

# **Making and Handling Protected Disclosures Policy & Procedure**

## Background/purpose

The *Victorian Protected Disclosure Act 2012* (PDAc) has been set up to:

- encourage and assist people to make a disclosure of **improper conduct** and **detrimental action** by public officers and public bodies;
- provide certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for a disclosure; and
- ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure, and the content of that disclosure.

The body with overall responsibility for administration of the PDAc is the Independent Broad-based Anti-corruption Commission (IBAC). More information about Protected Disclosures and advice on how to make a Protected Disclosure to the IBAC can be obtained from the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

The purpose of this policy and procedure is to facilitate the disclosure of improper conduct or detrimental action by VARTA or its employees (including members). These procedures have been prepared in accordance with the PDAc and the guidelines issued by IBAC.

## Definitions – Protected disclosures

A “**Protected disclosure**” is a disclosure made in accordance with Part 2 of the PDAc. Essentially it is a report made by a person about **improper conduct** or a **detrimental action** by a public body or public officer performing public functions.

“**Improper conduct**” is:

- corrupt conduct; or
- specified conduct which would:
  - constitute a criminal offence; or
  - reasonable grounds for dismissing, dispensing with or otherwise terminating the services of the person who engaged in that conduct

and which adversely affects a public officer/body’s honest performance of their functions, or that involves the public officer/body’s dishonest performance of functions, knowingly or recklessly breaching public trust, misusing information acquired in the performance of functions, conspiring for the same or involving substantial mismanagement of public resources or substantial risk to public health, safety or the environment.

“**Detrimental action**” is an action causing injury, loss or damage, intimidation or harassment or discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, because the person made or intends to make a disclosure, or has cooperated, or intends to cooperate, with an investigation of a disclosure.

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### Who can make a protected disclosure?

Any person or group of people can make a protected disclosure. Businesses and companies cannot make protected disclosures.

You may ask another person to make a disclosure on your behalf. However, if you do ask another person to do so, you should be aware that only the person who makes the disclosure will receive the protections under the PDAc.

### What can I make a protected disclosure about?

You may make a protected disclosure under the PDAc of information that shows/tends to show, or that you believe on reasonable grounds shows/tends to show that VARTA or its employees has, is or is proposing to —

- (i) engage in **improper conduct**; or
- (ii) take **detrimental action** in relation to a protected disclosure.

“Improper conduct’ and ‘detrimental action’ are defined in the PDAc and described above.

Believing on reasonable grounds means that your belief is based on grounds that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action. This requires more than just a mere suspicion, allegation or unsupported conclusions.

### How can I make a protected disclosure?

You may make a protected disclosure to IBAC:

- in person;
- by phone;
- by leaving a voicemail message;
- in writing by post, personal delivery or email;
- by any other form of electronic communication; and/or
- anonymously

A protected disclosure cannot be made by fax.

A protected disclosure must be made in private. Therefore, only the person to whom you are making the disclosure should hear or receive your disclosure. This does not preclude you from making a joint disclosure with a group of individuals at the same time.

VARTA cannot receive protected disclosures under the PDAc. Therefore, if you make a disclosure to VARTA it will not be a protected disclosure.

### What protections will I receive after I make a protected disclosure?

If you make a protected disclosure, you will receive:

- immunity from civil or criminal liability and administrative action for making the disclosure
- immunity from committing an offence under the Constitution Act 1975 (Vic) or any other act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
- immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information
- protection from an action for defamation

The protections will not apply if you knowingly provide false or misleading information or claim that a matter is the subject of a protected disclosure knowing that claim to be false.

### What protections will I receive against detrimental action if I make a protected disclosure?

It is an offence under the PDA Act for any person to take detrimental action against another person in reprisal for a protected disclosure.

If you have been involved in the improper conduct or detrimental action which is the subject of your disclosure, you will still however be held liable for your own involvement. Making a disclosure does not provide you with immunity from your own wrongdoing.

VARTA will take precautions to prevent its employees from being subjected to detrimental actions in reprisal for a protected disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by VARTA will be tailored to individual circumstances and the disclosers and witnesses will, where practicable, be consulted about any action that is taken. If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the person receiving the report will record details of the incident and advise the person of the protections they will receive under the PDA Act.

If you have sustained injury, loss or damage as a result of detrimental action taken against you in reprisal for taking a disclosure, the PDA Act sets out remedies that are available to you. You may wish to obtain legal advice about this.

### What will happen if a protected disclosure is made about me?

VARTA recognises that employees against whom disclosures are made must also be supported through the handling and investigation of those disclosures. VARTA will provide support during the handling and investigation of a disclosure as the circumstances require.

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### Alternatives to making a protected disclosure

VARTA encourages individuals who have concerns about VARTA services or staff to lodge complaints or feedback under VARTA's Complaints and Feedback Policy.

VARTA staff with concerns should raise matters with their supervisors at any time.

### Confidentiality requirements

If you make a disclosure to IBAC, and you repeat your disclosure to someone other than as provided by these procedures or permitted by the PDAc, you may lose the protections provided under the PDAc. If you are considering disclosing information about your disclosure, for instance to the media, you may wish to obtain legal advice first.

A person must not disclose information about a disclosure under the PDAc. This includes information about the disclosure itself, and the identity of the person making the disclosure. There are, however, a number of circumstances in which such information can be disclosed, including:

- In accordance with a direction or authorisation given by the entity investigating
- To the extent necessary to take lawful action in relation to the conduct that is the subject of the disclosure, including disciplinary process or action
- Where the IBAC or Victorian Inspectorate has determined that the disclosure is not a protected disclosure
- Where necessary for the purpose of exercising functions under the PDAc
- Where it is necessary for the purpose of exercising functions under the Independent Broad-based Anti-corruption Commission Act (Vic)
- For the purpose of a prosecuting an offence under a relevant Act or provision
- For the purpose of a disciplinary process or action in respect of conduct that would constitute an offence
- For the purposes of obtaining legal advice or representation
- To an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the PDAc
- An investigating body has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the PDAc

IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of investigative action.

### Criminal offences

Under the PDAc, the following actions are offences:

- Providing information under the PDAc that the person knows is false or misleading

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- Claiming that a matter is a subject of a protected disclosure knowing that claim is false
- Disclosing information in relation to a disclosure notified to IBAC for assessment, including information about the content or identity of the discloser
- Disclosing that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the PDAct
- Taking detrimental action against another person in reprisal for a protected disclosure

### Staff training and compliance

VARTA staff are required to be aware of this protected disclosure policy. All staff will be made aware of how to make a protected disclosure to IBAC. Staff directly responsible for implementing this policy, will be aware of how to communicate that process to the general public.

### Review and compliance

VARTA reviews its policies and procedures regularly to ensure compliance with legislative requirements. This policy will be reviewed biannually to ensure that it is compliant with both the PDAct and the IBAC guidelines.

### More information

More information about Protected Disclosures and advice on how to make a Protected Disclosure to the IBAC can be obtained from the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

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