an external welfare management organisation.

How will State Trustees manage my welfare if someone makes a disclosure about me?

State Trustees recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide welfare support to you during the handling and investigation of a disclosure as the circumstances require.

State Trustees will only disclose information about the subject of a disclosure in accordance with the law.

Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the disclosure will remain confidential.

A Welfare Manager may be appointed for the person against whom the disclosure is made in accordance with Section 8 of this policy.

Collating and publishing statistics

State Trustees is required to include in its Annual Report information on this policy.

Offences

It is a criminal offence to:

- Take detrimental action against a person who makes a disclosure.
- Breach the confidentiality of a person who makes a disclosure.

- Victimise a person who makes a disclosure.
- Knowingly provide false information with the intention that it be acted on as a public interest disclosure.

State Trustees may be found liable if its employees or officers take detrimental action or victimise a discloser.

It is an offence for the person making a public interest disclosure to IBAC 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 public interest disclosure by IBAC, is being investigated by IBAC, or has been referred to another organisation.

Public interest disclosures and freedom of information

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

State Trustees

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