

Protected Disclosures Practice Guideline

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Scope: Eastern Health

Executive Sponsor: ED Human Resources and Communications

Policy Status: New

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Approving Body: EH Executive Committee

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1. Purpose

This Practice Guideline sets out Eastern Health's policy and procedure in relation to its obligations under the Protected Disclosure Act 2012, and is intended to assist Eastern Health employees (and others engaged by or for Eastern Health) to understand and comply with those obligations.

2. Definitions of terms

"Corrupt Conduct" means the following types of conduct that would (if proved) be an indictable criminal offence or the offence of perverting the course of justice, attempting to pervert the course of justice, or bribery of a public official:

- Conduct of any person that adversely affects the honest performance of the functions of a Public Body or a Public Officer; or
- Dishonest performance of the functions of a Public Body or a Public Officer; or
- Conduct of a Public Body or a Public Officer that involves knowingly or recklessly breaching public trust; or
- The misuse by a Public Body or a Public Officer of information or material acquired in the course of the performance of the Public Body's or Public Officer's functions, whether or not for the benefit of any entity or individual(s); or
- A conspiracy or attempt to engage in any of the above types of conduct.

"Detrimental Action" includes: action causing injury, loss or damage; intimidation or harassment; and discrimination, disadvantage or adverse treatment (including disciplinary action) in relation to a person's employment, career, profession, trade or business. Examples include: personal injury; property damage or loss; and demotion, transfer, or isolation in the workplace.

"Detrimental Action Against Another Person in Reprisal for a Protected Disclosure" occurs when a person:

- Takes or threatens to take Detrimental Action against the other person because (or in the belief that) any person has made or intends to make the Protected Disclosure or has cooperated or intends to cooperate with an investigation of the Protected Disclosure; or
- Incites or permits someone else to take or threaten to take Detrimental Action against the other person because any person has made or intends to make the Protected Disclosure or has cooperated or intends to cooperate with an investigation of the Protected Disclosure.

"IBAC" means the Independent Broad-based Anti-corruption Commission, which is a Public Body set up under the Independent Broad-based Anti-Corruption Commissioner Act 2011. IBAC has a range of functions including investigation, and education and prevention, functions. It is overseen by the Victorian Inspectorate.

“Improper Conduct” means:

- Corrupt Conduct; or
- Any of the following types of conduct, which is not Corrupt Conduct but (if proved) would be a criminal offence or reasonable grounds for dismissal or termination of the Public Officer who engaged in that conduct:
 - Conduct of any person that adversely affects the honest performance of the functions of a Public Body or a Public Officer; or
 - Dishonest performance of the functions of a Public Body or a Public Officer; or
 - Conduct of a Public Body or a Public Officer that involves knowingly or recklessly breaching public trust; or
 - The misuse by a Public Body or a Public Officer of information or material acquired in the course of the performance of the Public Body’s or Public Officer’s functions, whether or not for the benefit of any entity or individual(s); or
 - A conspiracy or attempt to engage in any of the above types of conduct; or
 - Conduct of a Public Body or a Public Officer in his or her official capacity, that involves substantial mismanagement of public resources, or substantial risk to public health or public safety or the environment.

“Protected Disclosure” is a disclosure of Improper Conduct or Detrimental Action Against Another Person in Reprisal for a Protected Disclosure, that is made in accordance with the requirements of the Protected Disclosure Act. Those requirements include that the disclosure shows, or is on reasonable grounds believed by the individual making the disclosure to show, that:

- A person, Public Officer or Public Body has engaged in, is engaging in, or proposes to engage in Improper Conduct; or
- A Public Officer or Public Body has taken, is taking, or proposes to take Detrimental Action Against Another Person in Reprisal for a Protected Disclosure.

“Public Body” includes IBAC, a public sector body, a body established under an Act for a public purpose, a Council, a body performing a function on behalf of the State or a Public Body. Examples include: State Government departments; public health services (such as Eastern Health); the offices of the Health Services Commissioner, Freedom of Information Commissioner, Privacy Commissioner, and Ombudsman; Victoria Police; Victorian Auditor-General’s Office; Victorian Civil and Administrative Tribunal; Victorian Inspectorate.

“Public Officer” includes: a person employed in any capacity or holding any office in the public sector (which includes public health services); any other person in the service of a Public Body; a person performing a public function on behalf of a Public Officer or Public Body (whether under contract or otherwise); and an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a delegate of, a Public Body or Public Officer.

3. Name of EH Standard to which Practice Guideline relates

Corporate Governance and compliance.

4. Processes

Introduction

The Protected Disclosure Act replaced the Whistleblowers Protection Act 2001 and forms part of Victoria’s anti-corruption laws. It enables individuals to make disclosures of Improper Conduct in the public sector—which includes public health services—and provides protection for those individuals.

Eastern Health is committed to the objectives of the Protected Disclosure Act and to complying with the requirements of that Act.

Improper Conduct and Detrimental Action Against Another Person in Reprisal for a Protected Disclosure are strictly prohibited. Eastern Health will not tolerate its Public Officers engaging in such conduct. Eastern Health

supports the making of disclosures that reveal such conduct, so that appropriate action can be taken to address that conduct. All Eastern Health Public Officers are encouraged to identify and report, in accordance with this Practice Guideline, any incidences of such conduct.

Relationship with other Eastern Health complaint and communication processes

The procedures in this Practice Guideline apply to Improper Conduct and Detrimental Action Against Another Person in Reprisal for a Protected Disclosure. These procedures do not replace Eastern Health's normal complaint-handling processes or communication channels for all other concerns. For example:

- Complaints from patients (or their relatives or carers) about patient care should continue to be handled in accordance with the relevant policy, (currently) called "Patient Experience Feedback – Compliments, Concerns and Complaints".
- Grievances regarding employment matters should continue to be handled in accordance with the relevant policies, which (currently) include "Equal Opportunity", "Grievance Policy and Procedure", "Harassment", and "Workplace Bullying – Prevention and Management Practice Guideline".
- Privacy complaints should continue to be handled in accordance with the relevant policy, which is (currently) the "Privacy Policy".
- Employees should continue to raise any other concerns through the usual channels, for example, directly with their supervisors.

Protected Disclosures about Eastern Health

In order for a disclosure to be a Protected Disclosure, it must be made to the appropriate body. A Protected Disclosure about Eastern Health (including its Public Officers) *cannot* be made directly to Eastern Health. Any disclosure made directly to Eastern Health (whether about Eastern Health or another body) will not be a Protected Disclosure.

A Protected Disclosure about Eastern Health should be made directly to IBAC. Protected Disclosures can be made to IBAC orally or in writing and may be made anonymously. IBAC's website contains information about how to make a Protected Disclosure.

IBAC's details are:

Independent Broad-based Anti-corruption Commission
Phone: 1300 735 135
Fax: (03) 8635 6444
Post: IBAC, GPO Box 24234, Melbourne, VIC 3000
Website: www.ibac.vic.gov.au

If IBAC receives a disclosure about Eastern Health, it will assess whether it is a Protected Disclosure. If it is a Protected Disclosure, IBAC can investigate the matter under the Independent Broad-based Anti-corruption Commission Act 2011. If it is not a Protected Disclosure, IBAC may advise the discloser that they should make a complaint directly to Eastern Health.

It is an offence for a person to provide information to IBAC intending it to be a Protected Disclosure, if he or she knows it is false or misleading in a material way. Similarly, it is an offence for a person who has made a Protected Disclosure to provide further information to IBAC that the person knows is false or misleading in a material way. (The maximum penalty is 12 months imprisonment and a fine.)

It is an offence for a person to claim that a matter is the subject of a Protected Disclosure, knowing that claim is false. (The maximum penalty is 12 months imprisonment and a fine.)

Protections for Person Making Protected Disclosure

A number of protections apply under the Protected Disclosure Act for an individual who makes a Protected Disclosure. These included:

- In making a Protected Disclosure or providing further information to IBAC in relation to the Protected Disclosure, a person is not in breach of a confidentiality requirement in an Act or agreement.
- The person is protected from civil liability, criminal liability, liability arising through disciplinary action (or any other administrative process), and defamation claims in relation to the making of the Protected Disclosure and the provision of any further information to IBAC relating to the disclosure.
- It is an offence to take Detrimental Action Against Another Person in Reprisal for a Protected Disclosure. (The maximum penalty is two years imprisonment and a fine.)
- A person who takes Detrimental Action Against Another Person in Reprisal for a Protected Disclosure is liable in damages for any injury, loss or damage to that other person.
- If a person in the course of employment with, or while acting as an agent of, Eastern Health takes Detrimental Action Against Another Person in Reprisal for a Protected Disclosure, the individual and Eastern Health are both liable, and legal action may be taken against either or both under the Protected Disclosure Act, unless Eastern Health can prove that it took reasonable precautions to prevent the employee or agent from engaging in that Detrimental Action.
- An employee of Eastern Health who has made a Protected Disclosure and believes (on reasonable grounds) that he or she will be the victim of Detrimental Action Against Another Person in Reprisal for a Protected Disclosure, can request a transfer of employment. The CEO of Eastern Health may transfer that person to duties within a different area of Eastern Health (or to another Public Body if that body consents) on terms and conditions of employment that are no less favourable overall, whether on a permanent or fixed term basis. Such a transfer can only be made if the employee requests or consents to the transfer.

However:

- The above protections do not apply if the person has provided information that the person knows is false or misleading in material way.
- If a person making a disclosure has made a false disclosure or provided false further information relating to a disclosure, any action against that person is not Detrimental Action Against Another Person in Reprisal for a Protected Disclosure.
- A person's liability for his or her own conduct is not affected by his or her disclosure of that conduct under the Protected Disclosure Act.
- A manager may take management action against an Eastern Health employee who has made a Protected Disclosure, provided that the making of the disclosure is not a substantial reason for the management action.

Eastern Health's Human Resources Directors are responsible for managing the welfare of any person who has made a Protected Disclosure, is cooperating or intending to cooperate with an investigation of a Protected Disclosure, or is the subject of a Protected Disclosure. The Human Resources Directors will assess each situation on a case-by-case basis to determine the most appropriate course(s) of action, and will be guided by IBAC's "Guidelines for Protected Disclosure Welfare Management". The Human Resources Directors may seek legal advice from Eastern Health's Chief Counsel to assist them in the performance of their duties under the Protected Disclosure Act.

Confidentiality

Eastern Health will take all reasonable steps to maintain the confidentiality of any Protected Disclosures or to protect the identity of any person who has made a Protected Disclosure or is assisting or has assisted in an investigation by IBAC of a Protected Disclosure. The Human Resources Directors will have particular responsibilities in this regard, given their other responsibilities under this Practice Guideline, and will be guided by the relevant aspects of Eastern Health's privacy policy (currently called "Privacy").

The Protected Disclosure Act contains specific obligations relating to confidentiality, including the following:

- It is an offence to disclose information likely to lead to the identification of a person who made a disclosure in accordance with the required procedure for Protected Disclosures, except as required or permitted by the Protected Disclosure Act. (The maximum penalty is 12 months imprisonment and a fine.)

- It is an offence to disclose the content, or information about the content, of a disclosure made in accordance with the required procedure for Protected Disclosures, except as required or permitted by the Protected Disclosure Act. (The maximum penalty for an individual is 12 months imprisonment and a fine.)
- It is an offence, except in certain circumstances, to disclose that IBAC has determined a disclosure to be a Protected Disclosure. (The maximum penalty is six months imprisonment and a fine.)

Queries and Further Information

Queries about the protected disclosure process can be directed to IBAC (see details above). Further information, including IBAC's Guidelines, is available at IBAC's website.

General queries about the protected disclosure process can be directed to Eastern Health's Human Resources Directors.

5. Roles & Responsibilities

Role	Responsibilities
Board Members	Awareness of and compliance with this Practice Guideline.
CEO	Awareness of and compliance with this Practice Guideline. Leadership and support in relation to Eastern Health's compliance with the Protected Disclosure legislation, including allocation and provision of adequate resources.
Executive Director, Human Resources & Communications	Familiarity and compliance with this Practice Guideline. Leadership and management in relation to the implementation of this Practice Guideline, including raising awareness about its introduction.
All other Executive Directors	Awareness of and compliance with this Practice Guideline. Leadership (as may be required from time to time) in relation to Eastern Health's compliance with the Protected Disclosure legislation.
Human Resources Directors	Familiarity and compliance with this Practice Guideline. Responding to general queries about the protected disclosure process. Welfare management for individuals who make a Protected Disclosure or assist in relation to a Protected Disclosure.
All other managers and staff	Awareness of and compliance with this Practice Guideline.
Chief Counsel	Provide legal advice as required and appropriate in relation to the Protected Disclosure legislation.

6. Skills, Knowledge & Competencies

Staff Group	Skills, Knowledge Competency Required	Training Required	Delivery Mechanism	Responsibility	Timeframe
HR Directors	Familiarity with Practice Guideline & IBAC Guidelines. Ability to maintain confidentiality and respond to needs and concerns of protected persons.	Participation at a relevant session run by IBAC, if any provided (e.g. specific session on welfare management).	Session run by IBAC	Executive Director, Human Resources & Communications	2013-2014, if & when session becomes available.
		Discussion with EH Legal Counsel regarding Practice Guideline, protected disclosure legislation & IBAC Guidelines.	Discussion, information session.	Chief Counsel and Executive Director Human Resources & Communications	September/October 2013.

7. Tools & Techniques

See legislation and external standards above.

8. Measures / Targets

Measure / Target	Date Target Due	Frequency of measurement	Person (role) responsible / accountable	Reporting line
Publication of Practice Guideline on intranet (Objectify system)	August 2013	Ongoing	Executive Director, Human Resources & Communications	CEO
Appointment of Human Resources Directors (or other appropriate persons/roles) to respond to queries about the protected disclosure process and to manage the welfare of persons who make, or assist with, a Protected Disclosure.	August 2013	Ongoing	Executive Director, Human Resources & Communications	CEO
Publication in EHWeekly of a notice regarding introduction of new legislation and Practice Guideline.	September 2013	Initial only	Executive Director, Human Resources & Communications	CEO
Inclusion of information about the protected disclosure legislation in EH Code of Conduct.	August 2013	Ongoing	Executive Director, Human Resources & Communications	CEO

9. Practice Guideline Risk Rating

What may potentially happen if the Practice Guideline is breached, using EH Risk Tables and Matrix.	Consequence Rating	Likelihood Rating	Risk Rating
Commission of criminal offence.	High	Low-Medium	Medium

10. References

- Independent Broad-based Anti-corruption Commission Act 2011 (Vic)
- Protected Disclosure Act 2012 (Vic)
- Protected Disclosure Regulations 2012 (Vic)
- IBAC "Guidelines for Making and Handling Protected Disclosures" June 2013
- IBAC "Guidelines for Protected Disclosure Welfare Management" June 2013

11. Development History

New. To replace Whistleblower's Protection policy (no. 410).

12. Attachments

Nil. Refer to legislation at www.legislation.vic.gov.au and IBAC Guidelines at www.ibac.gov.au.