

# **VicForests Whistleblowers Procedure (Abbreviated Version)**

**22 July 2010**

**V.1.1**



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## **VICFORESTS WHISTLEBLOWERS PROCEDURES (Abbreviated Version)**

### **1. STATEMENT OF SUPPORT TO WHISTLEBLOWERS**

VicForests is committed to the aims and objectives of the *Whistleblowers Protection Act 2001* (the Act). It does not tolerate improper conduct by its employees or officers, nor the taking of reprisals against those who come forward to disclose such conduct. VicForests 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.

### **2. PURPOSE OF THESE PROCEDURES**

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by VicForests or its employees. The system enables such disclosures to be made to the protected disclosure coordinator or to the nominated protected disclosure officer. A copy of the extended version of these procedures will be provided to any person involved in a whistleblower disclosure, including the whistleblower and the person against whom the disclosure is made. These procedures are designed to complement normal communication channels between supervisors and employees. Employees may 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.

### **3. OBJECTS OF THE ACT**

The purpose of the *Whistleblowers Protection Act 2001* is to facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

### **4. DEFINITIONS OF KEY TERMS**

**Whistleblower** means any person who believes on reasonable grounds that a public officer or public body has engaged in or proposes to engage in improper conduct or reprisals against a whistleblower and who makes a disclosure in accordance with the Act about that improper conduct, or reprisal with a view to the matter being investigated and appropriate action being taken.

**Improper conduct** means:

- corrupt conduct;
- a substantial mismanagement of public resources;
- conduct involving substantial risk to public health or safety; or
- conduct involving substantial risk to the environment.

The conduct must also, if proved, be serious enough to constitute a criminal offence or reasonable grounds for terminating the employment of a public officer.

**Corrupt conduct** means:

- conduct of any person (whether or not a public officer) that adversely affects the honest performance of a public officer's or public body's functions;
- the conduct of a public officer in circumstances where he or she has discharged his or her functions with dishonesty or inappropriate partiality;
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust;
- conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of his or her official functions; or
- a conspiracy or attempt to engage in corrupt conduct.

**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.

## 5. REPORTING SYSTEM IN VicForests

### Contact person within VicForests

Disclosures of improper conduct or detrimental action by VicForests or its employees, may be made to the following officers:

- Protected disclosure coordinator  
Josephine Tan – General Counsel,  
in person: Level 7, 473 Bourke St, Melbourne 3000;  
by mail: GPO Box 191, Melbourne 3001
- Protected disclosure officer  
Catherine Proud – Director Human Resources  
in person: Level 7, 473 Bourke St, Melbourne 3000  
by mail: GPO Box 191, Melbourne 3001

All correspondence, phone calls and emails from internal or external whistleblowers will be referred to the protected disclosure coordinator or the protected disclosure officer.

### The Ombudsman

A disclosure about improper conduct or detrimental action by VicForests or its employees, may also be made directly to the Ombudsman:

Ombudsman Victoria  
Level 3, 459 Collins Street  
Melbourne Victoria 3000  
(DX 210174)  
Internet: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

Tel: (03) 9613 6222 or Toll Free: 1800 806 314

## 6. ROLES AND RESPONSIBILITIES

### Employees

Employees may report known or suspected incidents involving improper conduct or detrimental action in accordance with these procedures.

All employees of VicForests have a 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, he/she should protect and maintain the confidentiality of a person known or suspected to have made a disclosure

### Protected disclosure coordinator

The VicForests protected disclosure coordinator will:

- receive all communications from persons seeking to make a disclosure;
- assess each disclosure to determine whether it is a public interest disclosure;
- be a contact point for parties involved in a disclosure (including the Ombudsman) and provide general advice about the operation of the Act;
- be responsible for ensuring that VicForests carries out its responsibilities under the Act;
- be responsible for carrying out, or appointing an investigator to carry out, and overseeing an investigation referred to the public body by the Ombudsman;
- where necessary, appoint a welfare manager to support the whistleblower;

- take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential.

### Others

The **investigator** will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman has referred a matter to the public body, and may be a person from within VicForests or an external consultant. The **welfare manager** is responsible for looking after the general welfare of the whistleblower.

## 7. CONFIDENTIALITY

VicForests and its staff will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring that reprisals are not made against a whistleblower. Disclosure of information in breach of section 22 constitutes an offence that is punishable by a maximum fine of 60 penalty units or six months imprisonment or both. In certain circumstances described in the Act, a person may disclose information obtained about a protected disclosure.

It is also the responsibility of whistleblowers to keep their disclosure confidential. If a disclosure is repeated to an unauthorised person, the whistleblower will lose the protections that would otherwise have been afforded to that person under the Act. For example, if a disclosure is repeated to the media, the whistleblower will not be protected from actions in defamation for any allegations reported.

## 8. RECEIVING AND ASSESSING DISCLOSURES

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

- a natural person (that is, an individual person rather than a corporation) is making the disclosure;
- the disclosure relates to conduct of a public body or public officer acting in his or her official capacity;
- the alleged conduct is improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure; and
- the person making a disclosure has reasonable grounds for believing the alleged conduct has occurred.

Only 'protected disclosures' made in accordance with the requirements in Part 2 of the Act attract the protections offered to people making disclosures. In order to be a protected disclosure, it must be about improper conduct or detrimental action, made by a natural person, to the right person or public body, disclose conduct of a public body or public officer acting in his or her official capacity, allege improper conduct or detrimental action and the person must have reasonable grounds for believing that the conduct has occurred. Where a disclosure has been received, the protected disclosure coordinator will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

Disclosures of improper conduct or detrimental action by VicForests or its employees may be made to either VicForests or to the Ombudsman. VicForests cannot respond to disclosures which do not relate to VicForests or its employees or officers.

Where the protected disclosure officer or coordinator has received a disclosure that has been assessed as a protected disclosure, the protected disclosure coordinator will determine whether the disclosure amounts to a public interest disclosure. This assessment will be made within 45 days of the receipt of the disclosure.

In reaching a conclusion as to whether a protected disclosure is a public interest 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 public interest disclosure, VicForests must within 14 days:

- notify the person who made the disclosure of that conclusion; and
- refer the disclosure to the Ombudsman for formal determination as to whether it is indeed a public interest disclosure.

Where the protected disclosure coordinator concludes that the disclosure is not a public interest disclosure, VicForests must within 14 days:

- notify the person who made the disclosure of that conclusion; and
- advise that person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

If the whistleblower makes this request for referral, VicForests must immediately refer the matter to the Ombudsman for determination as to whether a matter is a public interest disclosure. Where appropriate, VicForests may also refer a person to an alternative avenue to seek redress. Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

## 9 INVESTIGATIONS

Where the Ombudsman refers a protected disclosure to VicForests for investigation, the protected disclosure coordinator will appoint an investigator to carry out the investigation which will involve:

- collecting information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- considering the information collected and to draw conclusions objectively and impartially;
- maintaining procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- making recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

Before commencing an investigation, the protected disclosure coordinator will draw up terms of reference and obtain authorisation for those terms by the Chief Executive Officer of VicForests.

The investigator will prepare an investigation plan for approval by the protected disclosure coordinator, addressing the following issues:

- what is being alleged?
- what are the possible findings or offences?
- what are the facts in issue?
- how is the inquiry to be conducted?
- what resources are required?

The principles of procedural fairness will be followed in any investigation of a public interest disclosure. The principles of procedural fairness ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.

The protected disclosure coordinator will ensure that the whistleblower is kept regularly informed about the handling of a protected disclosure and an investigation.

## 10 ACTION TAKEN AFTER AN INVESTIGATION

At the conclusion of the investigation, the investigator will submit a written report of findings to the protected disclosure coordinator. The report will contain:

- the allegation/s;
- an account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;
- the conclusions reached and the basis for them; and
- any recommendations arising from the conclusions.

Where the investigator has found that the conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:

- the steps that need to be taken by VicForests to prevent the conduct from continuing or occurring in the future; and
- any action that should be taken by VicForests to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

Where the investigator's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report. The report will not disclose particulars likely to lead to the identification of the whistleblower.

If the protected disclosure coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the Chief Executive Officer the action that must be taken to prevent the conduct from continuing or recurring. The protected disclosure coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct. The protected disclosure coordinator will provide a written report to the relevant Minister, the Ombudsman and the whistleblower setting out the findings of the investigation and any remedial steps taken. Where the investigation concludes that the disclosed conduct did not occur, the protected disclosure coordinator will report these findings to the Ombudsman and to the whistleblower.

## **11 MANAGING THE WELFARE OF THE WHISTLEBLOWER**

VicForests is committed to the protection of people who make protected disclosures against detrimental action taken in reprisal for the making of protected disclosures. The protected disclosure coordinator will appoint a welfare manager to all whistleblowers who have made a protected disclosure.

The protected disclosure coordinator will ensure that the whistleblower is kept informed of action taken in relation to his or her disclosure and the time frames that apply.

Where a person who makes a disclosure is implicated in misconduct, VicForests will handle the disclosure and protect the whistleblower from reprisals in accordance with the Act, the Ombudsman's guidelines and these procedures. VicForests acknowledges that the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in improper conduct. Section 17 of the Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action. The Chief Executive Officer of VicForests 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 whistleblower.

## **12 MANAGEMENT OF THE PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE**

VicForests recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. VicForests will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process.

The protected disclosure coordinator will ensure that the person who is the subject of any disclosure investigated by or on behalf of a public body:

- is informed as to the substance of the allegations;
- is given the opportunity to answer the allegations before a final decision is made;
- is informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and
- has his or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the protected disclosure coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation. VicForests will support a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated.

### **13 CRIMINAL OFFENCES**

VicForests will ensure that officers appointed to handle protected disclosures and other employees are aware of the offences created by the Act, including taking detrimental action against a whistleblower, divulging information obtained as a result of the handling or investigation of a protected disclosure without authority, obstructing the Ombudsman and knowingly provide false information.

### **14 COLLECTING 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 whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

### **15 REVIEW**

These procedures will be reviewed periodically to ensure that they meet the objectives of the Act.