

Development Victoria

Making and Handling Public Interest Disclosures Policy and Procedure A11

1. Policy Statement

1.1 Purpose

As a public body, Development Victoria is subject to the *Public Interest Disclosures Act 2012* (Vic) (the Act). The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct of public officers and public bodies, including Development Victoria, its employees and officers. The Act provides protection to people who make disclosures about improper conduct without fear of reprisal.

Development Victoria is committed to the aims and objectives of the Act, recognises the value of transparency and accountability, and supports the making of disclosures that reveal improper conduct. Development Victoria does not tolerate improper conduct by the organisation, its employees or officers, nor the taking of detrimental action in reprisal against those who make or cooperate with public interest disclosures.

The purpose of this document is to establish procedures for:

- a) a person (whether an employee or member of the public) to make a disclosure about Development Victoria, its employees or officers
- b) how Development Victoria will protect disclosers, and those who cooperate with disclosures, against detrimental action in reprisal for having made a disclosure
- c) addressing welfare management arrangements for disclosers and other affected Development Victoria individuals.

These procedures have been prepared in accordance with the Act and the guidelines issued by the Independent Broad-based Anti-corruption Commission (IBAC) which are available on the IBAC website (www.ibac.vic.gov.au).

1.2 Scope

This policy applies to all Development Victoria Board members and employees (including internal contractors and consultants¹).

1.3 Requirements

Board members and employees must follow the procedure set out below.

2. Responsibilities

2.1 Board and all employees

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.

¹ Note the application of clause 1.4 of the *Code of Conduct for Victorian Public Sector Employees* to the engagement of contractors and consultants. Contractors and consultants are only bound by the Code if explicitly required by their contract for services

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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, or who cooperates with a disclosure.

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

2.2 Group Head, Legal and Advisory

The Group Head, Legal and Advisory is the Public Interest Disclosure Manager appointed by Development Victoria. The responsibilities of the Public Interest Disclosure Manager are set out below at Section 9.4.

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 Disclosures Act 2012* (Vic).

Quick reference guide to public interest disclosures

<p>Who can I make a disclosure to?</p>	<p>If you wish to make a public interest disclosure about Development Victoria or any of its employees and/or officers, you must contact:</p> <ul style="list-style-type: none"> • IBAC • the Ombudsman • the Victorian Inspectorate. <p>It is important to note that if you make a disclosure to Development Victoria, the disclosure will not be protected under the Act.</p>
<p>Who can make a disclosure?</p>	<p>Any individual or group of individuals.</p> <p>A company or business cannot make a disclosure – but its officers or employees can.</p>
<p>How do I make a disclosure?</p>	<p>Verbally or in writing (but not by fax) in accordance with specific procedures. See above about <i>who</i> the disclosure can be made to.</p>
<p>What can I make a disclosure about?</p>	<p>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.</p> <p>This includes Development Victoria and any of its officers or employees.</p> <p>See Section 3 of this Policy for further details.</p>

3. What is a Public Interest 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:

- a) has engaged, is engaging or proposes to engage in **improper conduct**; or
- b) has taken, is taking or proposes to take **detrimental action** in reprisal against a person for having made a public interest disclosure or cooperating with the investigation of a public interest disclosure.

The Act provides certain protections for people who make a public interest disclosure, or those who may suffer detrimental action in reprisal for a disclosure. It also ensures that certain information about a disclosure is kept confidential (primarily the identity of the person making the disclosure, and the content of that disclosure). These confidentiality requirements and their exceptions are set out in sections 52, 53 and 54 of the Act.

3.1 Improper conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. When assessing allegations of improper conduct, there must be a link between the conduct and the official function of a public officer or public body.

Improper conduct includes:

- corrupt conduct²;
- any of the following conduct by a public officer or public body in their capacity as a public officer or a public body:
 - a) a criminal offence
 - b) serious professional misconduct³
 - c) dishonest performance of public functions
 - d) an intentional or reckless breach of public trust
 - e) an intentional or reckless misuse of information or material acquired in the course of the performance of public functions
 - f) a substantial mismanagement of public resources
 - g) a substantial risk to health or safety of one or more persons
 - h) a substantial risk to the environment;
- conduct by a third party that adversely affects the honest performance of a public officer or public body or is intended to adversely affect effective performance of a public officer or public body while obtaining an advantage for the third party; and/or
- conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above.

² As defined in the *Independent Broad-based Anti-corruption Commission Act 2011*

³ As defined in the IBAC Guidelines for handling public interest disclosures – January 2020

3.2 Detrimental action

It is an offence under the Act for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for a public interest disclosure.

There are two essential components: 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:

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

A person doesn't need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

The detrimental action may have been taken or threatened against a person making a public interest disclosure, or against a person who has cooperated, or intends to cooperate, with an investigation of a public interest disclosure.

Taken in reprisal

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

- a) the other person or anyone else has made, or intends to make the disclosure
- b) 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.

3.3 Examples of detrimental action prohibited by the Act include:

- a) 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.
- b) The demotion, transfer, isolation or change in duties of a discloser due to his or her having made a disclosure.
- c) Discriminating or disadvantaging a person in their career, profession, employment, trade or business.
- d) 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.

4. Who can a disclosure be made to?

Who you can make your protected disclosure to depends on the person or body your disclosure is about, as only certain people and bodies can receive protected disclosures.

If your disclosure is made to a person or body that cannot receive your disclosure, your disclosure will not be a protected disclosure, and you will not be protected under the Act.

If you wish to make a protected disclosure about Development Victoria or any of its employees and/or public officers, you must make your disclosure to one of the following:

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

The Ombudsman

Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone (03) 9613 6222 or 1800 806 314 (regional areas only)

www.ombudsman.vic.gov.au

The Victorian Inspectorate

PO Box 617 Collins Street West
Melbourne VIC 8007

Phone (03) 8614 3232

<https://www.lgi.vic.gov.au/>

IMPORTANT

If your disclosure is made to Development Victoria, you will not be protected under the Act.

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:

- a) You can make disclosure orally, in person, by telephone or by leaving a voice mail message.
- b) You can make disclosure in writing. IBAC recommends that a written disclosure to them be made via an online form available on their website.
- c) 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.
- d) Disclosures must be made in private.
- e) Disclosures cannot be made by fax.
- f) You can make a disclosure even if you are unable to identify the person or body about whom the disclosure relates.
- g) A complaint, notification or disclosure made under another Act may be deemed a public interest disclosure.
- h) 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.

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

7. Confidentiality obligations for disclosers

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

PART 2: HANDLING WELFARE MANAGEMENT

8. 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:

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

8.1 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 make a confidential record of the incident and advise the person of their right to make a public interest disclosure to IBAC.

8.2 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 employees 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 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.

9. Protection for disclosers and co-operators

Development Victoria is committed to ensuring the welfare of those who make or cooperate with public interest disclosures.

9.1 Obligation to protect confidentiality

As Development Victoria cannot receive public interest disclosures, we may not be aware someone has made a public interest disclosure about Development Victoria.

IBAC will only notify Development Victoria of a public interest disclosure made about us if it decides it is necessary. If IBAC does notify Development Victoria of the identity of a discloser, or someone cooperating with an investigation, such notifications are confidential and Development Victoria is responsible for providing that person with reasonable welfare support.

9.2 Obligations as an employer

Whilst the obligation to protect and maintain confidentiality applies to both employees and members of the public, the welfare management of each may be different. For example, public bodies have legislative and administrative obligations to ensure the health and wellbeing of employees under occupational health and safety legislation, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, the Victorian Public Sector Commission (VPSC) Code of Conduct for Victorian Public Sector Employees 2015 and the VPSC Code of Conduct for Directors of Victorian Public Entities 2024. These may not apply to members of the public who are disclosers or co-operators but not employees.

9.3 Appointing a welfare manager

Where relevant, Development Victoria will consider appointing a welfare manager to coordinate welfare support for a discloser or co-operator.

The welfare manager is responsible for:

- a) considering the welfare and protection needs of the discloser and/or co-operators and fostering a supportive work environment
- b) monitoring a specific discloser or co-operator
- c) providing practical advice and support
- d) advising the discloser and/or co-operators of the protections available under the Act
- e) receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (e.g. harassment, intimidation or victimisation)
- f) ensuring that the discloser and/or co-operators expectations of the process and outcomes are realistic; and
- g) maintaining confidentiality.

In determining whether to appoint a welfare manager, Development Victoria will consider:

- a) whether the disclosure has proceeded, or is likely to proceed, to an investigation
- b) whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances
- c) whether Development Victoria can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure, and
- d) whether it is within Development Victoria's power to protect the person/s involved from suffering repercussions.

Development Victoria may appoint an internal person as welfare manager or engage a contractor to provide welfare services. Development Victoria will also consider referring an employee to its Employee Assistance Program (EAP).

Welfare support will be provided to the discloser or co-operator on an ongoing basis, whether or not a welfare manager has been appointed.

9.4 Public Interest Disclosure Manager

Development Victoria's Public Interest Disclosure Manager 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.

Development Victoria's Public Interest Disclosure Manager is:

Group Head, Legal and Advisory
Development Victoria
Level 9, 8 Exhibition Street, Melbourne 3000
Ph: 03 8317 3580

The Public Interest Disclosure Manager:

- a) is the contact point for general advice about the operation of the Act.
- b) is Development Victoria's chief liaison with integrity agencies such as IBAC.
- c) 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.
- d) 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.
- e) is responsible for arranging any necessary and appropriate welfare support for the discloser or co-operators, including appointing a welfare manager to support a person entitled to be protected and to protect him or her from any reprisals.
- f) must collate statistics required to be reported by Development Victoria in its annual reports under the Act.
- g) is responsible for contacting IBAC if a Freedom of Information request is received for any document originating from IBAC or relating to a public interest disclosure. Documents may not be subject to the *Freedom of Information Act 1982* if they disclose information that relates to a public interest disclosure or are likely to identify a person who has made a public interest disclosure.

9.5 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 employment⁴.

⁴ See IBAC Guidelines for public interest disclosure welfare management – January 2020 for further details

9.6 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 account when considering disciplinary or other action as a result of the discloser's improper conduct.

10. Meeting the welfare needs of the subject of a public interest disclosure

Until a public interest disclosure complaint is resolved by the entity investigating the disclosure (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 EAP.

10.1 Informing the subject of a disclosure

Whether the person who is the subject of a public interest 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 the investigating entity determines that it is not a public interest disclosure complaint or makes a decision to dismiss the matter.

The Act restricts the release of information about the content of public interest disclosures and information which would be likely lead to the identification of 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, Development Victoria may give information to the subject of the disclosure about the allegation made against them in some circumstances, such as:

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

These exceptions do not allow Development Victoria 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.

10.2 Confidentiality for the subject of a disclosure

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 investigating entity's assessment and any ensuing investigation.

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Development Victoria will only disclose information about the subject of a public interest disclosure in accordance with the law.

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.

10.3 Natural justice for the subject of a disclosure

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:

- a) be informed about the substance of the allegations against them
- b) be given the opportunity to answer the allegations before a final decision is made
- c) be informed about the substance of any adverse comment that may be included in any report arising from an investigation
- d) 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.

10.4 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, despite the confidentiality of the process, information has been publicly disclosed that has identified the subject of the allegations, or where such information has become well known across the workplace.

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

11. Regular Review

Development Victoria will review this Policy and Procedure every two years, or more regularly where required.

12. Alternatives to making a public interest disclosure

This policy is designed to complement usual methods of submitting complaints to Development Victoria.

Employees are encouraged to raise matters with their supervisors and managers at any time.

Members of the public are encouraged to contact Development Victoria about any complaints or concerns they have with services provided by Development Victoria. This can be done by emailing complaints@development.vic.gov.au. Alternatively, a complaint may be made directly to Development Victoria's CEO by writing to:

Chief Executive Officer
Development Victoria
Level 9, 8 Exhibition Street
Melbourne VIC 3000

13. Related Documentation

Reference Documents:

IBAC Guidelines for public interest disclosure welfare management, January 2020

IBAC Guidelines for handling public interest disclosures, January 2020

Related Documents:

Victorian Public Sector Commission Code of Conduct for Public Sector Employees

Victorian Public Sector Commission Code of Conduct for Directors of Public Entities

Development Victoria Gifts, Benefits and Hospitality Policy and Procedure

14. Version Control

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