

## 1. Purpose

These procedures form an essential part of Development Victoria's commitment to the aims and objectives of the *Public Interest Disclosure Act 2012 (Vic) (Act)*. Development Victoria does not tolerate improper conduct by the organisation, its employees or officers, nor does it tolerate the taking of reprisals against those who come forward to disclose such conduct.

The purpose of this document is to establish procedures for:

- a person (whether an employee or member of the public) to make a disclosure about Development Victoria, its employees or officers;
- how Development Victoria will protect disclosers against detrimental action in reprisal for having made a disclosure; and
- addressing welfare management arrangements for disclosers.

Development Victoria will take all reasonable steps to protect people from any detrimental action in reprisal for having made a public interest disclosure. It will afford natural justice to the person or body who is the subject of the disclosures.

These procedures have been prepared in accordance with the Act and the guidelines issued by IBAC which are available on the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

## 2. Responsibilities

### 2.1 Board and all staff

The Board and all Development Victoria employees and officers are responsible for supporting the objectives of the Act and are encouraged to raise matters of concern in relation to Development Victoria, including about any other employee or officer. In particular, employees, officers and members are encouraged to report known or suspected incidents of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All Development Victoria employees and officers have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. No-one may engage in any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure.

Furthermore, they must protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

### 2.2 General Counsel

Development Victoria's General Counsel is the Public Interest Disclosure Coordinator appointed by Development Victoria. The responsibilities of the Public Interest Disclosure Coordinator are set out below at Section 8.

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## Part 1: Making a Disclosure

### Important notice about making disclosures

Development Victoria is *not* a body that may receive public interest disclosures.

A disclosure must be made to an external body that has the authority to receive the disclosure under the *Public Interest Disclosure Act 2012 (Vic)*.

### Quick reference guide to public interest disclosures

<b>Who can I make a disclosure to?</b>	If you wish to make a public interest disclosure about Development Victoria or any of its employees and/or officers, you must contact: <ul style="list-style-type: none"><li>• The Independent Broad-based Anti-Corruption Commission (<b>IBAC</b>);</li><li>• the Ombudsman; or</li><li>• the Victorian Inspectorate.</li></ul>
<b>Who can make a disclosure?</b>	Any individual or group of individuals. A disclosure <i>cannot</i> be made by a business or company.
<b>How do I make a disclosure?</b>	Verbally or in writing (but not by fax) in accordance with specific procedures. See below about <i>who</i> the disclosure can be made to.
<b>What can I make a disclosure about?</b>	Any information that you reasonably believe shows improper conduct engaged in, and/or detrimental action taken by, a person, public body or public officer performing public functions.  This includes Development Victoria and any of its officers or employees.

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### 3. What is a disclosure?

A public interest disclosure is a disclosure of information that (or that a person reasonably believes) shows/tends to show that a person, public officer or public body:

- has engaged, is engaging or proposes to engage in improper conduct; or
- has taken, is taking or proposes to take detrimental action in reprisal against a person for having made a public interest disclosure.

#### 3.1 Improper conduct

Improper conduct is defined in the Act to mean any of the following:

- Corrupt conduct;
- Substantial mismanagement of public resources;
- Serious professional misconduct;
- Dishonest performance of public functions;
- Substantial risk for reckless breach of public trust;
- Serious misuse of information;
- Intentional or reckless breach of public trust;
- Criminal offences; and
- Substantial risk to health and safety.

#### 3.2 Corrupt conduct

Corrupt conduct means any one of the following:

- conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person;
- conduct of a person (first person) intended to adversely affect the effective performance or exercise by a public officer or public body of their functions or powers and result in the first person or an associate of the first person obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument;
  - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument;

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- a financial benefit or real or personal property; or
- any other direct or indirect monetary or proprietary gain, that they would not have otherwise obtained; or
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; and
- if that conduct would constitute:
  - an indictable offence; or
  - one of the following types of common law offences committed in Victoria:
    - perverting the course of justice;
    - attempting to pervert the course of justice;
    - bribery of an official; or
    - misconduct in public office.

### 3.3 Detrimental action

It is an offence under the Act for a public officer or body to take detrimental action against a discloser in reprisal for making a public interest disclosure. There are two essential components here: whether there is in fact “detrimental action”, as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a public interest disclosure.

Detrimental action as defined by the Act 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.

In addition, a person can have taken detrimental action just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

Examples of detrimental action prohibited by the Act include:

- threats to a person’s personal safety or property, including intimidating or harassing a discloser or the discloser’s family or friends or otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser’s family or friends;
- the demotion, transfer, isolation or change in duties of a discloser due to his or her having made a disclosure;
- discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- discriminating against the discloser or the discloser’s family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

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### 3.4 Taken in reprisal for a Public Interest Disclosure

The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that:

- the other person or anyone else has made, or intends to make the disclosure; or
- the other person or anyone else has cooperated or intends to cooperate with an investigation of the disclosure.

This belief must be a reason for taking that action, or it will not be considered to be detrimental action.

## 4. Who can a disclosure be made to?

For general disclosures:

- IBAC;
- the Ombudsman; or
- the Victorian Inspectorate

For disclosures relating to public interest disclosure assessing bodies or their personnel (for example IBAC or the Ombudsman):

- the Victorian inspectorate (for disclosures about IBAC, its officers or a Public Interest Monitor)
- the Integrity and Oversight Committee (for disclosures about the Victorian Inspectorate or its officers)

For disclosures relating to a Council (or their members, officers or employees):

- that Council

For disclosures relating to members of Parliament or Ministers of the Crown:

- Speaker of the Legislative Assembly; or
- the President of the Legislative Council.

### What if I make the disclosure to the wrong body?

The Act provides for a “no wrong door” policy. This means that even if you make a disclosure to the wrong body, you will be protected from reprisal so long as:

- your disclosure was made to one of the above bodies; and
- you honestly believed that the body you made the disclosure to was the appropriate entity to receive the disclosure.

These kinds of disclosures are referred to as *Misdirected Disclosures*.

**NB:** If this happens, the body that receives the misdirected disclosure has an obligation to notify the correct authority of your disclosure with 28 days.

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If your disclosure is made to Development Victoria, you will not be protected under the Act. IBAC's contact details are as follows:

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

GPO Box 24234  
Melbourne VIC 3001  
Phone: 1300 735 135  
[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

If Development Victoria receives a complaint, report, or allegation of improper conduct or detrimental action that it views to be a public interest disclosure, it will advise the discloser to make their disclosure to IBAC.

Once a disclosure has been notified to IBAC, IBAC must determine whether it is a public interest disclosure complaint. Such a determination must be made within a reasonable time after the disclosure is notified to IBAC.

## 5. Who can make a disclosure?

Any individual natural person (or group of individuals) can make a public interest disclosure. This includes members of the public and employees of a public body.

A company or organisation cannot itself make a public interest disclosure, but its officers or employees can.

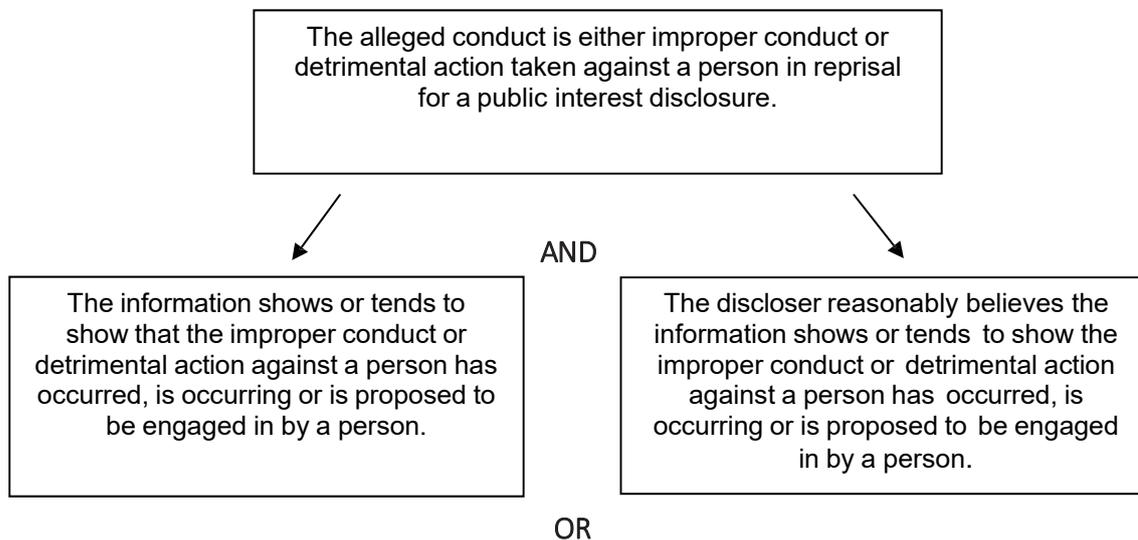
## 6. How can a disclosure be made?

Disclosures may be made in a number of ways set out in the Act, but must comply with the requirements of Part 2 of the Act:

- You can make disclosure orally, in person, by telephone or by leaving a voice mail message.
- You can make disclosure in writing. IBAC recommends that a written disclosure to them be made via an online form available on their website.
- You can make the disclosure anonymously. A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.
- Disclosures must be made in private.
- Disclosures cannot be made by fax.
- You can make a disclosure even if you are unable to identify the person or body about whom the disclosure relates.
- A complaint, notification or disclosure made under another Act may be deemed a public interest disclosure.

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- A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the following diagram:



- Remember that a disclosure about Development Victoria, its officers or employees must be made directly to IBAC, the Ombudsman or the Victorian Inspectorate.

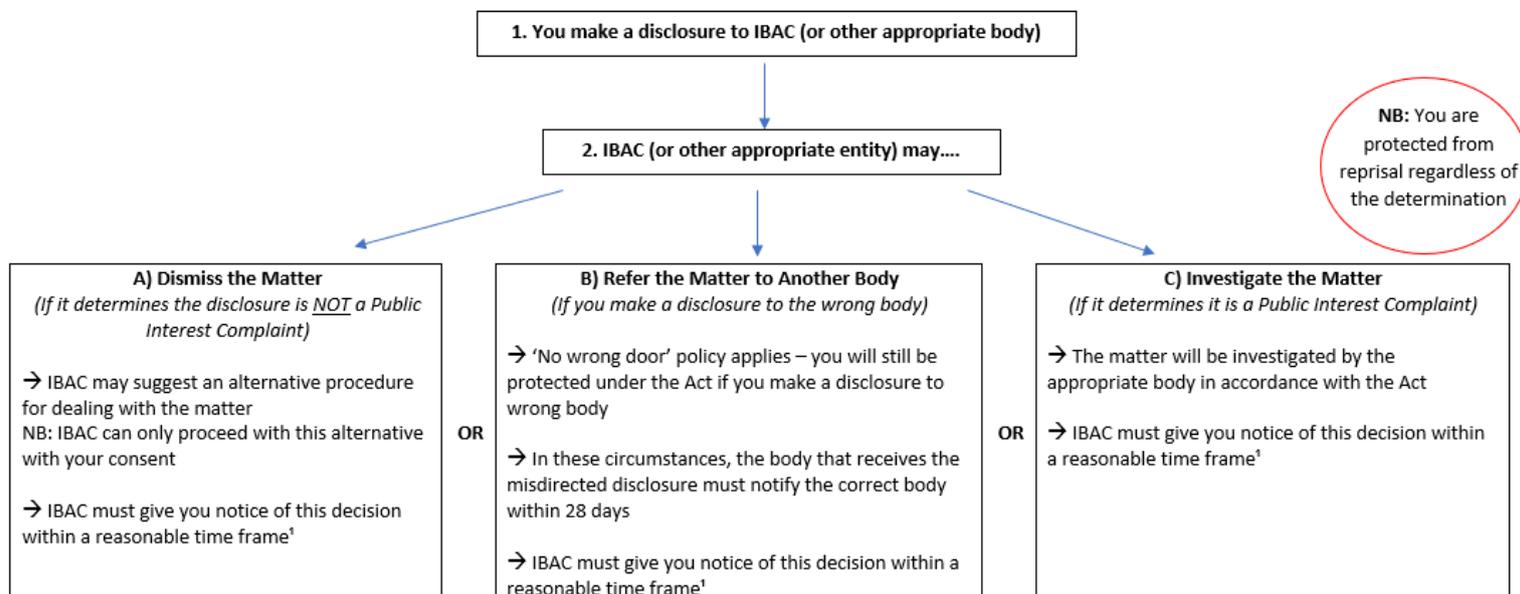
## 6.1 Confidentiality Obligations

- A discloser must not share information they receive from IBAC about its determination and as a result of the investigation.
  - o A discloser may be subject to a Confidentiality Notice prohibiting sharing any information related to the disclosure/investigation.
- A discloser can share information to the necessary people (even when they are subject to a Confidentiality Notice) for the purpose of:
  - o seeking legal advice;
  - o getting the support/advice of healthcare practitioners or trade unions;
  - o making a compensation claim to the Victorian WorkCover Authority; and
  - o making an application to the Fair Work Commissioner.

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## 6.2 The Disclosure Process under the Act

### Process for making a Public Interest Disclosure



#### <sup>1</sup> What if I’m not notified by the assessing entity after I have made a disclosure?

You may disclose a matter to an *External Entity* (a person or body who is not an entity to whom a disclosure can be made e.g. a journalist) in the following circumstances:

- If you haven’t been notified about any action taken by the assessing entity within 6 months, and they don’t respond to your request for advice within 30 days; or
- If the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to your request for advice within 30 days; or
- If the investigation of the original disclosure was not completed within 12 months, you have received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further 6 months of that response.

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## Part 2: Handling welfare management

### 7. Development Victoria's internal arrangements for supporting the making of disclosures

Development Victoria supports a workplace culture where the making of public interest disclosures is valued by the organisation, and where the right of any individual to make a public interest disclosure is taken seriously. Development Victoria will:

- ensure these procedures are accessible on its website and available internally and externally to employees, officers and any individual in the broader community;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, and will take any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;
- take the appropriate disciplinary and other action against any employees or officers engaged in the taking of detrimental action;
- ensure that Development Victoria as a whole handles the welfare management of persons connected with public interest disclosures matters consistently and appropriately in accordance with its obligations under the Act, the *Public Interest Disclosures Regulations 2013*, IBAC guidelines and these procedures; and
- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

#### 7.1 Recording details and advising of rights

If Development Victoria, being a public body that cannot receive disclosures, receives a report on an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the receiving officer must record details of the incident and advise the person of their rights under the Act to make a disclosure to IBAC.

#### 7.2 Mandatory notification to IBAC of suspected corruption

In addition to the process for public interest disclosures under the Act, Development Victoria's CEO (being the 'relevant principal officer') has an obligation under section 57 of the *Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)* (IBAC Act) to notify IBAC of any matter they suspect on reasonable grounds to involve corrupt conduct occurring or having occurred.

Accordingly, matters involving corrupt conduct which are reported by Development Victoria staff should be forwarded to the CEO so that the obligations under the IBAC Act can be met.

Where suspected corrupt conduct has been notified to IBAC specifically as a potential public interest disclosure, IBAC will also treat it as a suspected corrupt conduct notification and there is no need to further notify IBAC under the mandatory notification provisions.

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## 8. Protection for disclosers and co-operators

Development Victoria has an obligation to protect all disclosers (and any person who co-operates with an investigation into a public interest disclosure complaint) from detrimental action taken against them in reprisal for a public interest disclosure.

### 8.1 Obligation to protect confidentiality

Development Victoria takes its obligations under the Act seriously. This includes the obligation to protect the identity of the discloser and to keep confidential the contents of the person's disclosure. Where an organisation obtains this information, it must be kept confidential. Development Victoria also has an obligation to maintain the anonymity of a discloser during and after the investigation.

### 8.2 Obligations as an employer

Whilst the obligation to protect and maintain confidentiality applies to both employees and members of the public, Development Victoria also has legislative and administrative obligations to ensure the health and wellbeing of employees under occupational health and safety legislation and other legal instruments. However, the obligations may not apply to members of the public who are disclosers or co-operators but not employees.

### 8.3 Appointing a welfare manager

- In appropriate circumstances, Development Victoria will appoint a welfare manager to coordinate welfare support for a discloser or co-operator.
- Welfare support will be provided to the discloser or co-operator on an ongoing basis, whether or not a welfare manager has been appointed.

### 8.4 Public Interest Disclosure Coordinator

- Development Victoria's Public Interest Disclosure Coordinator has a central role in the way the organisation deals with all public interest disclosure matters, and in particular for ensuring that the welfare of any persons connected with a public interest disclosure is properly managed.
- The Public Interest Disclosure Coordinator:
  - is the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
  - is responsible for ensuring that Development Victoria carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;
  - is Development Victoria's chief liaison with IBAC in regard to the Act;
  - must take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
  - is responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a welfare manager to support a person entitled to be protected and to protect him or her from any reprisals; and

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- o must collate statistics required to be reported by Development Victoria in its annual reports under the Act.
- The Public Interest Disclosure Coordinator appointed by Development Victoria is:

*General Counsel  
Development Victoria  
Level 9, 8 Exhibition Street, Melbourne 3000  
Ph: 8317 3580*

## 8.5 Transfer of employees

Any Development Victoria employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be or has been taken against them, may request a transfer of employment. Subject to certain conditions, Development Victoria will endeavour to transfer the employee internally or to certain other public bodies on similar terms and conditions of employment.

## 8.6 If the person making the disclosure is implicated in the improper conduct or detrimental action

The discloser is not subject to criminal or civil liability for making the disclosure (section 39 of the Act). However, section 42 of the Act specifically provides that a person's liability for their own conduct is not affected by having disclosed that conduct under the Act. In other words, a discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct. However, in some circumstances, an admission by a discloser may be a factor that is taken into consideration when considering disciplinary or other action as a result of the discloser's improper conduct.

Even though Development Victoria cannot receive a public interest disclosure it will still be subject to the same general obligations of confidentiality, natural justice and fairness as a public service or other body that can receive disclosures, in relation to handling a disclosure and protecting the discloser.

# 9. Meeting the welfare needs of the subject of a public interest disclosure

Until a public interest disclosure complaint is resolved (either by dismissing or investigating it) the information about a person who is the subject of the disclosure is only an allegation.

Development Victoria will meet the welfare needs of the subject of the disclosure as they may need support once they become aware an allegation has been made against them.

Development Victoria will consider each matter on a case-by-case basis, taking into account the particular circumstances of the person and the allegation. If it is appropriate, Development Victoria may refer a person to its Employee Assistance Program.

## 9.1 Informing the subject of a disclosure

Whether the person who is the subject of a disclosure is informed about the allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a public interest disclosure complaint, or a decision is made to dismiss the matter.

The Act restricts the release of information about the content of disclosures or which would be

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likely to identify a discloser. This generally means a public body like Development Victoria cannot reveal this information to the person who is the subject of a disclosure.

However, a public body may give information to the subject of the disclosure about the allegation made against them in some circumstances, such as:

- if it is directed or authorised to do so by the entity investigating the disclosure; or
- for the purpose of taking action with respect to the alleged conduct, including disciplinary action.

These exceptions do not allow a public body to reveal information that would be likely to identify the discloser.

Investigating entities may also inform the subject of the disclosure for the purposes of conducting their investigation or taking action as a result of the investigation.

## 9.2 Confidentiality

Development Victoria will take all reasonable steps to ensure that the confidentiality of a person who is the subject of a public interest disclosure is maintained during the assessment and any ensuing investigation.

Where the disclosure is dismissed or investigations do not substantiate the allegations, confidentiality will still be maintained in relation to the subject's identity, as well as the fact of the investigation and any results.

## 9.3 Natural justice

A person who is the subject of an allegation will be afforded natural justice before a decision is made about their conduct.

Natural justice means the person has the right to:

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

If the matter has been investigated, the investigating entity (IBAC, the Victorian Inspectorate, Victoria Police or the Victorian Ombudsman) is responsible for carrying out this consultation.

## 9.4 If allegations are wrong or unsubstantiated

If someone has been the subject of allegations that are wrong or unsubstantiated, then Development Victoria and the investigating entity will endeavour to ensure there are no adverse consequences for the person arising out of the disclosure or its investigation.

This is particularly crucial where information has been publicly disclosed that has identified the person, and also where such information has become well known across the workplace if it is directed or authorised to do so by the entity investigating the disclosure; or the purpose of taking action with respect to the alleged conduct, including disciplinary action.

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# 10. Related documentation

## Policies

- Development Victoria's Making and Handling Public Interests Disclosures Policy

## Reference Documents

- *IBAC Guidelines* for protected disclosure welfare management, January 2016; and
- *IBAC Guidelines* for making and handling protected disclosures, January 2016.

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