

Treasury Corporation of Victoria

Public Interest Disclosures Procedures

August 2024

Purpose of these Procedures

The *Public Interest Disclosures Act 2012* (Vic) (the Act) encourages and facilitates the making of disclosures of improper conduct by public bodies or public sector employees, and protects people who report improper conduct from detrimental action taken against a person in reprisal for having reported the alleged improper conduct. Public bodies include TCV and public sector employees include TCV employees.

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

TCV recognises the value of transparency and accountability in its administrative and management practices, 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 Act directly to the Independent Broad-based Anti-corruption Commission (IBAC);
- keep a discloser's identity and the content of a disclosure confidential; and
- 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 any person who is the subject of the disclosure are kept confidential;
- will arrange necessary and appropriate welfare support for the discloser, including by appointing a Welfare Manager to support the discloser and to protect them from reprisals; and
- will collate statistics that TCV is required to report under the Act.

TCV's Disclosure Coordinator is the General Counsel / Corporation Secretary.

Welfare Manager

TCV's Disclosure Coordinator has appointed the Executive Director – People and Culture as the Welfare Manager. If TCV's Disclosure Coordinator is of the view that such an appointment would be inappropriate in relation to a particular disclosure, TCV's Disclosure Coordinator will appoint a different Welfare Manager for that disclosure.

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, harassment or discrimination, or other adverse action, taken against a person who makes a disclosure under the 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:

- › **improper conduct**; or
- › **detrimental action**,

by a public officer or a public body or conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

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

Improper conduct includes:

- corrupt conduct, which includes conduct that:
 - adversely affects the honest performance by a public officer or public body of the functions of a public officer or public body;
 - constitutes or involves the dishonest performance of the functions of a public officer or public body;
 - constitutes or involves knowingly or recklessly breaching public trust;
 - involves the misuse of information or material acquired in the course of the performance of the functions of a public officer or public body; or
 - is intended to adversely affect the effective performance of the functions or powers of a public officer or public body and results in the person or their associate obtaining a specified benefit;
- criminal offences;
- serious professional misconduct;
- dishonest performance of public functions;
- intentional or reckless breach of public trust;
- intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body;
- 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;
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Detrimental Action includes:

- 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. A disclosure can relate to conduct or action that may have already taken place, may be occurring now or may happen in the future.

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 other individuals. A company or business cannot make a protected disclosure.

How to make a public interest disclosure

A public interest disclosure by TCV or its employees should be made directly to IBAC. Under the 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

Disclosures can be made anonymously if preferred.

Protections provided by the Act

A discloser who makes a protected public interest disclosure under the Act:

- cannot be fired, disciplined or bullied for making a disclosure;
- is not subject to any civil or criminal liability for making a disclosure;
- is not committing an offence against the *Constitution Act 1975* (Vic) or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information;
- is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality; and
- cannot be held liable for defamation in relation to information included in a public interest disclosure.

Confidentiality

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

Maintaining confidentiality is crucial to ensure 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 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 Act, and this includes disclosing the identity of the discloser. TCV will only disclose information about a disclosure in accordance with the law, including under the Act.

TCV cannot receive public disclosures under the 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 Act. If a person who makes a public interest disclosure repeats their disclosure other than as permitted by the

Act, they may lose their protections provided for under the 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 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 securely and can only be accessed by TCV's Disclosure Coordinator, an investigator or the 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 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, and persons who are the subject of the protected disclosure, and 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 of their disclosure, TCV will be required to keep that information confidential.

Protections 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 Disclosure Coordinator will record details of the incident and advise the person of their rights under the 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 will be, is being or has been taken against them in reprisal for a disclosure may request a transfer of employment.

An employee can be transferred to a public service body (a Department, an Administrative Office or the Victorian Public Sector Commission) or a different part of TCV on terms and conditions of employment that are no less favourable overall. This can only happen if they request, or consent to, the 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 being taken against the employee
- if a transfer to another public service body or public entity is proposed, the head of that public service body or public entity consents to the transfer.

The transfer can be permanent or for a fixed term, and if the employee is transferred to another organisation, the employee's service in the new body is regarded as continuous with their pre-transfer service.

Discloser implicated in improper conduct or detrimental action

Where a discloser is implicated in the improper conduct disclosed and TCV has been provided with the necessary information by an investigative entity (e.g. IBAC), TCV will take all reasonable steps to 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 Act and are consistent with IBAC's guidelines.