

Public Interest Disclosure Procedures

Authorised by: CEO

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| Responsible executive: | Brendan Webb Chief Executive Officer |
| Approval date: | 1 Decembe 2022 |
| Review period: | Two years |

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1. Introduction

1.1. Public Interest Disclosures Act 2012

The purposes of the *Public Interest Disclosures Act 2012* (Vic) (“the Act”) are to:¹

1. to encourage and facilitate disclosures of—
 - a. improper conduct by public officers, public bodies and other persons; and
 - b. detrimental action taken in reprisal for a person making a disclosure under this Act; and
2. to provide protection for—
 - a. persons who make those disclosures; and
 - b. persons who may suffer detrimental action in reprisal for those disclosures; and
3. to ensure that those disclosures are properly assessed and, where necessary, investigated;
4. to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

The Act regulates “whistleblowing” or “protected disclosures”.

As a public body, Ports Victoria (PV) is subject to the Act. This includes PV’s Board members, the CEO, management, employees and contractors (which, for the purpose of these procedures, will all be referred to as “PV Staff”).

1.2. Purpose of the Procedures

The purpose of these Public Interest Disclosures Procedures (“the Procedures”) is to provide information to PV Staff and members of the public regarding how a public interest disclosure may be made about PV or a PV Staff member pursuant to the Act. The Procedures include information about how and to whom a public interest disclosure can be made as well as what constitutes a public interest disclosure.

The Procedures also set out the steps that PV will take to protect people who make disclosures and others from detrimental action that may be taken in reprisal for the disclosure having been made.

1.3. Scope

1.3.1. Areas of the PV business to which these Procedures apply

The Procedures apply to the following people:

- a. PV, including all PV Staff; and
- b. members of the public.

1.3.2. Specific activities to which the Procedures apply

Disclosures made under the Act can only be about the conduct of a public body or public officer in the performance of their functions as a public body or public officer. Therefore, these Procedures apply only in relation to:

- a. disclosures made about PV; or
- b. disclosures made about PV Staff when acting in their capacity as PV Staff.

¹ Section 1.

1.4. Using the Procedures

Information for PV Staff and members of the public regarding how to make a public interest disclosure can be found in Section 2 of these Procedures.

Information for PV Staff regarding actions that must be taken in relation to public interest disclosures made about PV or PV Staff can be found in Section 3 of these Procedures.

2. How to make a Public Interest Disclosure

2.1. The Act

PV is a public body and is therefore subject to the Act. Any person wishing to make a disclosure about improper conduct of PV or PV Staff can do so by following the procedures set out in the Act (refer to section 2.3 of the Procedures below).

2.2. What is a public interest disclosure?

A public interest disclosure is a disclosure by a natural person (i.e. not a company, but an individual) of:

- a. information that shows or tends to show:
 - i. a person, a public body (for example, PV) or a public officer (for example, PV Staff) has engaged, is engaging or proposes to engage in improper conduct; or
 - ii. a public body or a public officer is taking or proposes to take detrimental action against a person as described in section 3 of these Procedures;
- b. information that the person reasonably believes shows or tends to show:
 - i. a person, a public body or a public officer has engaged, is engaging or proposes to engage in improper conduct; or
 - ii. a public body or a public officer is taking or proposes to take detrimental action against a person as described in section 3 of these Procedures.

It is important to note that a public interest disclosure may be made even if the person making the disclosure cannot identify the person or the body to whom or to which the disclosure relates.

2.2.1. Improper conduct

Improper conduct is defined in the Act as meaning: ²

- a. corrupt conduct;
- b. conduct that constitutes:
 - i. a criminal offence;
 - ii. serious professional misconduct;
 - iii. dishonest performance of public functions;
 - iv. an intentional or reckless breach of public trust;
 - v. an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public body or public officer;
 - vi. substantial mismanagement of public resources;
 - vii. substantial risk to the health or safety of one or more persons;

² Section 4.

- viii. substantial risk to the environment;
- c. conduct of any person that:
 - i. adversely affects the honest performance by a public body or public officer of their functions as a public body or public officer;
 - ii. is intended to adversely affect the effective performance or exercise by a public body or public officer of their functions or powers as a public body or public officer and result in the person, or an associate of the person, obtaining an approval, appointment, financial benefit or monetary or proprietary gain that the person or associate would not have otherwise obtained; or
- d. conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

Conduct that is trivial or less serious is excluded from the definition of improper conduct.

Examples of improper conduct include:

- a. a public officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty;
- b. a public officer favours unmeritorious applications for positions or permits by friends and relatives;
- c. a public officer sells confidential information.

2.2.2. Detrimental action

The Act makes it an offence for a person to take detrimental action against another person in reprisal for a public interest disclosure (that is, detrimental action taken against a person because a public interest disclosure has been made). Detrimental action is in the Act to include: ³

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

Examples of detrimental action include:

- a. a public body refuses a deserved promotion of a person because the person made a public interest disclosure;
- b. a public body demotes, transfers, isolates in the workplace or changes the duties of a person because the person made a public interest disclosure;
- c. a public body (or public officer) threatens, abuses or carries out other forms of harassment directly or indirectly against a person who has made a public interest disclosure, or that person's family or friends, because the person made the public interest disclosure;
- d. a public body (or public officer) discriminates against a person who made a public interest disclosure, or that person's family or friends, because the person made the public interest disclosure.

Further information regarding detrimental action and PV's procedures for protecting people against detrimental action can be found in Section 3 of these Procedures.

The Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

³ Section 3.

2.3. Making a public interest disclosure

2.3.1. To whom can a public interest disclosure be made?

Disclosures of improper conduct or detrimental action by PV or a PV Staff member may be made to the Independent Broad-based Anti-Corruption Commission (“IBAC”), the Victorian Ombudsman (“Ombudsman”) or the Victorian Inspectorate.

IBAC:

Postal: GPO Box 24234, Melbourne, Victoria, 3001

Telephone: +61 1300 735 135

Email: info@ibac.vic.gov.au

Website www.ibac.vic.gov.au

Ombudsman:

Postal: Level 2, 570 Bourke Street, Melbourne, Victoria, 3000

Telephone +61 3 9613 6222

Email: vomedia@ombudsman.vic.gov.au

Website www.ombudsman.vic.gov.au

Victorian Inspectorate:

Postal: PO Box 617 Collins Street West, Melbourne, Victoria, 8007

Telephone +61 3 8614 3225

Email: info@vicinspectorate.vic.gov.au

Website: www.vicinspectorate.vic.gov.au

A public interest disclosure will be regarded as a misdirected disclosure if it is made to an entity that is not listed above (but which can receive public interest disclosures), and the person who made the disclosure honestly believed that the receiving entity was an appropriate entity. The disclosure can still be notified to IBAC for assessment and will receive the protections of the public interest disclosure regime.

PV is not able to receive disclosures under the Act.⁴ Therefore, if a disclosure is made to PV (or a PV Staff member) the discloser will be advised that the disclosure should be made directly to IBAC or one of the entities listed above. A disclosure made to PV will not be protected under the Act.

2.3.2. What happens when a public interest disclosure has been made?

Information regarding the process for making a public interest disclosure can be found on the websites of each of the entities listed in 2.3.1 above. Disclosures can be made verbally or in writing and can be made anonymously.

This publication also contains information regarding IBAC’s processes for responding to disclosures, which include:

- a. an initial assessment by IBAC regarding whether the disclosure is a “public interest complaint” in accordance with the Act; and
- b. if IBAC determines that the disclosure is a public interest complaint, dealing with the public interest complaint in accordance with its legislative powers, which may include investigating the public interest complaint or referring the public interest disclosure to another entity for investigation.

The Act provides certain protections to individuals who make disclosures including:

- c. restricting disclosure of information about the content of a disclosure or which could identify the discloser; and

⁴ PV could previously receive disclosures under the *Whistleblowers Protection Act 2001*.

d. protecting the discloser from detrimental action in reprisal for making the disclosure.

2.3.3. What if the disclosure is not a public interest complaint?

If the disclosure is determined by IBAC not to be a public interest complaint under the Act, IBAC will notify the person who made the disclosure of that determination and will also notify the person that the disclosure will not be investigated. The matter will not proceed any further as a public interest complaint. As a consequence of this determination, the confidentiality provisions under part 7 of the Act (confidentiality of disclosures) will no longer apply in relation to the disclosure. However, the protections under Part 6 of the Act (protection of persons making public interest disclosure) will apply.

If IBAC determines that a disclosure is not a public interest complaint but considers that the matter which is the subject of the disclosure may be able to be dealt with by another entity, IBAC may advise the person who made the disclosure that the disclosure can be dealt with by another entity and that the person should make a complaint directly to that entity.

However, if the person who made the disclosure wishes to bring the matter to PV's attention, the person can nevertheless report the matter to PV for consideration, investigation and resolution (as appropriate) pursuant to PV's internal procedures. In such a circumstance the matter will fall outside the scope of these Procedures.

3. Protecting people against detrimental action

3.1. What is detrimental action in reprisal?

The Act makes it an offence for a person to take detrimental action against another person in reprisal for someone making a public interest disclosure (that is, *because* a public interest disclosure has been made). The following constitutes a breach of this provision:

- a. a person takes detrimental action against another person;
- b. a person threatens to take detrimental action against another person; or
- c. a person incites or permits someone else to take or threaten to take detrimental action against another person,

because or in the belief that:

- a. a person has made a public interest disclosure;
- b. a person intends to make a public interest disclosure; or
- c. a person has cooperated, or intends to cooperate, with an investigation of a public interest disclosure.

The person against whom detrimental action is taken need not be the discloser. It can be any person including witnesses, persons cooperating with an investigation, the discloser's family, friends or associates, or any other person provided that the detrimental action is in response to a public interest disclosure having been made.

3.2. Penalties for taking detrimental action – Criminal and Civil

The taking of detrimental action is an offence under the Act.⁵ The maximum penalty for taking detrimental action against another person in reprisal for a public interest disclosure is 240 penalty units⁶ or 2 years imprisonment or both.

⁵ Section 45.

⁶ The current value of a penalty unit is available here: [Penalties and values | Department of Justice and Community Safety Victoria](#)

In addition, the Act states that a person who takes detrimental action against another person in reprisal for a public interest disclosure is liable to compensate that person for any injury, loss or damage. Therefore, a person who takes detrimental action may be subject to both criminal and civil penalties.

3.3. General protections

PV does not tolerate improper conduct by PV Staff nor the taking of detrimental action in reprisal for the disclosure of such conduct. PV is supportive of public interest disclosures being made and recognises that the protection of persons in connection with public interest disclosures is essential for the effective implementation of the Act. PV will take all reasonable steps to protect PV Staff and others from any detrimental action as a result of a public interest disclosure being made, including:

- a. ensuring that all PV Staff are aware of their right to make public interest disclosures under the Act;
- b. ensuring that these Procedures are accessible to PV Staff and are publicly available;
- c. advising PV Staff where they can obtain further information, advice and assistance regarding public interest disclosures;
- d. conveying to all PV Staff as well as members of the public that the making of public interest disclosures is encouraged by PV and those who do so will be supported; and
- e. ensuring that all PV Staff are aware that detrimental action will not be tolerated and may attract both criminal and civil penalties under the Act.

3.4. Where PV becomes aware that a public interest disclosure has been made

Although PV cannot receive public interest disclosures under the Act, in certain circumstances PV may become aware that a public interest disclosure has been made about PV or a PV Staff member. Such a circumstance might arise where an investigation is commenced by an investigating entity.

In such circumstances PV will:

- a. Cooperate with the investigating entity by:
 - i. responding to the investigating entity's inquiries; and
 - ii. provide further information as required.

Investigations will be handled by the CEO (or the CEO's delegate). However, if the public interest disclosure relates to the CEO, investigations will be handled by the Chair of the PV Board (or the Chair's delegate).

- b. Maintain confidentiality by:
 - i. keeping the identity of the discloser (if known) and the subject matter of the disclosure confidential;
 - ii. taking steps to reduce the possibility that other staff might guess the identity of the discloser or a person cooperating with the investigation (correctly or incorrectly); and
 - iii. ensuring that all files kept and records made in relation to the disclosure (both electronic and hardcopy) are kept securely and can only be accessed as necessary by persons authorised in connection with the disclosure.

Where an investigation has commenced, it may be necessary for the investigating entity (for example, IBAC) to disclose the identity of the discloser and the content of the public interest disclosure to the entity or person under investigation. In such circumstances, PV will be bound by the confidentiality requirements set out in Part 7 of the Act, which include:

- i. a requirement to keep the content, or information about the content, of a public interest disclosure confidential; and
- ii. a requirement to keep the identity of a discloser, or information likely to lead to the identification of a discloser, confidential.

However, PV will be able to disclose information to the investigating entity without breaching these requirements.

- c. Assess the risks of detrimental action being taken in reprisal by:
 - i. considering the nature of the disclosure and identifying any areas of concern;
 - ii. monitoring the workplace;
 - iii. anticipating problems; and
 - iv. endeavouring to deal with problems before they develop.
- d. Protect the discloser against possible detrimental action (where the discloser's identity is known) by:
 - i. examining the immediate welfare and protection needs of the discloser and seeking to encourage a supportive working environment;
 - ii. listening and responding to any concerns the discloser may have about harassment, intimidation or victimisation in relation to the public interest disclosure; and
 - iii. considering whether the concerns the discloser may have about harassment, intimidation or victimisation might be due to causes other than the public interest disclosure.

The discloser will be advised that they can seek welfare support and assistance from PV's Employee Assistance Program or a person appointed by the CEO. PV's Employee Assistance Program is provided by:

Converge International

Telephone: 1300 OUR EAP (1300 687 327)

Email: eap@convergeintl.com.au

Website: www.convergeinternational.com.au

Where the discloser makes a report to PV regarding harassment, discrimination or adverse treatment that may amount to detrimental action in reprisal for the public interest disclosure, PV will advise the discloser that such conduct may itself be grounds for a further public interest disclosure under the Act and advise the discloser of their rights to make a further disclosure to IBAC or another entity (refer section 2.3.1).

- e. Protect other persons against detrimental action, including witnesses, people who cooperate with investigations and the person who is the subject of the public interest disclosure. These people will also be provided with the protections and support outlined at paragraph (d) above.

With respect to the person who is the subject of the public interest disclosure, PV will:

- i. acknowledge that, until the public interest disclosure is resolved by IBAC (either by dismissing or investigating it) and an outcome is reached, the information is only an allegation;
 - ii. take all reasonable steps to ensure the confidentiality of the person during the assessment and investigation process;
 - iii. take all reasonable steps to ensure the continued confidentiality of the identity of the person, the fact of the investigation and its results where the disclosure is dismissed or investigations do not substantiate the allegations made; and
 - iv. ensure that there are no adverse consequences for the person where the allegations are wrong or unsubstantiated.
- f. Manage the impact of any investigation across the organisation by maintaining confidentiality as required and preventing the spread of gossip and rumours.
 - g. Keep contemporaneous records of all aspects of a public interest disclosure and investigation, including copies of correspondence, other materials and written records of meetings and telephone discussions.

3.5. Limitations

Whilst the Act and these Procedures provide certain protections to persons who make public interest disclosures, such persons are nevertheless responsible for their own conduct. Therefore, if the person making the public interest disclosure is implicated in the improper conduct, that person may still be subject to

reasonable consequences flowing from his or her involvement which may involve legitimate management action or disciplinary action. This is recognised in the Act.⁷

Where the person making the public interest disclosure is implicated in the improper conduct, the matter will be referred to the CEO for consideration and determination of disciplinary action in relation to the person's involvement in the improper conduct. The CEO will make the decision as to whether disciplinary or other action will be taken against the person. Where the conduct that is the subject of a public interest disclosure and under investigation by IBAC, the CEO (or the CEO's appointed representative) will consult with IBAC as appropriate.

In all cases where disciplinary or other action is being contemplated, the CEO must be satisfied that it has been clearly demonstrated that:

- a. the intention to proceed with disciplinary action is not causally connected to the making of a public interest disclosure (as opposed to the content of a public interest disclosure or other available information);
- b. there are good and sufficient grounds that would fully justify action against any other person (who has not made a public interest disclosure) in the same circumstances; and
- c. there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The CEO (or the CEO's appointed representative) will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the public interest disclosure. The CEO will clearly advise the person who made the public interest disclosure of the proposed action to be taken, and of any mitigating factors that have been taken into account. In some circumstances, PV may consider an admission to be a mitigating factor when considering disciplinary or other action.

3.6. Criminal offences

The Act establishes a number of criminal offences regarding public interest disclosures. These are outlined in the table below.

| Offence | Penalty (maximum) | Section of Act |
|---|--|----------------|
| Taking detrimental action against a person in reprisal for a public interest disclosure being made | 240 penalty units or two years imprisonment or both <i>Civil penalties may also apply – a court may order the offender to pay damages to compensate for injury, loss or damage.</i> | Section 45 |
| Disclosing information about the content of an assessable disclosure without legislative authority | Individuals: 120 penalty units or 12 months imprisonment or both Bodies corporate: 600 penalty units | Section 52 |
| Disclosing information likely to lead to the identification of a person who has made an assessable disclosure without legislative authority | Individuals: 120 penalty units or 12 months imprisonment or both Bodies corporate: 600 penalty units | Section 53 |
| Knowingly providing false information with the intention that the information is to be acted on as a public interest disclosure | 120 penalty units or 12 months imprisonment or both | Section 72(1) |
| Knowingly providing further information in relation to a public interest disclosure that the person knows is false or misleading | 120 penalty units or 12 months imprisonment or both | section 72(2) |

⁷ Section 42.

| Offence | Penalty (maximum) | Section of Act |
|---|---|----------------|
| Falsely claiming that a matter is the subject of a public interest disclosure | 120 penalty units or 12 months imprisonment or both | section 73(1) |
| Falsely claiming that a matter has been determined to be a public interest disclosure complaint by IBAC or the Inspectorate | 120 penalty units or 12 months imprisonment or both | section 73(2) |

4. Administering the Procedures

4.1. Process for amendments

These Procedures will be reviewed every two years to ensure that they continue to meet the objectives of the Act and the Regulations and accord with IBAC's guidelines.

Additional reviews may also occur for the following reasons:

- change of key legislation or regulations;
- following any recommendations made by IBAC; or
- any other reason which, in management's opinion, necessitates an earlier review.

4.2. Approval level required

The CEO is responsible for approving these Procedures and any amendments made to these Procedures. Any proposed amendments to the Procedures should be provided to the Audit Committee for their review and comment.

4.3. Procedure owner

4.3.1. Overall Responsibility

These Procedures have been prepared to:

- guide and assist any person who wishes to make a public interest disclosure about PV or a PV Staff member; and
- set out the steps that PV will take to protect people who make a public interest disclosure and others from detrimental action that may be taken in reprisal for the public interest disclosure having been made.

It is the responsibility of all PV Staff to implement the Procedures.

4.3.2. Administration and Maintenance

PV's Legal Counsel is responsible for the administration and maintenance of these Procedures.

| No. | |
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| 1. | Guidelines for Handling Public Interest Disclosures (January 2020) IBAC |
| 2. | Guidelines for Public Interest Disclosure Welfare Management (January 2020) IBAC |