

Responding to whistleblower and fraud reports

Key summary points

- There are a variety of mechanisms for making whistleblower and fraud reports, including through anonymous and confidential disclosures.
- The Manager Internal Audit and Fraud Control is responsible for investigating (or facilitating investigations) of whistleblower and fraud reports.
- Investigations must have regard to procedural fairness, such that the person under investigation has a reasonable opportunity to address the allegations before a decision is made.
- Disclosures made by an eligible whistleblower to an eligible recipient are protected under the Whistleblower Protection Scheme (i.e. “protected disclosures”).

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1 Scope

This procedure applies to all workers across the ActewAGL Joint Venture, including Evoenergy. 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.

Any references in this document to ActewAGL include both ActewAGL Retail and ActewAGL Distribution (trading as Evoenergy).

Whistleblowers, auditors, management and external stakeholders (including our regulators, customers and suppliers) play an important role in identifying and reporting wrongful or illegal behaviour, including fraud and corruption. There are two types of reports this procedure applies to:

- **Whistleblower reports** which cover various type of misconduct, including fraud, corruption, safety violations, regulatory non-compliance and other unethical and illegal activities. Whistleblowing often involves reporting issues that might otherwise be concealed or ignored by the organisation.
- **Fraud reports** which specifically addresses instances of fraud, such as financial deception, embezzlement or other dishonest activities (including corruption) intended to result in financial gain. These can come from employees, whistleblowers, management and auditors.

Both types of reports may be covered by the Whistleblower Protection Scheme where they are deemed 'protected disclosures' – refer to Section 5 for more information.

2 Purpose

This procedure sets out ActewAGL's response to reports of wrongful or illegal behaviour, including fraud and corruption, and the protections available to whistleblowers under the *Corporations Act 2001* (Cth) and the *Tax Administration Act 1953* (Cth) (the Whistleblower Protection Scheme).

3 Procedure

3.1 Making a report

Whistleblower and fraud reports can be made verbally or in writing. If a person makes a verbal disclosure, they are encouraged to also provide a written statement regarding the disclosure, however, this is not necessary.

A disclosure can be anonymous¹ or confidential². Where a disclosure is anonymous, persons are encouraged to provide as much information as possible for the disclosure to be reviewed and investigated fully. Investigations of anonymous disclosures may be unable to proceed where enough information is not available.

ActewAGL workers have the following avenues for making a disclosure:

- Whistleblower Program, an independent avenue managed by Deloitte which is available 24/7. Contact can be made via:
 - Calling 1800 233 285
 - Online via [ACTEW AGL Fraud & Corruption Hotline \(deloitte-halo.com\)](https://deloitte-halo.com)
 - Posting a disclosure to:

ActewAGL Fraud & Corruption Hotline
Reply paid 12628
A'Beckett Street
Melbourne VIC 8006
- Manager Internal Audit and Fraud Control
- General Manager People and Legal, Group Manager People and Corporate Affairs or another senior manager at ActewAGL.

Where a disclosure is made to an eligible recipient who is not the Manager Internal Audit and Fraud Control, the disclosure will normally be forwarded to this officer as they have responsibility for receiving and managing

¹ Disclosure made by a person whose identity is unknown.

² Disclosure made by a person who has permitted their identity to be known to the eligible recipient.

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 their disclosure.

Incidents relating to people issues that are not intended to be disclosed under the Whistleblower Protection Scheme or are not reports of fraud, should be reported to the General Manager People and Legal or the Group Manager People and Corporate Affairs.

3.2 Investigations procedure

The Manager Internal Audit and Fraud Control is responsible for investigating (or facilitating investigations) of whistleblower and fraud reports where required to do so. The Manager Internal Audit and Fraud Control reports to the Chief Executive Officer and the Chair of the Safety Audit and Risk Committee (SARC) to ensure the neutrality of Internal Audit and any investigations undertaken.

Disclosures related to bullying, harassment or vilification will be investigated in accordance with the ActewAGL Bullying, Harassment and Vilification procedure.

Table 1. Procedural steps

Phase	Activities
Notification to executives	<p>If the Manager Internal Audit and Fraud Control determines the report makes allegations of a 'serious' nature, an email notification will be sent to the Chief Executive Officer, Chief Financial Officer, General Manager People and Legal and the relevant division's executive.</p> <p>As a guide, serious matters may include one or more of the following:</p> <ul style="list-style-type: none"> the potential for criminal charges or litigation the potential for reputation or public interest impact serious and willful misconduct by an employee in accordance with enterprise agreements as amended or replaced. <p>Where criminality is suspected, the Chief Finance Officer will determine in conjunction with the General Manager People and Legal, the relevant executive and the Manager Internal Audit and Fraud Control when and how the Police and/or other authorities are contacted and engaged.</p> <p>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.</p>
Preliminary review	<p>A preliminary review of the allegation will be undertaken to determine whether an investigation is required. The following factors are considered:</p> <ul style="list-style-type: none"> credibility and source of allegation scope and complexity of the allegation, including who will need to be involved and what resources will be required whether there is sufficient and appropriate evidence to determine how to handle the allegation whether there are alternative means of resolving the allegation (e.g. mediation, education, contract management) whether there is a risk of immediate harm (e.g. reputational damage, safety and wellbeing of employee) whether there is potential for fraud, corruption or any other form of criminal conduct. <p>Where the facts of a matter are known, the matter may need to be managed rather than investigated. If a decision is made to not proceed to an investigation, the preliminary review outcome will be documented and the person making the report notified.</p>
Investigation planning	<p>The Manager Internal Audit and Fraud Control will commence an investigation. This involves:</p>

Phase	Activities
	<ul style="list-style-type: none"> establishing an investigation team, which may be comprised of an external investigator or subject matter experts across ActewAGL (e.g. legal, IT, HR) developing an investigation plan with the objective, scope and approach for the investigation notifying the relevant executives that an investigation has commenced.
Investigation fieldwork	Depending on the scope and approach outlined in the investigation plan, the investigation team may gather records, documents, and statements, analyse data and conduct interviews with relevant parties.
Investigation report	<p>A final report will be prepared summarising the results of investigation. The report will conclude whether the allegation was:</p> <ul style="list-style-type: none"> Substantiated: The investigation found that it is more likely than not the alleged conduct occurred. Not substantiated: The investigation found that it is more likely than not the alleged conduct did not occur. Inconclusive: The investigation did not find enough evidence to either prove or disprove the alleged conduct occurred. This can occur due to conflicting testimonies, lack of corroborating evidence, or insufficient information. <p>Where necessary, the final report may make recommendations for management to consider:</p> <ul style="list-style-type: none"> disciplinary action in accordance with the Evoenergy Enterprise Agreement or relevant Retail/Corporate procedure. possible termination of contracts legal action, including pursuing the recovery of any assets lost or stolen, and to pursue, or assist authorities in pursuing, legal remedies if there has been a breach of the law. process and control improvements. <p>The Police may separately pursue criminal charges against persons who appear to have participated in criminal acts.</p>
Investigation outcome notification	<p>The Manager Internal Audit and Fraud Control will report the findings of the investigation to the relevant executives. Management will be responsible for implementing any recommendations from the investigation.</p> <p>The status and outcome of each allegation received is reported to the SARC at each committee meeting.</p>

3.3 Procedural fairness

Investigations must have regard to procedural fairness, also referred to as natural justice. This requires ActewAGL to give the person under investigation a reasonable opportunity to address the allegations before a decision is made.

ActewAGL will endeavour to provide the person under investigation with enough information to respond to the allegation. Procedural fairness does not require the decision maker to adopt an 'open file' policy which would have the effect of disclosing every piece of evidence to an affected party. This includes a copy of the final investigation report.

4 Roles and responsibilities

Table 2. Key responsibilities

Role	Responsibilities
All ActewAGL workers	All ActewAGL workers 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 Whistleblower Protection Scheme.
General Managers and Group Managers	General Managers and Group Managers are responsible for: <ul style="list-style-type: none"> ensuring their staff are aware of this procedure and avenues available to them for making whistleblower and fraud reports passing on any reports they believe may be eligible for protection under the Whistleblower Protection Scheme to the Manager Internal Audit and Fraud Control ensuring no frivolous gossip occurs in regard to any investigations.
Manager Internal Audit and Fraud Control	Manager Internal Audit and Fraud Control is responsible for: <ul style="list-style-type: none"> receiving and recording whistleblower and fraud disclosures ensuring employee protection maintaining confidentiality investigating disclosures when required to do so liaising with the Federal/ACT Police where required maintaining independence and impartiality.
Contract managers	Contract managers are responsible for: <ul style="list-style-type: none"> providing a copy of the Code of Conduct and this procedure to external contractors, consultants or suppliers so they are fully aware of ActewAGL's approach to whistleblowers retain responsibility for the services delivered by third parties which includes ensuring that services are delivered in line with our Code of Conduct and ethical standards.

5 Whistleblower protection scheme

Disclosures made by an eligible whistleblower to an eligible recipient are protected under the Whistleblower Protection Scheme (i.e. "protected disclosures"). To access the legal rights and protections for whistleblowers under the Corporations Act, you must meet the definition of an eligible whistleblower. Whistleblowers can provide their name and contact details when they report, or they can report anonymously.

Table 3. Criteria for protection

Criteria	Requirements of the Whistleblower scheme ³
Eligible whistleblower	You must be a current or former: <ul style="list-style-type: none"> employee of ActewAGL officer (director or company secretary) of ActewAGL supplier of goods and services to ActewAGL (including a volunteer)

³ [Whistleblower rights and protections | ASIC](#)

Criteria	Requirements of the Whistleblower scheme ³
	<ul style="list-style-type: none"> • associate of ActewAGL • spouse, relative or dependent of one of the above.
Disclosure about	The disclosure must be about ActewAGL or a related company/organisation.
Eligible recipient	<p>The disclosure must be made to:</p> <ul style="list-style-type: none"> • director, company secretary, company officer or senior manager of ActewAGL or a related company/organisation. - this includes the Chair of the Board, Chair Safety, Audit and Risk Committee (SARC), Group Secretary, Executives and Group Managers • Manager Internal Audit and Fraud Control, auditors or actuaries • ActewAGL Whistleblower Hotline • Australian Securities and Investment Commission (ASIC) or the Australian Prudential Regulation Authority (APRA).
Exceptions	<p>You may not be protected under the Whistleblower Scheme where the disclosure is:</p> <ul style="list-style-type: none"> • Made to a journalist or a member of Parliament, unless it is a public interest or emergency disclosure. • Related to a personal work-related grievance. This generally includes: <ul style="list-style-type: none"> – interpersonal conflict with another employee – decision about your employment, transfer or promotion – decision about the terms and conditions of your employment – decision to suspend or terminate employment or take disciplinary action. • Related to misconduct of ActewAGL's competitors or where you are a customer or client of ActewAGL. The whistleblower protections are designed to protect insiders to ActewAGL only. • Vexatious. 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 or repayment of costs incurred for court proceedings.
Public interest disclosure	<p>The whistleblower protections will only apply in the following circumstances:</p> <ul style="list-style-type: none"> • you have made a previous report to ASIC or APRA that satisfies the criteria above • at least 90 days have passed since you reported your concerns to ASIC or APRA, and you do not have reasonable grounds to believe that action to address your concerns is being or has been taken • you have reasonable grounds to believe that reporting your concerns to a journalist or parliamentarian would be in the public interest • after 90 days from when you reported to ASIC or APRA, you give ASIC or APRA a written notice that includes sufficient information to identify your earlier report and states your intention to make a public interest disclosure. This could be by contacting the ASIC officer who considered your concerns and quoting the reference number of your case • you report your concerns about misconduct or an improper state of affairs or circumstances or a breach of the law to a journalist or a parliamentarian. The extent of the information disclosed is no greater than is necessary to inform the recipient about your concerns.
Emergency disclosures	The whistleblower protections will only apply in the following circumstances:

Criteria	Requirements of the Whistleblower scheme ³
	<ul style="list-style-type: none"> You have made a previous report to ASIC or APRA that satisfies the criteria above. You have reasonable grounds to believe that the information in your report concerns substantial and imminent danger to the health or safety of one or more people or to the natural environment. You give ASIC or APRA a written notice that includes sufficient information to identify your earlier report and states your intention to make an emergency disclosure. Please quote the reference number of your previous report to ASIC. You report your concerns about the substantial or imminent danger to a journalist or parliamentarian. The extent of the information disclosed is no greater than is necessary to inform the recipient about the substantial and imminent danger.

Examples of disclosures that are eligible for protection under the Whistleblower Scheme include conduct that the whistleblower has reasonable grounds to suspect is:

- 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
- an unlawful reprisal against someone who has made a whistleblower disclosure.

5.1 Protections for whistleblowers

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

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:

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

Detriments

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 person to engage in conduct against another person that causes or will cause a detriment:
 - 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
 - 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:
 - 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
 - the threat was made because the person makes or may make a qualifying disclosure.

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 or 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.

6 References

- [Corporations Act 2001](#)
- [Tax Administration Act 1953](#)
- [Code of Conduct](#)
- Access to Surveillance Procedure
- Conflict of Interest Manual
- Bullying, Harassment and Vilification Procedure
- Fraud Corruption and Control Plan