

Protected Disclosure Policy and Procedure

February 2016

Next review date: February 2018

Contents

1	Policy	3
2	Scope	3
3	Responsibility	3
4	Guidelines	4
4.1	What is a Protected Disclosure?	4
4.2	Protections Available	4
4.3	How to make a Disclosure	5
4.4	Detrimental Action	6
4.5	Role of IBAC	6
4.6	Role of the Victorian Ombudsman	6
4.7	Result of disclosing reportable conduct	6
4.8	Reporting	7
5	References	7
Appendix 1	Frequently Asked Questions	7

1 Policy

AMES Australia personnel are well placed to expose serious problems within the organisation. The purposes of the *Protected Disclosure Act 2012* are to:

- (a) encourage and facilitate reporting of:
 - (i) improper conduct by public officers, public bodies and other persons
 - (ii) detrimental action taken in reprisal for a person making a disclosure under the Act
- (b) provide protection for:
 - (i) persons who make those disclosures
 - (ii) persons who may suffer detrimental action in reprisal for those disclosures
- (c) provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures

AMES Australia is committed to effective reporting of:

- Corrupt, dishonest or fraudulent behaviour
- Unethical behaviour including breaching the Code of Conduct, e.g. bullying, sexual harassment, intimidation
- Illegal activity (including theft, drug sale or use, violence or threatened violence and criminal damage against property)
- A substantial mismanagement of public resources
- A substantial risk to the environment
- A substantial risk to health or safety
- Breach of Commonwealth or State legislation, or local authority by-laws

2 Scope

The *Protected Disclosure Policy and Procedure* applies to all AMES Australia employees, volunteers, partners, subcontractors, Board members and Board Committee members.

Anyone can make a protected disclosure. This includes individuals either internal or external to the organisation, independent contractors, students, recipients of services and the general public.

3 Responsibility

The Executive General Manager Corporate Governance is AMES Australia's Protected Disclosure Coordinator and is responsible for receiving disclosures.

The responsibility of the Protected Disclosure Coordinator is to:

- Be the contact point for general advice about operation of the Act
- Impartially assess each disclosure to determine whether it may be a protected disclosure

- Refer disclosures that may be a protected disclosure to IBAC, and receive legal advice and advice from IBAC about referring such disclosures to the police
- Refer disclosures not considered to be a protected disclosure to AMES Australia's complaint management process, or where an incidence of fraud, corruption or associated improper conduct is reported that may require an investigative response, the Chief Executive Officer and the Executive General Manager Corporate Governance shall meet to assess and decide on next steps
- Where necessary, appoint the role of Welfare Manager to support a person making a disclosure
- Establish and manage a confidential filing system
- Collate and publish statistics on disclosures made
- Take all necessary steps to ensure the identity of the person making the disclosure and the person subject of the disclosure remain confidential
- Liaise with the CEO of AMES Australia

4 Guidelines

4.1 What is a Protected Disclosure?

Protected Disclosure

A person may disclose information that shows, or that the person believes on reasonable grounds shows:

- (i) a person associated with AMES Australia has behaved, is behaving or proposes to behave improperly
- (ii) a person or the organisation has punished, is punishing or proposes to punish a person who has reported improper conduct

To be a protected disclosure, the conduct must be serious enough that, if proven, would constitute corrupt conduct, a criminal offence, or reasonable grounds for dismissal.

Internal Disclosure

Disclosure about improper conduct that is not deemed to be a protected disclosure is considered to be an internal disclosure. The Fraud Investigation Team will consider the nature of the disclosure and either:

- Notify IBAC for the disclosure to be assessed, and advise the person who made the disclosure of the action taken, or
- Advise the person who made the disclosure that the disclosure is not considered to be a protected disclosure and has not been notified to IBAC for assessment

AMES Australia is committed to protecting individuals who report improper conduct in good faith. People making disclosures not considered to be a protected disclosure will receive similar protection to those making a protected disclosure.

All disclosures will be investigated appropriately.

4.2 Protections Available

When a person makes a protected disclosure they have:

- Immunity from:
 - Civil and criminal liability
 - Disciplinary action for making a disclosure

- Liability for breaching confidentiality
- Defamation action
- The right to sue for damages or to seek an injunction to stop actions in reprisal

The Independent Broad-based Anti-corruption Commission (IBAC), the Ombudsman and the public body must not:

- Reveal the identity of the person making the disclosure or information that would lead to the person's identification
- Reveal information as a result of a protected disclosure except in limited circumstances
- Take detrimental action against a person for making a protected disclosure

Individuals receive protection under the Act if their allegation satisfies the definition of a protected disclosure.

Managing the Welfare of the Person making a Disclosure

The Protected Disclosure Coordinator is responsible, where necessary, for appointing a Welfare Manager to support the person making a disclosure. AMES Australia will provide additional support through its employee assistance program. The person making a disclosure may request action to protect them, such as relocation or leave of absence, during the investigation where it may not be possible to maintain their anonymity.

4.3 How to make a Disclosure

If you would like to make a complaint, disclosure or enquiry, contact the Protected Disclosure Coordinator or IBAC.

Protected Disclosure Coordinator	IBAC
Phone: (03) 9938 4767 Address: Level 4, 1 Little Collins Street, Melbourne 3000 Email: thomasp@ames.net.au	Phone: 1300 735 135 Fax: (03) 8635 6444 Address: Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3001 or: GPO Box 24234, Melbourne, VIC 3000 Email: Use the enquiry form on http://www.ibac.vic.gov.au/contact-us or: https://www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form

If the complaint, disclosure or enquiry concerns the Protected Disclosure Coordinator, it may be made to the CEO.

A disclosure can be made:

- In person
- In writing
- By telephone
- Electronically
- Anonymously

It is in the best interests of the person making a disclosure to keep disclosures confidential by discussing related matters only with the Protected Disclosure Coordinator or officers of IBAC.

The protections provided to a person who makes a protected disclosure under the Act do not cease, unless the allegations are repeated to persons not authorised by the Act to receive that disclosure, for example, the media.

4.4 Detrimental Action

The Protected Disclosure Act creates an offence for a person to take detrimental action against another person in reprisal for someone making a protected disclosure.

Detrimental action by a person includes the following:

- Action causing injury, loss or damage
- Intimidation or harassment
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

The person need not have actually taken the action, but can just have threatened to do so.

4.5 Role of IBAC

The primary purpose of IBAC is to strengthen the integrity of the Victorian public sector, to enhance community confidence in public sector accountability, and to identify, expose and investigate serious corrupt conduct.

If an agency decides a disclosure may be a protected disclosure, IBAC must be notified for assessment of the disclosure.

The IBAC:

- Receives and assesses complaints and notifications in relation to corrupt conduct
- Investigates those complaints if they are deemed to be a protected disclosure, refers the complaints to other persons or bodies to investigate, or dismisses the complaints if IBAC determines that the complaint does not warrant investigation
- Has education and prevention functions

4.6 Role of the Victorian Ombudsman

The Ombudsman promotes excellence in public administration in Victoria and seeks to ensure the highest possible standards of public sector service delivery to all Victorians. The Ombudsman enquires into or investigates administrative actions taken by a Government department or public statutory body. The office also has important functions aimed at ensuring compliance by state entities with certain specified Victorian legislation such as the *Charter of Human Rights and Responsibilities Act 2006*.

The ombudsman also:

- Enquires into or investigates any administrative action taken by or in an authority that appears to involve corrupt conduct on a referral from the IBAC
- Must notify the IBAC of a complaint or referred matter that appears to involve corrupt conduct

4.7 Result of disclosing reportable conduct

When AMES Australia receives a complaint, report or allegation of improper conduct, the first step is to determine whether the matter may be a protected disclosure.

If a notification may be a protected disclosure AMES Australia must notify the IBAC for assessment and within 28 days of receiving the disclosure, inform the person making the disclosure in writing that the disclosure has been notified to the IBAC for assessment.

4.8 Reporting

AMES Australia's Annual Report must include:

- A statement about how to access procedures relating to making disclosures
- The number of disclosures received during the year

5 References

Independent Broad-based Anti-corruption Commission Act 2011

<http://www.ibac.vic.gov.au/resources/legislation>

Protected Disclosure Act 2012

Ombudsman Act 1973

Victorian Legislation and Parliamentary Documents

Appendix 1 Frequently Asked Questions

What is a disclosure?

A disclosure is an allegation or report of improper conduct.

What conditions must be met for a report to be a protected disclosure?

A person may disclose information that shows, or that the person believes on reasonable grounds shows:

- (i) a person associated with AMES Australia has behaved, is behaving or proposes to behave improperly
- (ii) a person or the organisation has punished, is punishing or proposes to punish a person who has reported improper conduct

To be a protected disclosure, the conduct must be serious enough that, if proven, would constitute corrupt conduct, a criminal offence, or reasonable grounds for dismissal.

How can a disclosure be made?

A disclosure can be made orally or in writing, in person or electronically.

Disclosures may be made anonymously.

Does a disclosure have to be made? Does improper conduct have to be reported?

It is ethical for improper conduct to be reported.

All AMES Australia employees, volunteers, partners, subcontractors, Board members and Board Committee members are bound by the *Code of Conduct* for Victorian Public Sector Employees as stated in the *Public Administrations Act 2004*. The *Code of Conduct* states that AMES Australia personnel must report workplace behaviour that violates any law, rule or regulation or represents corrupt conduct, mismanagement of public resources, or is a danger to public health or safety or to the environment. Integrity is demonstrated by the reporting of improper conduct.

The *Protected Disclosure Act 2012* states that it is an offence to make false disclosure or provide false information, accompanied by a penalty.

What notification do people receive about action taken in relation to a disclosure made?

The person reporting suspected improper conduct must be notified of the findings of any investigation and action taken.

Where further information is sought from a person who makes a disclosure, is that information protected?

That information will be protected as forming part of the original disclosure, or where an entirely different allegation is being made, by constituting a new disclosure.

Is there any protection before it has been decided whether a report is a protected disclosure?

Protection is provided from the time a disclosure is made.