



# **Public Interest Disclosure Guidelines and Procedures**

Approved by CEO on 15 February 2021

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## Purpose

The *Public Interest Disclosures Act 2012 (Vic)* (**the Act**) aims to make the public sector more open and accountable by encouraging people to report improper conduct in the knowledge that they will be protected when they do.

ACMI is committed to the aims and objectives of the Act.

ACMI's Public Interest Disclosure Guidelines & Procedures set out the process to facilitate the making of public interest disclosures and for protecting people who make such disclosures from detrimental action. These Guidelines & Procedures are prepared in accordance with the Act and the guidelines issued by the Independent Broad-based Anti-corruption Commission (**IBAC**).

ACMI is **not** a public body able to receive public interest disclosures relating to ACMI under the Act. Such disclosures should be made directly to IBAC.

The Independent Broad-based Anti-corruption Commission (**IBAC**)

Level 1, North Tower, 459 Collins Street, Melbourne VIC 3000

GPO Box 24234, Melbourne VIC 3001

Tel. 1300 735 135; Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

## ACMI's Public Interest Disclosure Coordinator is:

Graham Jephcott, Deputy CEO / Executive Director, Commercial & Operations

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The Public Interest Disclosure Coordinator will assess claims of detrimental action and provide welfare management support (see Welfare management; and Dealing with detrimental action sections below).

## Who can make a disclosure?

Any individual or group of individuals can make a public interest disclosure. They can be an employee of the public body, a contractor, or a member of the public.

A disclosure cannot be made by a business or company.

## How do I make a disclosure?

A public interest disclosure must be made in private and may be made:

- (a) in person,
- (b) by phone, or by leaving a voicemail message, or
- (c) in writing by post, personal delivery or email (but not by fax).

**Anonymously** - You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated, and you will not be notified of the outcome of any investigation.

**By Proxy** - You may ask someone else to make a disclosure on your behalf. However, if someone makes a disclosure on your behalf, only they will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure.

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

You may make a **public interest disclosure** about information that, shows or tends to show, or that you believe, on **reasonable grounds**, shows or tends to show, that:

- (a) a person, public officer or public body,
- (b) has engaged in, is engaging in, or proposing to engage in,
- (c) '**improper conduct**' and/or '**detrimental action**'.

This means improper conduct engaged in, and/or detrimental action taken, by or involving public bodies or public officers performing public functions.

Public bodies include ACMI. Public officers include ACMI staff.

### **Definitions: Improper conduct, Detrimental action, Reasonable grounds**

#### **Improper conduct**

Improper conduct (excludes trivial conduct) is the following by or involving public officers or bodies:

- (a) corrupt conduct
- (b) a criminal offence
- (c) serious professional misconduct
- (d) dishonest performance of public function

- (e) intentional or reckless breach of public trust
- (f) intentional or reckless misuse of information
- (g) substantial mismanagement of public resources
- (h) substantial risk to health or safety of one or more persons
- (i) substantial risk to the environment
- (j) conduct of any person that adversely affects the honest performance by a public officer or public body of their functions
- (k) conduct of any person that is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the person, or an associate of the person, obtaining a benefit.

### **Detrimental Action**

Detrimental action is conduct that a public officer or public body takes against a person in reprisal for them (or another person) making a public interest disclosure or cooperating in its investigation. Detrimental action can include:

- (a) causing injury, loss or damage
- (b) intimidation or harassment
- (c) discrimination, disadvantage or adverse treatment in relation to the person's employment, career, profession, trade or business, including the taking of disciplinary action.

### **Reasonable Grounds**

Your belief that improper conduct or detrimental action has occurred, is occurring or will occur does not have to be based on actual proof. It is enough if (i) you believe (as opposed to knowing) that improper conduct or detrimental action has occurred, is occurring or will occur and (ii) you have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

### **Who do I make my disclosure to?**

If you wish to make a public interest disclosure about improper conduct or detrimental action by ACMI or its staff, and you wish to be protected from detrimental action under the Act, you should contact:

Independent Broad-based Anti-corruption Commission

Phone: 1300 735 135

Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Visit [IBAC's online portal](#) to lodge an anonymous disclosure.

ACMI may refer misdirected disclosures to IBAC in accordance with the 'no wrong door' provisions contained in the Act.

### **What will happen after I make a disclosure to IBAC?**

Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes outlined here.

Once IBAC is notified, it must assess whether your disclosure is a public interest complaint. IBAC may seek further information from you and/or ACMI to make the assessment.

If IBAC determines your disclosure is a public interest disclosure, it becomes a 'public interest complaint'.

IBAC may determine to:

- (a) dismiss the complaint
- (b) investigate the complaint
- (c) refer the complaint to another body for action (for example, the Victorian Inspectorate or the Victorian Ombudsman)
- (d) refer the complaint back to ACMI for action (if both you and ACMI consent).

IBAC will provide you with a written statement advising you of its determination, next actions and your legal obligations.

IBAC will also notify ACMI of its determination and may recommend that ACMI investigates the matter or takes other appropriate action.

Regardless of whether IBAC determines your disclosure is a public interest disclosure or not, you will still receive the protections under the Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

## **What protection will I receive?**

The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These include:

- (a) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- (b) immunity from committing an offence under the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (c) immunity from breaching any other obligation (made by oath or the rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- (d) protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines that the disclosure is not a 'public interest disclosure'.

The protections in the Act do not apply if you use a proxy (but may apply to your proxy) or provide false or misleading information or claim that a matter is the subject of a public interest disclosure knowing that claim to be false.

## **Welfare management**

ACMI recognises that the welfare of, and protection from detrimental action of, persons making genuine public interest disclosures are essential for the effective implementation of the Act and are relevant to the ACMI's obligation to create a safe working environment.

ACMI will provide welfare support to a discloser or a witness in an investigation, or persons who are the subject of the protected disclosure, or those who have cooperated or intend to cooperate with an investigation of a public interest disclosure complaint, as the circumstances require.

The Public Interest Disclosure Coordinator will provide reasonable support and will discuss the reasonable expectations with the person(s) they are supporting on what ACMI is able to deliver, and whether their expectations are realistic.

## **Dealing with detrimental action**

ACMI together with the Public Interest Disclosure Coordinator will take precautions to prevent ACMI staff from taking detrimental action in reprisal for a protected disclosure by

identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The Public Interest Disclosure Coordinator will assess the individual circumstances of each case and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

A disclosure of detrimental action is itself a public interest disclosure and should be made to IBAC. IBAC will assess it as a new disclosure according to its own guidelines and processes.

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Public Interest Disclosure Coordinator will record details of the incident and advise the person of their rights under the *Act* to make a disclosure to IBAC. The Public Interest Disclosure Coordinator will also advise the person of the protections that they will receive under the *Act*.

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

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

### **Confidentiality**

There are a number of confidentiality obligations that arise under the *Act* and other laws relating to the receipt and investigation of public interest disclosures.

- (a) If you repeat your disclosure to someone other than your partner, lawyer, health practitioner or other prescribed persons, you may lose the protections provided to under the *Act*.
- (b) ACMI will only disclose information about you or your disclosure in accordance with the law, including the *Act*. The *Act* prohibits disclosing information that is likely to lead to your identification, unless permitted to do so in accordance with the *Act*.
- (c) IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of their investigative action. In such circumstances, the public body or public officer must uphold the confidentiality requirements under the *Act*.



- (d) ACMI will ensure all files related to public interest disclosures are secure and only accessible to authorised officers.

### **Criminal Offences**

There are a number of offences set out in the Act. The key offences are:

- (a) it is an offence to take detrimental action against another person in reprisal for a public interest disclosure;
- (b) it is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act;
- (c) it is an offence for any person to:
  - (i) provide false or misleading information or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure;
  - (ii) claim that a matter is the subject of a public interest disclosure knowing the claim to be false; and
  - (iii) falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint; and
- (d) it is an offence for any person to:
  - (i) disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act; and
  - (ii) disclose that a disclosure has been determined to be a public interest disclosure complaint unless permitted to do so by the Act.

### **Related documents**

- *Public Interest Disclosure Act 2012*
- *Public Interest Disclosure Regulations 2013*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- IBAC, January 2020 Guidelines for handling public interest disclosures
- IBAC, January 2020 Guidelines for public interest disclosure welfare management

- *Public Administration Act 2004*
- Victorian Public Sector Commission standards and Code of Conduct for Victorian Public Sector Employees (2007)
- Victorian Public Service Workplace Determination 2012 (or its successor)
- *Occupational Health and Safety Act 2004*
- *Occupational Health and Safety Regulations 2007*
- *Charter of Human Rights and Responsibilities Act 2006*

### **Matters already disclosed to ACMI**

If a matter has already been disclosed to ACMI and handled under a separate process, for example, a grievance or complaint dealt with by the Human Resources Department under the relevant internal HR Policies or Procedures, the matter will not be dealt with by these Public Interest Disclosure Guidelines and Procedures.

### **Review**

ACMI's Guidelines and Procedures will be reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC's guidelines.