

Goulburn Broken Catchment Management  
Authority  
Governance Procedure  
GOV 011

Public Interest Disclosures  
Procedure

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## Purpose

This Procedure is published by the Goulburn Broken Catchment Management Authority (CMA) in compliance with s 58 of the Public Interest Disclosures Act 2012 (the Act) and the Guidelines published by the Independent Broad-based Anti-Corruption Commission (IBAC) as at January 2020.

This document establishes procedures for how:

a person, whether a CMA employee (past or present) or member of the public, can make a Public Interest Disclosure (PID) about the CMA and/or its officers or employees;

the CMA will protect persons who make a PID against detrimental action for making a PID;

the CMA will ensure natural justice is afforded to the person or body who is the subject of any PID; and

the welfare of disclosers will be managed by the CMA.

The CMA has established this Procedure to facilitate and encourage the making of PIDs. These procedures have been prepared in accordance with the Act and IBAC Guidelines.

This procedure aligns with the Goulburn Broken CMA Governance Business Principle –Our sound and ethical Governance Structure and practices support the achievement of organisational goals and expectations, comply with all laws and regulations, and satisfy community expectation.

## Scope

This procedure is applicable to Goulburn Broken Catchment Management Authority (CMA) employees and board directors.

The CMA cannot receive a Public Interest Disclosure (PID) under the Act.

## Definitions

**CEO** – Chief Executive Officer

**Employees** – any person directly engaged by GB CMA;

Category A – under an employment contract

Category B – as a GB CMA volunteer, Advisory Group or committee member

Category C – under a GB CMA Student placement contract

**IBAC** – Independent Broad-based Anti-corruption Commission

## Who can make a public interest disclosure

Any person can make a PID about improper conduct engaged in, or detrimental action taken by, the CMA, its officers or employees (or any other public sector employee).

A PID can be made by:

- an individual, or
- a group of individuals.

A PID can be made anonymously, however, this may affect how the PID is investigated, and the outcome of any investigation will not be provided to the person who made the disclosure. Where it cannot be identified who reported the PID, the PID will be treated as anonymous.

A company or business cannot make a PID.

A PID can be made on someone else's behalf, however, only the person who makes the disclosure will receive the full protection of the Act in relation to that PID. Protection for any other party will be limited to confidentiality and protection against detrimental action taken for the PID that has been made.

Reference to the Act or the protections in the Act are not required for your PID to be a 'PID'.

## When a PID should be made

A PID should be made where there is information that shows or tends to show a person, public officer or public body is engaging in, or proposing to engage in 'improper conduct' and/or 'detrimental action'.

The CMA is a public body. Its officers and employees are public officers.

### What is improper conduct?

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. If the conduct is trivial, it will not meet the threshold of improper conduct. There needs to be a link between the conduct and the official function of a public officer or public body.

Improper Conduct includes conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes any of the following:

- corrupt conduct;
  - criminal offence;
  - serious professional misconduct;
  - dishonest performance of public functions;
  - intentional or reckless breach of public trust;
  - intentional or reckless misuse of information;
  - substantial mismanagement of public resources;
  - substantial risk to health or safety of a person; or
  - substantial risk to the environment; and
- conduct of any person that:
- adversely affects the honest performance by a public officer or public body of their public functions;
  - is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

### What is Detrimental Action?

Detrimental Action includes any of the following:

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

### What are Reasonable Grounds?

Belief that improper conduct or detrimental action has occurred, is occurring, or will occur does not have to be based on actual proof. It is enough to believe (as opposed to know) that improper conduct or detrimental action has occurred, is occurring or will occur. However, there must have reasonable grounds for this belief. Mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be a PID under the Act. For example, it is not enough to say, “I know X is corrupt”. There must be information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

Concerns that are not a PID

If the concerns in not a PID, but more in the nature of a general complaint the GB CMA’s complaints handling process should be followed. More information is available in the GOV 031 – Complaints Management Procedure on SharePoint.

## How to make a PID

You may make a PID about the CMA or any of its employees by:

- Completing the IBAC “Make a Complaint” or “Provide Information” form at [Report corruption or misconduct | IBAC](#)
- Calling IBAC on 1300 735 135

### 7. What will happen after I make a public interest disclosure?

PIDs made to IBAC will be handled in accordance with IBAC’s guidelines and processes.

IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.

If IBAC determines that a disclosure is a PID, it must decide to either:

- dismiss the PID;
- investigate the PID; or
- refer the PID to another body for investigation, such as the Victoria Police, the Ombudsman or the Victorian WorkCover Authority.

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

If IBAC determines that your disclosure is not a PID, the confidentiality requirements set out in Part 11 of this procedure no longer apply in relation to a PID.

## Protections for the Discloser

The Act sets out the protections provided to persons who make a PID. These include:

immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the PID;

immunity from committing an offence under the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or otherwise restricts the PID of information;

immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the PID of information; and

protection from an action for defamation.

These protections apply to a PID from the time the PID is made and continue to apply even if IBAC determines that the PID is not a PID.

The protections in the Act do not apply if false or misleading information is provided or there is a claim that a matter is the subject of a PID knowing that claim to be false.

It is important to note that the IBAC is not required to contact the CMA about any PID made, so there should not be any discussion regarding and PID made to IBAC with the CMA or any person in the CMA unless permission has first been obtained from IBAC to do so, or this has been directed by IBAC, or IBAC has contacted the CMA to provide it with information in order to allow the CMA to provide the discloser with any necessary welfare and support.

Section 54 of the Act however provides circumstances in which the CMA's Employee Assistance Program ("EAP") and other support persons or organisations (such as your doctor or a trade union of which you are a member) can be made, in order to seek assistance in connection with making a PID.

## CMA Responsibilities

There are a number of roles and responsibilities involved in coordinating a PID. These are detailed below:

### **PID Coordinator**

Mark Turner has been appointed the CMA's PID Coordinator. This person is responsible for handling enquiries about the CMA's obligations under the Act. Further information about CMA's PIDs policy or procedures can be obtained, or a confidential meeting to discuss any matters of concern arranged by contacting Mark Turner whose contact details are as follows:

**Mark Turner**

**PID Coordinator**

**GOULBURN BROKEN CMA**

**PO BOX 1752 SHEPPARTON VIC 3632**

**Phone 03 5822 7700**

Email: [reception@gbcma.vic.gov.au](mailto:reception@gbcma.vic.gov.au)

The PID Coordinator is:

the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC; responsible for ensuring that the CMA carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;

CMA's chief liaison with IBAC and any other investigating entities in regard to the Act;

to 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;

responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a PID Welfare Manager to support a person entitled to be protected and to protect them from any reprisals; and

to collate statistics required to be reported by CMA in its annual reports under the Act.

## PID Officer

If there are any concerns about contacting the PID Coordinator, or a wish to speak to an alternative contact at the CMA about PID matters, the PID Officer can be contracted:

**Carl Walters**

**PID Officer**

**03 5822 7700**

[reception@gbcma.vic.gov.au](mailto:reception@gbcma.vic.gov.au)

## PID Welfare Manager

The CMA's PID Coordinator will consider, on a case by case basis, appointing a PID Welfare Manager when a person has made a PID or is cooperating, or intending to cooperate, with an investigation of a PID. A PID Welfare Manager will be more likely to be appointed:

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

If appointed, the PID Welfare Manager will:

- provide practical advice about the protections available to those associated with a PID;
- respond quickly and appropriately to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- not divulge any details relating to the PID to any person other than the PID Coordinator or the PID Officer as the case may be;
- ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the PID; and
- refer or offer to refer internal persons associated with a PID to the EAP for further support and welfare assistance.

## Directors, Employees and Contractors

Directors, employees and contractors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this procedure, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All Directors, employees and contractors of the CMA have an important role to play in supporting those who have made a legitimate PID in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a PID. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a PID.

## Protection from detrimental action

The CMA recognises that the welfare and protection from detrimental action of persons making genuine PIDs is essential for the effective implementation of the Act and is relevant to the CMA's obligation to create a safe working environment under the Occupational Health and Safety Act 2004 (Vic), the Charter of Human Rights and Responsibilities Act 2006 (Vic), the Public Administration Act 2004 (Vic) and the common law.

The CMA will take precautions to prevent its officers, employees and agents from taking detrimental action in reprisal for a PID. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by the CMA will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

A PID of detrimental action is itself a PID and, where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the CMA may consider reporting the matter to the Police or IBAC.

If an employee who has made a PID believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, they may request a transfer of employment to another government agency on terms and conditions that are no less favourable overall to them. Note that all requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:

- the Chief Executive Officer of the CMA must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee who made a PID;
- the Chief Executive Officer must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' government agency consents to the transfer.

The Act sets out remedies that are available where injury is sustained or there is loss or damage as a result of detrimental action taken in reprisal for making a PID. Legal advice may also be obtained about this.

Whilst there are these protections, there are also responsibilities. Detrimental action against another person cannot be taken in reprisal for a PID.

Making a PID does not provide immunity for wrongdoing of the discloser. If the discloser undertook improper conduct or detrimental action which is the subject of a PID, they will still be held liable for their own involvement.

The content, or information about the content, of a PID made to IBAC or any information which is likely to lead to the identification of the person who made that PID unless permitted by the Act must not be disclosed, unless permitted by the Act.

## Confidentiality

There are a number of confidentiality obligations which arise under the Act and other laws relating to the receipt and investigation of PIDs.

Repeating a PID to someone other than as provided for in these procedures or permitted by the Act, may result in the loss of the protections provided for in the Act. For example, if a PID is repeated to the media and the media reports on it, there may not be protected from defamation action. This may also breach the confidentiality obligations.

If considering disclosing information about a PID made by you under the Act, it may be appropriate to speak to the PID Coordinator, your PID Welfare Manager and/or obtain legal advice first.

The CMA will only disclose information about a PID in accordance with the law, including the Act.

The circumstances in which information about a PID made to IBAC may be disclosed include:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the PID;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the PID including disciplinary process or action;
- where IBAC or the Ombudsman has determined that the PID is not a PID;
- where necessary for the purpose of exercising functions under the Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-corruption Commission Act 2011 (Vic);
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary proceedings or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation;
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act; and
- where an investigating body has published a report to Parliament or otherwise made public the content of the PID consistent with the confidentiality requirements of the Act.

The Act also prohibits disclosing information that is likely to lead to identification of a PID reporter except in accordance with the Act.

IBAC or the relevant investigating entity may disclose the identity of a person who makes a PID and the content of the PID if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information is disclosed is bound by the same confidentiality requirements as the investigating entity.

Exemption from the Freedom of Information Act 1982 (Vic) (FOI Act)

The FOI Act provides a general right of access for any person to seek documents in the possession of the CMA.

The Act, however, provides that certain information related to PIDs as contained in documents in the possession of the CMA will be exempt from the application of the FOI Act.



The CMA is required to contact the IBAC prior to providing any document originating from IBAC or relating to a protected disclosure, if that document is sought under the FOI Act.

## Standards (or References)

Public Interest Disclosures Act 2012

Public Interest Disclosure Regulations 2019

Independent Broad-based Anti-corruption Commission Act 2011

IBAC Reporting Corruption webpage:

- a) <https://www.ibac.vic.gov.au/reporting-corruption>

IBAC Guidelines issued January 2020 under s 57 of the Public Interest Disclosure Act 2012:

- a) Guidelines for handling public interest disclosures –

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>

- b) Guidelines for public interest disclosure welfare management

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management>

Freedom of Information Act 1982

Privacy and Data Protection Act 2014

Charter of Human Rights and Responsibilities Act 2006

GB CMA's Employment Assistance Program

## Relates to

GOV 010 Public Interest Disclosures Policy

GOV 001 Privacy Policy

GOV 017 Conflict of Interest Policy

GOV 020 Gifts, Benefits and Hospitality Policy

GOV 021 Theft, Losses and Fraud Control Policy

HRM 002 Senior Management Employment Policy

HRM 010 Enterprise Agreement staff employment policy

HRM 020 Grievance Procedure

HRM 022 Discipline Procedure

HRM 039 Working Together Procedure

HRM 049 Issue Resolution Procedure

VPS Code of Conduct

## Consultation

The Goulburn Broken CMA is committed to consultation and cooperation between management and employees. The Goulburn Broken CMA will involve employees both formally and informally in workplace change that would impact on its employees.

## Communication of the Policy

All employees will receive information about the policy at induction and will be provided with electronic access or a written copy of the policy after any revisions.

The approved policy will be available to all employees, categories A, B & C on the Goulburn Broken CMA portal site.

## Responsibilities / Authorisation

Policies and Procedures are developed by Management, endorsed by the Management Team and approved by the Chief Executive Officer. All policies are endorsed by the Audit Risk and Compliance Committee and approved by the Board.

## Review

The Corporate Program Manager will review this procedure every 3 years and forward to the Management Team for endorsement.

### **Authorisation and Endorsement**

Final Version 7.0 endorsed at August 2023 Management Team Check-In Meeting and approved by the Chief Executive Officer on the 24 August 2023.