

Public Interest Disclosure Procedures

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QUICK REFERENCE GUIDE TO MAKING A PUBLIC INTEREST DISCLOSURE

What is a public interest disclosure (PID)	A public interest disclosure is a complaint or allegation made about improper conduct or detrimental action involving a public officer or public body.
Who can make a disclosure?	Any individual or group of individuals can make a disclosure. A disclosure cannot be made by a business or company.
How do I make a disclosure?	Verbally or in writing (but not by fax). You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated, and you will not be notified of the outcome of any investigation.
What can I make a PID about?	<ul style="list-style-type: none"> • Improper conduct, including corrupt conduct of public bodies (which includes the MAV) or public officers (which includes MAV Board members, staff and its agents). • Conduct, even if not from a public body or officer, that adversely affects, or is intended to adversely affect, the honest performance of a public body or officer's functions. • Detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of such a disclosure.
What is improper conduct?	<p>Improper conduct includes (but not trivial conduct):</p> <ul style="list-style-type: none"> • Corrupt conduct • Criminal offence • Serious professional misconduct • Dishonest performance of public functions • Intentional or reckless breach of trust or misuse of information • Substantial mismanagement of public resources • A substantial risk to (a) health or safety of one or more persons or (b) the environment • Conduct of any person that adversely affects the honest performance of a public officer or public body's functions or is intended to affect the performance and obtain an advantage for that person.
Who can I make a PID to?	<p>If you wish to make a public interest disclosure about the MAV or our officers you must contact:</p> <p>The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 GPO Box 24234, Melbourne, VIC 3001 Telephone: 1300 735 135 Website: www.ibac.vic.gov.au</p> <hr/> <p>If you wish to make a PID about a council, or any other public bodies/agencies, the list of entities that can receive a PID can be found in IBAC's <i>Guidelines for Handling Public Interest Disclosures</i>, which is available at:</p> <p>www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures</p>

1. Introduction

The *Public Interest Disclosures Act 2012* (Vic) (the PID Act) establishes a legal framework to encourage and assist people to report improper conduct and corruption in the Victorian public sector – these reports are referred to as public interest disclosures (or PID).

The PID Act aims to achieve this by providing certain protections for people who make public interest disclosures, as well as people who cooperate or intend to cooperate with an investigation into a public interest disclosure. Protections include keeping these persons' identities confidential and protecting them from reprisals, including bullying, harassment or legal action.

Not all public bodies and government agencies can receive public interest disclosures. A public interest disclosure about the Municipal Association of Victoria (MAV) must be made direct to IBAC. However, under the PID Act the MAV is required to establish procedures to protect persons from reprisals for making a public interest disclosure and managing the welfare of persons connected to a public interest disclosure.

These procedures have been prepared in accordance with the PID Act and Guidelines issued by the Independent Broad-based Anti-corruption Commission (IBAC) which are available online at <http://www.ibac.vic.gov.au/>.

2. Purpose

The purpose of these procedures is to describe how:

- a person can make a public interest disclosure
- the MAV will manage the welfare and confidentiality of disclosers and persons connected with a public interest disclosure (should the MAV have knowledge of the public interest disclosure)
- the MAV will protect persons against detrimental action for making a public interest disclosure, or witnesses or persons cooperating with an investigation into a public interest disclosure (should the MAV have knowledge of the public interest disclosure)

3. Scope and Application

The MAV is **not** able to receive **public interest disclosures** (PID) under the PID Act.

A PID about the MAV and or MAV officers (Our staff, Board/Committee members and agents) should be made directly to IBAC.

These procedures apply to all MAV staff, members and any persons connected with a public interest disclosure who are entitled to protections and welfare management by the MAV under the PID Act.

Persons connected with a public interest disclosure include the discloser, any witnesses to an investigation and the subject of an investigation.

These procedures apply to any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with the PID Act.

These procedures form an essential part of MAV's commitment to the aims and objectives of the PID Act.

If you are considering making a public interest disclosure, you are encouraged to also seek your own advice to understand how the PID Act and these procedures might apply to you or affect you in your specific circumstances.

4. Statement of support to disclosers

The MAV does not tolerate improper conduct by its staff, Board/committee members and or agents, nor the taking of reprisals against people who come forward to disclose such conduct.

MAV recognises the value of transparency and accountability in its processes and supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such improper conduct.

The MAV will take all reasonable steps to protect people who make disclosures from any detrimental action in reprisal for making the disclosures.

5. Making a Public Interest Disclosure

5.1 Who can make a Disclosure?

Any individual person or group of people can make a disclosure to IBAC. They can be an employee a public body, a contractor or tenderer, a client or a member of the public.

You can make a disclosure if you are a Board/committee member or staff member of the MAV. A disclosure about the MAV must be made direct to IBAC.

A company or business cannot make a public interest disclosure. The PID Act only provides for 'a natural person' to make a disclosure. Any disclosure needs to be made by an officer or employee of the company or business.

You do not have to specifically refer to a public interest disclosure or the protections under the PID Act. You may also advise that you do not want it treated as a PID when making your disclosure.

5.2 What can a Disclosure be made about?

You can make a public interest disclosure about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that a public officer or public body is engaging in or proposing to engage in 'improper conduct' and/or 'detrimental action'.

The conduct you disclose must be in the performance of a person or the organisation's function as a public officer or public body.

The MAV is a public body and our Board members and staff are public officers.

5.3 What is 'improper conduct' and 'detrimental action'?

The conduct you disclose must be improper conduct and/or detrimental action. The definitions and examples of 'improper conduct' and 'detrimental action' are explained in the following table.

Improper conduct is:	Detrimental action is:
<ul style="list-style-type: none">• Corrupt conduct and/or	Action taken against a person who has made a disclosure which:

Improper conduct is:	Detrimental action is:
<ul style="list-style-type: none"> • Conduct of a public officer or public body in their official capacity that constitutes: <ul style="list-style-type: none"> ○ a criminal offence ○ serious professional misconduct ○ dishonest performance of public functions ○ intentional or reckless breach of public trust ○ an intentional or reckless misuse of information or material acquired in the course of public functions or a substantial mismanagement of public resources ○ a substantial risk to the health and safety of one or more persons ○ a substantial risk to the environment, and/or • conduct of any person 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 advantage for the third party and/or • Conduct by any person that could constitute a conspiracy or attempt to engage in any of the above 	<ul style="list-style-type: none"> • causes 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). <p>Detrimental action is not: Legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.</p>
Examples of Improper Conduct	Examples of Detrimental action
<ul style="list-style-type: none"> • A public officer takes a bribe or receives a payment other than their wages in exchange for the discharge of a public duty. • A public officer sells confidential information. • A public officer favours unmeritorious applications for jobs by friends and relatives. • A person attempts to bribe a public officer 	<ul style="list-style-type: none"> • A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure. • A public officer threatens, abuses or carries out other forms of harassment directly or indirectly against the person (and their family or friends) who makes a disclosure. • A public body discriminates against the person who makes a disclosure or their family and associates in subsequent applications for jobs, permits or tenders.

5.4 What is 'reasonable' grounds?

'Reasonable grounds' is your belief that improper conduct or detrimental action has occurred, is occurring, or will occur and does not have to be based on actual proof. It is enough if you believe (as opposed to know) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have 'reasonable grounds' for your belief.

Mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be considered as reasonable grounds or protected by the PID Act. For example, it is not enough to say '*I know that X is corrupt*'. You must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

5.5 How does a person make a Disclosure?

The MAV is not authorised under the PID Act to receive public interest disclosures. If you wish to make a public interest disclosure about the MAV or about an MAV member or MAV staff, you must make your disclosure directly to IBAC.

Postal address:	IBAC GPO Box 24234 Melbourne, VIC 3001
Office address:	Level 1, North Tower 459 Collins Street Melbourne, VIC 3000
Online:*	https://www.ibac.vic.gov.au/reporting-corruption
Telephone:	1300 735 135
Email:	info@ibac.vic.gov.au

**IBAC provides a secure online form to make a complaint or provide information about public sector corruption.*

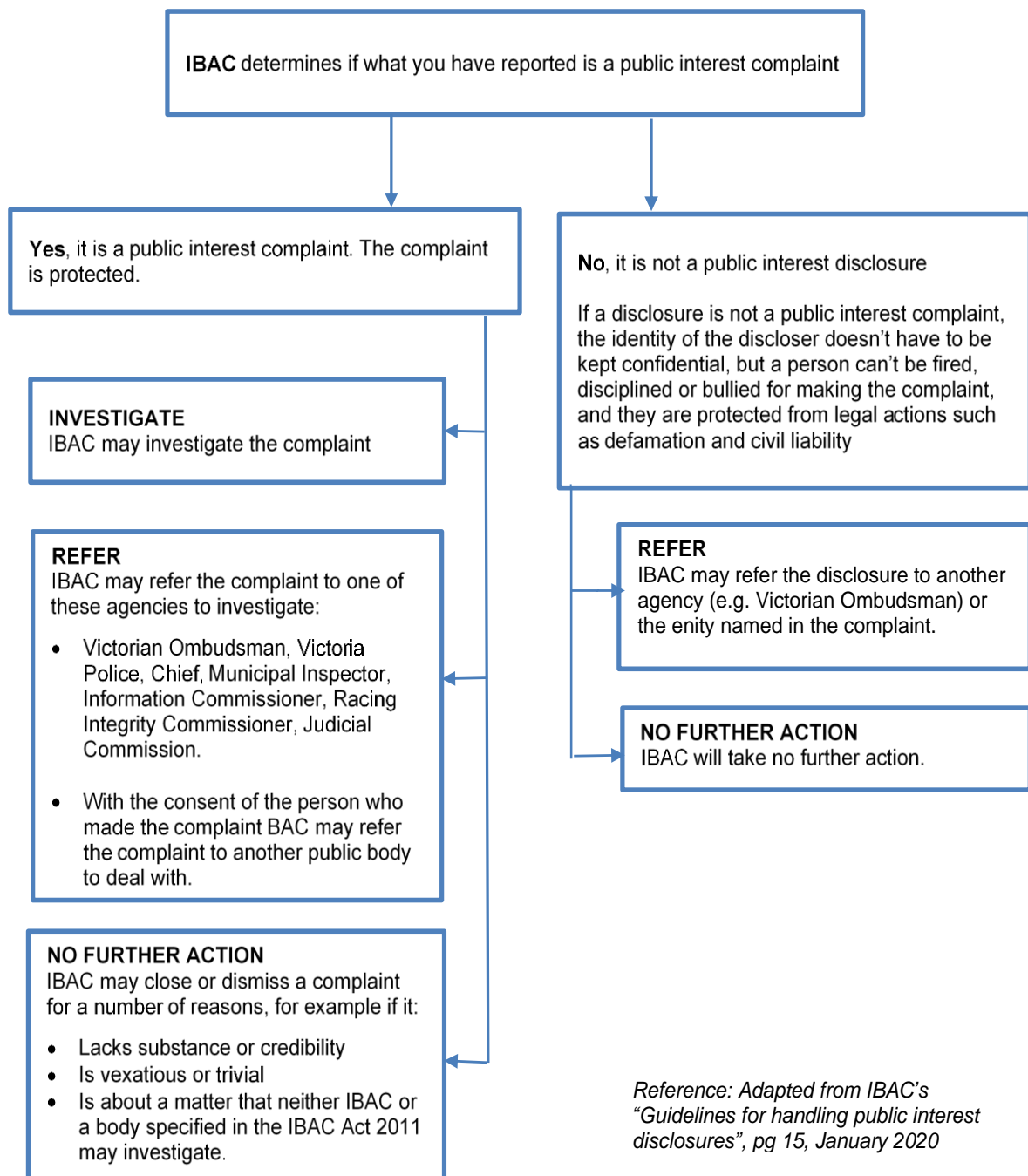
Any person who wishes to make a disclosure is encouraged to refer to [IBAC's Guidelines](#) for handling public interest disclosures, which is available on IBAC's website.

5.6 What will happen after a person makes a Disclosure?

Disclosures made to IBAC will be handled in accordance with their guidelines and processes outlined in the flowchart below.

If IBAC determines that your complaint is not a disclosure about improper conduct or detrimental action it may refer you to another agency or refer you to the MAV (as a complaint to be dealt with according to MAV's customer feedback and complaints handling processes).

Regardless of whether IBAC determines your disclosure is a public interest disclosure or not, you will still receive the protections under the PID Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.



6. Handling of a Public Interest Disclosure

6.1 Who can I seek advice from at the MAV?

The MAV's Public Interest Disclosure Coordinator has a central role with respect to disclosure matters, in particular for ensuring that the welfare of any persons connected with a disclosure is properly managed.

The Public Interest Disclosure Coordinator:

- Will provide general advice about the PID Act and these procedures.
- Is responsible for ensuring that the MAV carries out its responsibilities under the PID Act and the IBAC Guidelines

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- Liaises with IBAC in regard to the PID Act
 - Where necessary, arranges for appropriate welfare support for a person suspected of making a disclosure.
 - Ensures confidentiality of information
 - Takes all necessary steps to ensure the identity of a person suspected of making a disclosure and the identity of a person who is the subject of the disclosure are kept confidential.

The MAV's Public Interest Disclosure Coordinator is:

Ms Celia Robinson

Manager Governance

Level 12, 60 Collins Street MELBOURNE VIC 3000

Phone: (03) 9667 5555

Email: crobinson@mav.asn.au

6.2 What are 'Protections'?

The PID Act sets out that a number of protections are to be provided to persons who make a disclosure in accordance with the PID Act. These include:

- (a) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- (b) immunity from committing an offence under the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (c) immunity from breaching any other obligation (made by oath or the rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- (d) protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines that the disclosure is not a 'public interest disclosure'.

The protections in the PID Act do not apply if you provide false or misleading information or claim that a matter is the subject of a public interest disclosure knowing that claim to be false.

The protections will apply to further information relating to a public interest disclosure that you provide to IBAC.

In addition to these protections, the MAV recognises that the welfare and protection from detrimental action of persons making genuinely public interest disclosures are essential for the effective implementation of the PID Act and is relevant to the MAV's commitment under its Fraud and Corruption Control Policy, and its obligations to create a safe working environment under the Occupational Health and Safety Act 2004, the Charter of Human Rights and Responsibilities Act 2006 and common law.

6.3 Welfare Management

The MAV will provide welfare support to a discloser or parties involved in the investigation as the circumstance requires.

The MAV cannot receive a public interest disclosure or may not know when a person has made a disclosure and may only become aware if IBAC (or another investigating authority) advises the MAV.

If the MAV is made aware of the identity of a discloser, and/or the contents of their disclosure, the MAV will:

- (a) be required to keep that information confidential; and/or
- (b) will also consider appointing a welfare manager when a person has made a public interest disclosure or is co-operating, or intending to co-operate, with an investigation of the public interest disclosure.

In determining whether to appoint a welfare manager, the MAV will consider:

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

The MAV may appoint an internal person as welfare manager or engage a contractor to provide welfare services. The MAV will also consider referring an employee to an appropriate provider of Employee Assistance services.

If a Welfare Manager is appointed, they will:

Inform	At a minimum, provide: <ul style="list-style-type: none">• Outline legislative or administrative protections available.• Describe the action proposed to be taken.• if an action has been taken, provide the details about results (if the matter was referred by IBAC)
Provide active support	<ul style="list-style-type: none">• Acknowledge the person for having come forward.• Provide the person with an assurance that they have done the right thing, and the MAV appreciates it.• Make a clear offer of support.• Assure them that all reasonable steps will be taken to protect them.• Give them an undertaking to keep them informed
Manage expectations	Have an early discussion with them: <ul style="list-style-type: none">• What outcome do they want?• Are their expectations realistic?• What will the organisation be able to deliver?
Maintain confidentiality	The identity of the discloser and the subject matter of their disclosure need to be kept confidential: <ul style="list-style-type: none">• Make sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive• Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser.• Make sure that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures and persons affected by them in your organisation

Assess the risks of detrimental action being taken in reprisal	<p>Be proactive and do not wait for a complaint of victimisation.</p> <ul style="list-style-type: none"> • Actively monitor the workplace, anticipate problems and deal with them before they develop.
Protect the discloser	<ul style="list-style-type: none"> • Examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment. • Listen and respond to any concerns the person may have about harassment, intimidation, or victimisation in reprisal for their actions. • Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to a public interest disclosure
Manage the impact of any investigation	Prevent the spread of gossip and rumours about an investigation into the disclosure
Keep records	Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action

Reference: Adapted from IBAC's "Guidelines for handling public interest disclosures", pg 7, January 2020

A welfare manager must not divulge any details relating to the disclosed matter to any person, other than the PID coordinator, or the principal officer of the public body (the MAV's Chief Executive Officer). All meetings between the welfare manager and the person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

If a welfare manager is appointed to look after a discloser or witness, the welfare manager will only be required to provide reasonable support and should discuss the reasonable expectations with the person(s) they are supporting.

6.4 If detrimental action occurs

If a discloser or any other person is aware of or suspects another person has suffered adverse treatment that would amount to detrimental action taken in reprisal for making a disclosure, they should report the matter to the welfare manager or PID Coordinator.

The welfare manager or PID Coordinator will:

- Record details of the incident.
- Advise the discloser of their rights under the Act; and
- Advise the MAV Chief Executive Officer of the detrimental action.

Where detrimental action is of a serious nature, likely to amount to a criminal offence, the MAV Chief Executive Officer will consider reporting the matter to the police or IBAC.

The taking of detrimental action in reprisal for making a disclosure, even of only part of the reason for the action, can be an offence against the Act as well as grounds for making a further disclosure to IBAC.

6.5 Dealing with a Discloser who is implicated in misconduct

Where a person who makes a disclosure is implicated in misconduct, the PID Coordinator and the Chief Executive Officer will decide whether disciplinary or other action should be taken against the person, after seeking appropriate legal advice or advice from IBAC.

The principles of natural justice will be followed in any investigation of any reported misconduct and disciplinary action taken.

Action will be taken only when the disclosed matter has been dealt with and when the PID Coordinator and the Chief Executive Officer have decided to proceed with disciplinary action, and it is clearly demonstrated that:

- The misconduct is not causally connected to the making of the disclosure (as opposed to other available information).
- There are good and sufficient grounds that would fully justify action against a non-discloser in the same circumstances.
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The process will be documented, including the reasons why the disciplinary or other action is being taken, and if there are any reasons why the action is not in retribution for the making of the disclosure.

The discloser will be advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

6.6 Confidentiality

The PID Act prohibits the disclosure of information received due to the handling or investigation of an assessable disclosure except in certain limited circumstances. Disclosure of information in breach of the PID Act constitutes a criminal offence.

It is the responsibility of all MAV staff to maintain confidentiality in accordance with the Act. It is also the responsibility of a person making a disclosure and in their own interests to keep their disclosure confidential by only discussing related matters with IBAC officers or other persons authorised by law.

The MAV will ensure that all files, whether paper or electronic, are secure and can only be accessed by authorised officers. All printed material will be kept in files that are clearly marked as a Public Interest Disclosure matter and include a prominent warning on the front of the file that criminal penalties apply to any unauthorised divulging of information concerning a public interest disclosure. All electronic files will have limitations on access.

If a discloser repeats their disclosure to someone other than IBAC, they may lose the protections provided for in the PID Act. For example, if a disclosure is repeated to the media and the media reports on it, they may not be protected from defamation action. The discloser may also breach your confidentiality obligations. If a discloser is considering disclosing information about their disclosure, they should speak to IBAC or obtain legal advice first.

7. Criminal Offences

There are a number of offences set out in the PID Act relating to breaches of the requirements of the Act. Key offences to be aware of:

- It is an offence to take detrimental action against another person in reprisal for a public interest disclosure
- It is an offence to disclose the content, or information about the content, of a disclosure that has been notified by IBAC to the MAV or information which is likely to lead to the identification of the person who has made that disclosure unless such disclosure is permitted by the PID Act

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- It is an offence for any person to:
 - provide false or misleading information, or further information that relates to a disclosure, that the person knows to be false or misleading in a material way, intending that the information be acted on as public interest disclosure
 - claim that a matter is the subject of a public interest disclosure knowing the claim to be false
 - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a complaint
 - disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the PID Act
 - disclose that a disclosure has been determined to be a public interest complaint unless permitted to do so by the PID Act.

8. Alternatives to making a Public Interest Disclosure

These procedures are designed to complement the usual methods of submitting complaints to the MAV.

Members of the public are encouraged to use the MAV's usual feedback processes to communicate complaints or concerns about the services provided by the MAV and our staff.

More information is available on the MAV's website (www.mav.asn.au).

MAV staff are encouraged to raise matters with the Chief Executive Officer or Manager, Governance at any time.

9. Reporting obligations

MAV is required to publish information about how these procedures may be accessed in its annual reports.

10. Training and Awareness

The MAV will:

- ensure that Board/Committee member and our staff have access to these procedures.
- incorporate into its induction programs information about the MAV's general obligations under the PID Act, these procedures and the rights and obligations of MAV member and staff under the PID Act.
- periodically provide refresher training for staff about their rights and obligations under the PID Act.
- raise awareness during staff meetings about the protections available under the PID Act and the MAV's obligations and commitments.
- provide training to any staff:
 - with specific responsibilities and functions to handle and manage public interest disclosures under the PID Act, including the PID coordinator and persons involved in welfare management

- with responsibilities under the Freedom of Information (FOI) Act and or information/data management, to ensure that no prohibited information under the PID Act is disclosed and to ensure there is appropriate liaison with IBAC or other investigative agencies where required in response to a request for access under the FOI Act.

11. Policy Context

Legislation, standards & external guidelines	<i>Independent Broad-based Anti-corruption Commission Act 2011</i> <i>Public Interest Disclosures Act 2012 (Vic)</i> <i>Public Interest Disclosures Regulations 2013 (Vic)</i> <i>Occupational Health and Safety 2004 Act (Vic)</i> <i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i> <i>Freedom of Information Act 1982 (Vic)</i> Guidelines for handling public interest disclosures 2020 (IBAC) Guidelines for public interest disclosure welfare management 2020 (IBAC)
MAV Policies, procedures, and related documents	Fraud and Corruption Control Policy Fraud and Corruption Control System MAV Members Code of Conduct MAV Staff Code of Conduct

12. Document Control

Approval Authority	MAV Board
Date Last Adopted	3 November 2023
Document Custodian	Manager Governance
Next Review Date	September 2025
Review History	July 2021 (new format) February 2020 (changed to public interest disclosure procedure) September 2019 April 2017 (formerly protected disclosure procedure)