

Treasury Corporation of Victoria

Public Interest Disclosures Procedures

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Purpose of these procedures

The *Public Interest Disclosures Act 2012* (formerly the Protected Disclosure Act 2012) encourages and facilitates making disclosures of improper conduct by public bodies or public sector employees and protects people who report improper conduct from reprisal. Public bodies or public officers include TCV and its employees.

Protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

TCV does not tolerate improper conduct by its employees, officers or directors, nor the taking of reprisals against those who come forward to disclose such conduct.

TCV recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures revealing improper conduct and will take all reasonable steps to protect people making disclosures from reprisals. We are also committed to affording natural justice to the person subject of the disclosure.

TCV has established these procedures to:

- make TCV employees and other persons aware that they can make disclosures under the Public Interest Disclosures Act directly to IBAC
- keep a discloser's identity and the content of a disclosure confidential
- manage the welfare of disclosers including protecting them from detrimental action.

Roles and responsibilities

TCV's Disclosure Coordinator

TCV's Disclosure Coordinator:

- is the TCV contact point for general advice about the operation of the Act
- is TCV's contact point with IBAC about the Act
- is responsible for ensuring TCV carries out its responsibilities under the Act and any guidelines issued by IBAC
- will take all necessary and reasonable steps to ensure the identity of the person making a protected disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- arranges necessary and appropriate welfare support for the discloser, including by appointing a Welfare Manager to support the discloser and to protect them from reprisals
- collates statistics that TCV is required to report under the Act.

TCV's Disclosure Coordinator is the Deputy Managing Director and Corporation Secretary.

Welfare manager

TCV's Disclosure Coordinator will appoint the welfare manager. TCV's General Manager Human Resources will be appointed unless TCV's Disclosure Coordinator is of the view that such an appointment would be inappropriate.

Employees

Employees are encouraged to report to IBAC known or suspected incidences of improper conduct or detrimental action in accordance with these procedures. All employees of TCV have an important 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 under the Public Interest Disclosures Act. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure under the Act or to be cooperating with an investigation of a disclosure under the Act.

What is a public interest disclosure?

A public interest disclosure is a complaint or allegation made by any person about:

- › **corruption**
- › **improper conduct** or
- › **detrimental action**

by a public officer or a public body.

Public interest disclosures can be made about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that a person, public officer or public body that is engaging in or proposing to engage in improper contact or detrimental action.

Corruption includes:

- taking or offering bribes
- dishonestly using influence
- committing fraud, theft or embezzlement
- misusing information or material acquired at work
- conspiring or attempting to engage in the above corrupt activity

Improper conduct includes:

- corrupt conduct
- criminal offences
- serious professional misconduct
- dishonest performance of public functions
- intentional or reckless breach of public trust
- intentional or reckless misuse of information
- substantial mismanagement of public resources
- substantial risk to health or safety of a person
- substantial risk to the environment
- conduct of any person that adversely affects the honest performance by a public officer of their functions
- conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person

Detrimental Action is:

- 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, including the taking of disciplinary action.

Who can make a Public Interest Disclosure?

Any person can make a public interest disclosure about improper conduct engaged in, or detrimental action taken by, TCV or one of its employees, officers or directors.

You can make a public interest disclosure if you are a member of the public, or if you are a TCV employee or an employee of another public sector body.

You can make a public interest disclosure as an individual or together with a group of individuals. A company or business cannot make a protected disclosure.

How to make disclosures

A disclosure of improper conduct by TCV or its employees should be made directly to the Independent Broad-based Anti-corruption Commission (IBAC). Under the Public Interest Disclosures Act TCV is not able to receive public interest disclosures

You may make a protected disclosure to IBAC using IBAC's online form. If you are unable to complete the online form, you should contact IBAC for further information:

- by phone: 1300 735 135
- by email: info@ibac.vic.gov.au
- www.ibac.vic.gov.au

Confidentiality

TCV will take all reasonable steps to protect the identity of the person making the disclosure or persons cooperating with an investigation of a disclosure or the person about whom a disclosure is made.

Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a public interest disclosure or any persons cooperating with an investigation.

TCV has confidentiality obligations under the Public Interest Disclosures Act. These requirements include protecting the identity of the discloser and the matters disclosed. It is a criminal offence to disclose information connected with a disclosure made in accordance with the Public Interest Disclosures Act, and this includes disclosing the identity of the discloser. TCV will only disclose information about a disclosure in accordance with the law, including the Public Interest Disclosures Act.

TCV cannot receive public disclosures under the Public Interest Disclosures Act. Any public interest disclosures made to TCV will be referred to IBAC.

A person who makes a public interest disclosure cannot tell anyone about it except as permitted by the Public Interest Disclosures Act. If a person who makes a public interest disclosure repeats their disclosure other than as permitted by the Public Interest Disclosures Act, they may lose the protections provided for in the Public Interest Disclosures Act. For example, if a disclosure is repeated to the media and the media reports on it, the discloser may not be protected from defamation action.

TCV will take the following steps to protect the confidentiality of a person making a disclosure or the matters disclosed in a public interest disclosure:

- *staff training*: ensure all employees have access to these procedures and receive training about the Public Interest Disclosures Act, the reasons for having public interest disclosures procedures, TCV's obligations and the rights and obligations of TCV's employees under the Act
- *information management*: ensure all files, whether paper or electronic relating to disclosure matters, are kept in a secure room and can only be accessed by TCV's Disclosure Coordinator, an investigator or welfare manager (in relation to welfare matters)

Welfare

TCV recognises that the welfare and protection from detrimental action of persons making genuine public interest disclosures is essential for the effective implementation of the Public Interest Disclosures Act and is also relevant to TCV's obligation to create a safe working environment.

TCV 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. Where TCV becomes

aware of the identity of a discloser, and/or the contents or their disclosure, TCV will be required to keep that information confidential

Protecting against detrimental action

Under the Act, it is an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure.

If anyone reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, TCV's Public Interest Disclosure Coordinator will record details of the incident and advise the person of their rights under the Public Interest Disclosures Act to make a disclosure to IBAC.

If the detrimental action is of a serious nature likely to amount to a criminal offence, TCV's Disclosure Coordinator may report the matter to Victoria Police or IBAC.

A person can make a public interest disclosure about detrimental action taken against them in reprisal for making an earlier disclosure.

Transfer of employees

An employee who has made a disclosure and who believes on reasonable grounds that detrimental action is being taken against them in reprisal for a disclosure may request a transfer of employment.

After making a disclosure an employee can be transferred internally to a public service body (a Department, an Administrative Office or the Victorian Public Sector Commission) or a different part of TCV on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- TCV's Managing Director has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee
- TCV's Managing Director considers that the transfer will avoid, reduce or eliminate the risk of detrimental action
- if transfer to another public body is proposed the head of that public body consents to the transfer.

The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

Discloser implicated in improper conduct or detrimental

Where a discloser is implicated in the improper conduct disclosed and TCV has been provided with the necessary information by an investigative entity (eg IBAC, TCV will protect the discloser from detrimental action in accordance with the Act.

However, under the Act, a person's liability for their own conduct is not affected by their disclosure of that conduct under the Act, therefore a discloser is not protected from reasonable consequences flowing from their involvement in improper conduct.

Review

The procedures will be reviewed annually to ensure they meet the objectives of the Public Interest Disclosures Act and accord with IBAC's guidelines.