



# *Public Interest Disclosure Procedure*

**Document No. 079**

<b>Sponsor:</b>	Executive Manager – Corporate Services	
<b>Reviewing Body:</b>	Executive Management Team	
<b>Approving Body:</b>	Executive Management Team	
<b>Model Procedure /Body</b>	No	Not Applicable

<b>Approved:</b>	April 2023		

<b>Cycle / Review Date</b>	3 Years	April 2026
----------------------------	---------	------------

## 1. Purpose

The WGCMA is required to establish and publish procedures under section 58 of the Act and ensure these procedures are readily available to members of the public as well as internally to all staff and Board members of the Authority.

These procedures form an essential part of WGCMA's commitment to the aims and objectives of the Act. WGCMA does not tolerate improper conduct by the organisation, its employees, officers or Board members nor the taking of reprisals against those who come forward to disclose such conduct.

The Authority recognises the value of transparency and accountability in its administrative and management practices, 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 Authority will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosures. It will also afford natural justice to the person or body who is the subject of the disclosures.

## 2. Scope

These procedures are a resource for disclosers and potential disclosers, whether an internal Board or staff member of WGCMA or a member of the public; essentially, any individual who wants to find out how WGCMA will manage their welfare if they make a disclosure.

In addition, these procedures cover how the Authority will protect other people connected to a public interest complaint from detrimental action being taken against them in reprisal for a discloser making a public interest disclosure. Such persons can include individuals who are the subject of public interest disclosures and public interest complaints; and others who are connected to public interest disclosures, such as witnesses or persons cooperating with an investigation into a public interest complaint.

## 3. References

[\*Public Interest Disclosures Act 2012 \(Vic\)\*](#)

[\*Protected Disclosure Regulations 2013 \(Vic\)\*](#)

[\*Independent Broad-based Anti-corruption Commission Act 2011 \(Vic\)\*](#)

[Independent Broad-based Anti-corruption Commission](#)

[Victorian Ombudsman](#)

[Victorian Inspectorate](#)

[Public Interest Disclosure Policy](#)

## 4. Definitions

**Act:**

*Public Interest Disclosures Act 2012*

**Associate:**

An associate of the first person is:

- a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
- b) if the first person is a natural person, a person who is a relative of the first person;
- c) if the first person is a body corporate—an entity of whom the first person is an associate within the meaning of section 11 of the *Corporations Act 2001 (Cth)*; or an employee or officer of a related body corporate within the meaning of that Act to the first person.

**Discloser:**

A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act.

**Disclosure:**

Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act.

**IBAC:**

Independent Broad-based Anti-corruption Commission.

**IBAC Act**

*Independent Broad-based Anti-corruption Commission Act 2011 (Vic).*

**Investigative entity:**

Any one of the bodies authorised to investigate a public interest complaint, being: the IBAC; the Victorian Ombudsman; the Chief Commissioner of Police; the VI; Judicial Commission of Victoria; the Chief Municipal Inspector; the Information Commissioner; and the Racing Integrity Commissioner.

**Procedures:**

This version of the procedures of WGCMA, as established under section 58 of the Act.

**Protected discloser:**

A person who makes a public interest disclosure.

**Public interest disclosure:**

Any complaint, concern, matter, allegation or disclosure (however described) made by a natural person that shows or tends to show improper conduct or detrimental action and which is made in accordance with Part 2 of the Act.

**Public interest complaint:**

A public interest disclosure which has been determined and assessed by the IBAC to be a public interest complaint under section 26 of the Act.

**Regulations:**

*Protected Disclosure Regulations 2013 (Vic)* or such other regulations that might be made under the Act.

**WGCMA:**

West Gippsland Catchment Management Authority.

**VI**

Victorian Inspectorate

## 5. Procedures

### 5.1 About the Act

The Act commenced operation on 10 February 2013 and was amended in March 2019. The amended (and renamed) Act commenced on 1 January 2020.

The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct and detrimental action by public officers and public bodies. It does so by providing certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential component of this protection is to ensure that information connected to a public interest disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential.

Public interest disclosures may be made about any of the public officers or bodies as defined in section 3 of the Act and section 6 of the IBAC Act.

However, not all agencies may receive disclosures under the Act. Under the Act, WGCMA is not a body that may receive public interest disclosures. Therefore, **if you wish to make a disclosure about WGCMA, or one of our employees, officers, staff or Board members, you should make that disclosure directly to the IBAC.**

### 5.2 WGCMA's internal arrangements for handling welfare management

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

The Authority will:

- ensure these procedures are accessible on its website and available internally and externally to staff, Board members and any individual in the broader community;
- not tolerate the taking of detrimental action in reprisal against any person for making a public interest disclosure, including to take any reasonable steps to protect such persons from such action being taken against them;
- afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;
- take the appropriate disciplinary and other action against any staff or Board members engaged in the taking of detrimental action;
- ensure that WGCMA as a whole handles the welfare management of persons connected with public interest disclosure matters consistently and appropriately in accordance with its obligations under the Act, any regulations made under the Act, any guidelines issued by IBAC and these procedures; and

## OFFICIAL

- be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of public interest disclosures.

### 5.2.1 Staff and Board members

Staff and Board members are encouraged to raise matters of concern in relation to WGCMA, including about any staff or Board member. In particular, staff and Board members are encouraged to report known or suspected incidences 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 staff and Board members of WGCMA have an important role to play in supporting those who have made a legitimate disclosure 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 disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

### 5.2.2 Public Interest Disclosure Coordinator

WGCMA's Public Interest Disclosure Coordinator has a central role in the way the organisation deals with all public interest disclosure matters, and in particular for ensuring that the welfare of any persons connected with a public interest disclosure is properly managed.

The Public Interest Disclosure Coordinator is:

- the contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
- responsible for ensuring that WGCMA carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- WGCMA's chief liaison with the IBAC 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 welfare manager to support a person entitled to be protected and to protect him or her from any reprisals; and
- to collate statistics required to be reported by WGCMA in its annual reports under the Act.

The Public Interest Disclosure Coordinator appointed by WGCMA is the Executive Manager - Corporate Services, [philipped@wgcm.vic.gov.au](mailto:philipped@wgcm.vic.gov.au), 1300 094 262.

## 5.3 Making a disclosure

### 5.3.1 What is a disclosure and who can make a disclosure?

A disclosure may be made about two things under the Act:

1. improper conduct of public bodies or public officers; and
2. detrimental action taken by public bodies or public officers in reprisal against a person for the making of a public interest disclosure.

## OFFICIAL

The term disclosure is interpreted under the Act in the ordinary sense of the word, for example, as a "revelation" to the person receiving it. The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a public interest disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

A disclosure may:

- only be made by a natural person (or a group of individuals making joint disclosures). Disclosures cannot be made by a company or an organisation;
- be made anonymously;
- be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- also be a complaint, notification or disclosure (however described) made under another law.

**The following are not public interest disclosures under the Act:**

- a disclosure made by a discloser who expressly states in writing, at the time of making the disclosure, that the disclosure is not a disclosure under the Act; and
- a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure is a disclosure and the disclosure is otherwise made in accordance with Part 2 of the Act.

### 5.3.2 How can a disclosure be made?

A disclosure must be made in accordance with Part 2 of the Act.

Part 2 of the Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.

Disclosures must be made in private.

Generally, a verbal disclosure may be made:

- in person;
- by telephone;
- by leaving a voicemail message on a particular telephone answering machine; or
- by any other form of non-written electronic communication.

Generally, the IBAC recommends that written disclosures to the IBAC be made via its online form available from <https://www.ibac.vic.gov.au/re...> (last accessed 1 January 2020).

Disclosures cannot be made by fax.

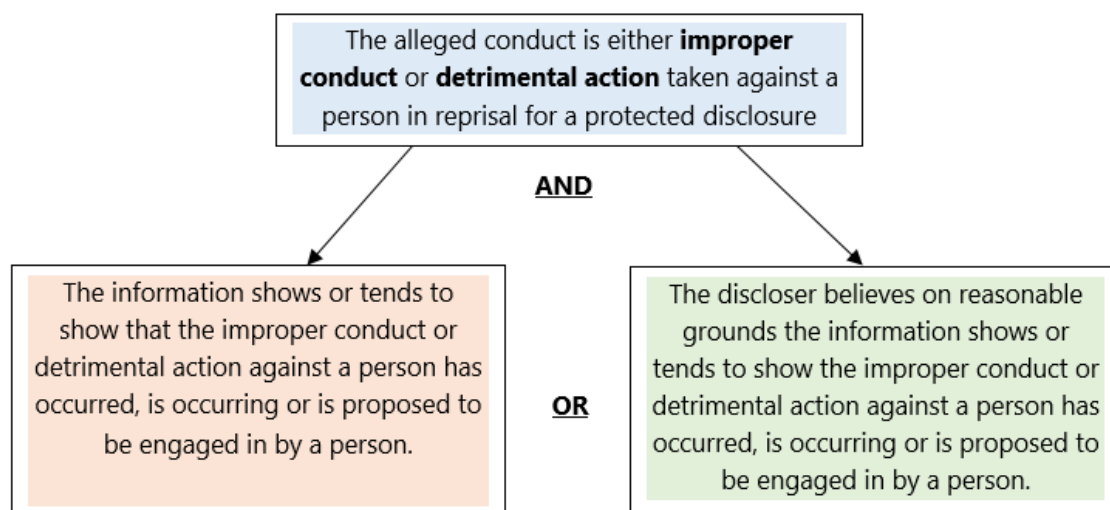
A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.

## OFFICIAL

A disclosure attempted or purported to be made to WGCMA will not be a disclosure made in accordance with Part 2 of the Act (and therefore not protected), because WGCMA is not permitted to receive disclosures. **If you wish to make a disclosure about WGCMA, please make that disclosure directly to the IBAC.** For further information about how to make a disclosure to the IBAC, see <https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint>.

### 5.3.3 What can a disclosure be made about?

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



#### 5.3.3.1 Improper conduct

A disclosure may be made about improper conduct by a public body or public officer in the performance of their functions as a public body or public officer.

Central to the notion of improper conduct is the notion of the "public trust".

There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage, or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

Disclosers will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as a public officer or a public body.

"Improper conduct" is defined in the Act to mean:

- corrupt conduct; or
- conduct of a public officer or body that constitutes:
  - a 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;



## OFFICIAL

- substantial risk to the health or safety of one or more persons; or
- substantial risk to the environment.

"Improper conduct" might also be the conduct of any person that:

- adversely affects the honest performance by a public officer or body of their functions; or
- is intended to adversely affect the effective performance by a public officer or body of their functions for the benefit of the other person (for example resulting in the other person obtaining a licence, permit or approval, appointment, financial benefit or other direct or indirect monetary or proprietary gain).

The conduct must be serious. Less serious or trivial conduct is excluded from the definition of "improper conduct".

### **Corrupt conduct**

Corrupt conduct means any one of the following:

- conduct of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body;
- conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- conduct of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- conduct of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - a financial benefit or real or personal property; or
  - any other direct or indirect monetary or proprietary gain,
- that they would not have otherwise obtained; or
- conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above and that conduct could amount to an indictable offence, or one of the following three types of common law offences committed in Victoria:
  - perverting the course of justice;
  - attempting to pervert the course of justice; or
  - bribery of an official.

### **5.3.3.2 Detrimental action**

It is an offence under the Act for a public officer or body to take detrimental action against a discloser in reprisal for making a public interest disclosure. The public officer or body is also liable in damages for any injury, loss or damage to that other person. There are two essential components here: whether there is in fact "detrimental action", as defined by the



## OFFICIAL

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**

Detrimental action as defined by the Act includes:

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

In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a public interest disclosure, but against any person connected with a public interest disclosure.

Examples of detrimental action prohibited by the Act include:

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

### **Taken in reprisal for a public interest disclosure**

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

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

This belief need not be a substantial part of the reason for taking that action, it can be any part of the reason.

### **5.4 Assessment of a disclosure**

Disclosures about WGCMA should only be made to the IBAC. WGCMA is a public body that cannot receive disclosures. If WGCMA receives a complaint, report, or allegation of improper conduct or detrimental action, the discloser will not be given the protections under the Act. To be a protected public interest disclosure, it must be made to IBAC. Accordingly, WGCMA will advise the discloser to make their disclosure directly to the IBAC.

## OFFICIAL

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

If the IBAC is of the view that the assessable disclosure is not a public interest disclosure, then it is not a 'public interest complaint'. If the IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the public interest disclosure is a "public interest complaint".

### 5.4.1 If the IBAC determines the disclosure is not a public interest complaint

If the IBAC determines the disclosure is not a public interest complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is not a public interest complaint; and
- as a consequence of that determination:
  - the disclosure will not be investigated as a public interest complaint; and
  - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- regardless of whether the IBAC has determined that the disclosure is a public interest complaint, the protections under Part 6 apply to a public interest disclosure.

In addition, if the IBAC is of the view that the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, the IBAC may advise the discloser that:

- the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a public interest complaint; and
- if the discloser wishes to pursue the matter, make a complaint directly to that entity.

The IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to the IBAC under the IBAC Act.

### 5.4.2 If the IBAC determines the disclosure is a public interest complaint

#### 5.4.2.1 Notification to the discloser

If the IBAC determines the disclosure is a public interest complaint, the IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- the IBAC has determined that the disclosure is a public interest complaint;
- regardless of the determination, the protections available to a discloser of a public interest disclosure under Part 6 of the Act apply;
- the discloser has rights, protections and obligations under the Act as contained in sections 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act; and
- it is an offence under section 74 of the Act to disclose that the IBAC has determined that the disclosure is a public interest complaint.

Whether or not IBAC determines the disclosure to be a public interest complaint, the protections under Part 6 of the Act apply to the discloser.

Once the IBAC has determined that a disclosure is a public interest complaint, the discloser cannot withdraw that disclosure. However, under the IBAC Act, the IBAC can decide not to investigate a public interest complaint if the discloser requests that it not be investigated.

#### 5.4.2.2 Further actions the IBAC may take

Under the IBAC Act, the IBAC may dismiss, investigate, or refer a public interest complaint.

If the IBAC dismisses a public interest complaint, then it must do so on one of the grounds specifically set out in the IBAC Act. In particular, the IBAC must dismiss a public interest complaint if the matter disclosed is a matter that neither the IBAC nor an investigating entity may investigate.

The IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is "serious corrupt conduct".

The IBAC may also choose to refer the public interest complaint to other appropriate and relevant investigative entities.

#### 5.4.2.3 Other information about investigative entities' investigations of a public interest complaint

If the IBAC or another investigative entity is conducting an investigation of a public interest complaint, it may be in contact with WGCMA or a person about which the disclosure has been made. This will be for the purpose of conducting investigative enquiries.

WGCMA or that person will be able to disclose information about the public interest complaint to the investigative entity without breaching the confidentiality requirements of the Act.

The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then WGCMA or person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.

In addition, if WGCMA is advised of the identity of the discloser, then it will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

At the conclusion of its investigation, the relevant investigative entity must generally provide the discloser with information about the results of its investigation, including any action taken by the investigative entity and any recommendation by the investigative agency that action or further action be taken.

The investigative entity may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, the investigative entity must not provide any information that is likely to lead to the identification of a discloser.

The investigative entity does not have to provide this information to either the discloser or the relevant principal officer in specified circumstances set out in the IBAC Act or the Ombudsman Act 1973 (Vic).

## 5.5. Welfare management

WGCMA is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of public interest disclosures.

The protection of persons making genuine public interest disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a public interest complaint ("cooperators"). Persons who are the subject of allegations will also have their welfare looked after.

WGCMA cannot receive disclosures, and therefore may not know that a person has made a public interest disclosure. Confidentiality obligations require a person who has made a public interest disclosure not to discuss the matter with any other person except with the IBAC (or another investigative entity to which the IBAC may have referred the disclosure). Therefore, WGCMA will only be made aware that a person requires protection under the Act if that information has been provided to WGCMA by the IBAC or the VI (when assessing whether a disclosure is a public interest complaint), or by the investigative entity investigating a public interest complaint.

Once WGCMA has been made aware of the identity of a discloser, and any other relevant information about the public interest disclosure, WGCMA will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act.

WGCMA must, where it is aware of or has been provided the identities of disclosers and cooperators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the public interest disclosure. WGCMA will ensure its workplace culture supports disclosers and cooperators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., employees, Board members, other officers) or external members of the public. However, different legislative responsibilities (including those external to the Act) apply to persons internal to the organisation, and to persons who may be clients or users of WGCMA's services. These responsibilities derive from various legislative and administrative obligations to:

- ensure the health and wellbeing of employees of a public sector body under laws including those relating to occupational health and safety, the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, the *Public Administration Act 2004 (Vic)*, and various Victorian Public Sector Codes of Conduct (as relevant); and
- comply with various relevant laws, policies and practices when making administrative and other decisions or taking particular actions affecting a customer, client or user of WGCMA's services.

Generally, for internal persons, WGCMA will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, WGCMA will take reasonable steps to provide appropriate support. WGCMA will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

### 5.5.1 Support available to disclosers and cooperators

WGCMA will support disclosers and cooperators by:

## OFFICIAL

- keeping them informed, by providing:
  - confirmation that the disclosure has been received, if the relevant investigative agency has provided this information to WGCMA;
  - the legislative or administrative protections available to the person;
  - a description of any action proposed to be taken;
  - if action has been taken by WGCMA, details about results of the action known to WGCMA;
- providing active support by:
  - acknowledging the person for having come forward;
  - assuring the discloser or cooperator that they have done the right thing, and WGCMA appreciates it;
  - making a clear offer of support;
  - assuring them that all reasonable steps will be taken to protect them;
  - giving them an undertaking to keep them informed as far as WGCMA is reasonably able to;
- managing their expectations by undertaking an early discussion with them about:
  - what outcome they seek;
  - whether their expectations are realistic;
  - what WGCMA will be able to deliver;
- maintaining confidentiality by:
  - ensuring as far as is possible that other people cannot infer the identity of the discloser or cooperator;
  - reminding the discloser or cooperator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or cooperator;
  - ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in WGCMA;
- proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint to be made by the discloser or cooperator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- protecting the discloser or cooperator by:
  - examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
  - listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
  - assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the public interest disclosure;
- using best endeavours to prevent the spread of gossip and rumours about any investigation into the public interest disclosure where WGCMA is aware of any investigation being undertaken or about to be undertaken; and
- keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

### 5.5.1.1 Appointment of a welfare manager

In appropriate circumstances, WGCMA will appoint a suitable welfare manager to protect a discloser or a cooperator. The following matters will be taken into consideration by WGCMA when deciding whether to appoint a welfare manager in a particular case:

## OFFICIAL

- are there any real risks of detrimental action against the discloser or cooperator, taking into account their particular circumstances?
- whether WGCMA can or will take the discloser or cooperator seriously and treat them with respect?
- whether WGCMA will give the discloser or cooperator effective support, including keeping the discloser informed of the status of the disclosure (as far as WGCMA has been provided with such information by a relevant investigative entity)?
- can WGCMA protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or cooperator has in fact suffered retribution?

If the answer to the first question is 'yes' then the IBAC recommends the appointment of a dedicated welfare manager. If the answer to the first question is 'no' and WGCMA can meet the needs set out in the remainder of the questions, the IBAC suggests there may be no need for a dedicated welfare manager to be appointed for that particular case.

In most circumstances, a welfare manager will only be required where a public interest complaint proceeds to investigation, but each public interest disclosure received by WGCMA will be assessed on its own merits. In particular, a welfare manager will be appointed where WGCMA believes that one is required to ensure that the appropriate support as set out in section 6.1 above can be provided to the discloser or cooperator.

If appointed, the welfare manager will, in addition to providing the general support set out above at section 6.1:

- advise the discloser or cooperator of the legislative and administrative protections available to him or her, including providing practical advice;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- not divulge any details relating to the public interest disclosure to any person other than the Public Interest Disclosure Coordinator;
- ensure all meetings between the welfare manager and the discloser or cooperator are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure;
- encourage the discloser to use the employee assistance program if needed; and
- ensure the expectations of the discloser are realistic and reasonable, and that the discloser or cooperator understands the limits of the support WGCMA is able to reasonably provide in the particular circumstances. This is particularly the case where a welfare manager has been appointed in relation to an external discloser or cooperator.

### 5.5.2 Welfare management of persons who are the subject of public interest disclosure

WGCMA will also meet the welfare needs of a person who is the subject of a public interest disclosure. It is important to remember that until a public interest complaint is resolved, the information about the person is only an allegation.

WGCMA will make a decision about whether or when the subject of a disclosure will be informed about a public interest disclosure involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a public interest complaint, or if a decision is made to dismiss the



disclosure. This may also depend on the stage at which the relevant investigative entity actually informs WGCMA of the identity of the subject of a disclosure.

The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. WGCMA may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the public interest complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

Investigative entities may also inform the subject of the public interest complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

#### **5.5.2.1 Welfare services**

A person the subject of a disclosure who is made aware of their status as such may have a welfare manager appointed by WGCMA, or be referred to WGCMA's employee assistance program for welfare assistance. Alternatively, the Public Interest Disclosure Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, these procedures, and any other relevant law or code of conduct. WGCMA will consider each matter on a case by case basis, taking into account the information it has been provided by the investigative entity and the person's particular circumstances.

#### **5.5.2.2 Confidentiality**

Consistent with WGCMA's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, any information received from the IBAC or another investigative entity and the identities of persons involved will not be divulged.

WGCMA will take all reasonable steps to ensure the confidentiality of the subject of a disclosure at all times. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure (to the extent that WGCMA has been provided that information by an investigative entity) will still be kept confidential by WGCMA.

#### **5.5.2.3 Natural justice**

WGCMA will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. The IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:

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

#### **5.5.2.4 If the allegations are wrong or unsubstantiated**



## OFFICIAL

WGCMA will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, WGCMA and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across WGCMA and the subject is a staff or Board member of WGCMA.

Further, if the matter has been publicly disclosed by WGCMA, the CEO will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated/for compensation/additional supported needs.

### 5.5.3 If detrimental action is reported

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the welfare manager or Public Interest Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act to make a disclosure to the IBAC.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
  - the other person or anyone else has made, or intends to make, the disclosure; or
  - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure under the Act. The penalty for committing such an offence in contravention of the Act is a maximum fine of 240 penalty units (\$39,652.80 from 1 January 2020, increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*), two years' imprisonment or both.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation should be made to the IBAC as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, WGCMA will also consider reporting the matter to the police or the IBAC.

A discloser of a public interest disclosure may also:

- take civil action against the person who took detrimental action against the discloser and seek damages;
- take civil action against WGCMA jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of WGCMA; and
- apply for an order or an injunction from the Supreme Court.

### 5.5.4 Protections for persons making a public interest disclosure

#### 5.5.4.1 Part 6 protections available to disclosers

## OFFICIAL

Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'public interest disclosure', i.e., one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- the discloser is not subject to any civil or criminal liability for making the public interest disclosure;
- the discloser is not subject to any administrative action (including disciplinary action) for making the public interest disclosure;
- by making the public interest disclosure, the discloser is not committing an offence against the *Constitution Act 1975* or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- by making the public interest disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality;
- the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure made by him or her; and
- an award of costs cannot be made against the discloser unless the discloser's claim is vexatious or conducted unreasonably.

The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if the IBAC has determined that the public interest disclosure is not a public interest complaint.

The protections also apply to further information relating to a public interest disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- the IBAC; or
- any investigative entity investigating the public interest disclosure.

In circumstances where the principal officer (in WGCMA's case, this is the CEO) makes a notification in good faith to IBAC under the mandatory notification directions, the relevant principal officer will be protected from any criminal or civil liability. This is the case even if the suspicion on which the report is based turns out to be untrue or unsubstantiated.

### **Transfer of employees**

An employee of a public service body or public entity who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

After making a disclosure an employee can be transferred internally to another part of a public service body, or to another public service body or public entity on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- the head of the public body has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee;
- the head of the public body considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- if transfer to another public body is proposed, the head of that public body consents to the transfer.

## OFFICIAL

The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.

### 5.5.4.2 Loss of protections caused by actions of the discloser

However, a discloser is not protected if they commit an offence under section 72 or section 73 of Act, as follows:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure (maximum penalty: a fine of 120 penalty units (\$19,826.40 from 1 January 2020, increasing 1 July every year in accordance with arrangements made under the *Monetary Units Act 2004*), 12 months' imprisonment, or both);
- claim that a matter is the subject of a public interest disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both);
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint (maximum penalty: a fine of 120 penalty units, 12 months' imprisonment, or both).

### 5.5.4.3 Other limitations on protections afforded to disclosers

A discloser is not protected against legitimate management action being taken by WGCMA in accordance with the Act.

In addition, although the discloser of a public interest disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a public interest disclosure.

#### **If the person making the disclosure is implicated in the improper conduct or detrimental action that is the subject of the disclosure**

Where a discloser is implicated in improper conduct, and an investigative entity has provided the necessary information to WGCMA, WGCMA will protect the discloser from reprisals in accordance with the Act, any guidelines issued by IBAC and these procedures. WGCMA acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The CEO will make the final decision on the advice of the Public Interest Disclosure Coordinator as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without WGCMA ensuring that:

## OFFICIAL

- the fact that a person has made a public interest disclosure is not any part of the reason for WGCMA taking the action against the employee;
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

WGCMA will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

### 5.6 Confidentiality

#### 5.6.1 Obligation of confidentiality on WGCMA and all individuals

WGCMA will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to public interest disclosure matters is crucial, among other things, in ensuring detrimental actions are not taken in reprisal against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with officers of the IBAC, another investigative entity, or other persons authorised by law.

#### 5.6.2 Steps taken by WGCMA to ensure confidentiality

##### 5.6.2.1 Information management

WGCMA will ensure all files, whether paper or electronic, are kept securely. Those files will be accessible only by the Public Interest Disclosure Coordinator.

The welfare manager will not divulge any details relating to the disclosed matter to any person other than the Public Interest Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All meetings between any relevant persons will be conducted discreetly to protect the confidentiality of the person making a public interest disclosure.

##### 5.6.2.2 Exemption from the FOI Act

The *Freedom of Information Act 1982 (FOI Act)* provides a general right of access for any person to seek documents in the possession of WGCMA.

However, the Act provides that certain information related to public interest disclosures as contained in documents in the possession of WGCMA will be exempt from the application of the FOI Act.

Such information excluded from the operation of the FOI Act includes:

## OFFICIAL

- any information relating to a disclosure made in accordance with the Act; and
- any information that is likely to lead to the identification of a discloser.

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

### 5.6.2.3 Training for all staff

WGCMA will:

- ensure that all staff and Board members have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures training about WGCMA's general obligations under the Act and the rights and obligations of all staff and Board members;
- introduce periodic refresher courses for existing staff and Board members about their rights and obligations under the Act;
- provide additional training and assistance to:
  - any staff of WGCMA with specific responsibilities and functions to handle and manage public interest disclosures under the Act, including the Public Interest Disclosure Coordinator and people involved in welfare management; and
  - any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of the IBAC or other investigative agencies where required in response to a request for access under the FOI Act.

### 5.6.3 Limited exceptions permitted by the Act

The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act, include circumstances such as:

- where disclosure is required by WGCMA (or one of its officers) in the exercise of functions of WGCMA under the Act;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigative entity for the purpose of exercising that entity's functions under the IBAC Act;
- in accordance with a direction or authorisation given by the investigative entity that is investigating the disclosure;
- to the police where the information is relevant to an existing investigation relating to actual or potential criminal conduct;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- where the IBAC or the VI has determined that the assessable disclosure is not a public interest disclosure and the discloser or WGCMA subsequently discloses the information;
- when an investigative entity has published a report to Parliament, in accordance with its confidentiality obligations;
- for the purpose of obtaining legal advice in relation to matters specified in the Act;

## OFFICIAL

- in order to enable compliance with the Act:
  - where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
  - where a person is under 18 years of age, to a parent or guardian;
  - where a person is suffering a disability and is not able to understand, to an independent person;
- in disciplinary actions or legal proceedings for certain offences in the Act or other specified acts;
- for the purpose of, or in the course of, a restorative engagement process, with the written consent of the person participating in the process who alleges that they are the victim of sex discrimination or sexual harassment;
- to any of the following to assist the discloser in seeking appropriate advice:
  - health practitioner;
  - trade union;
  - employee assistance program;
- to Victorian WorkCover Authority for the purposes of a compensation claim; and
- to the Fair Work Commission for the purpose of an application or related proceeding.

The Act prohibits the inclusion of any details, in any report or recommendation, that is likely to lead to the identification of a discloser. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

### 5.6.4 Permitted external disclosure

A person who has made a public interest disclosure may make further disclosure of that matter to external parties such as the media and politicians if:

- the original disclosure was not made anonymously;
- the original disclosure was determined to be a public interest complaint and the discloser was notified of that determination; and
- one of the following applies:
  - the discloser has not been notified of any action in relation to the disclosure within 6 months of the determination and has not received a response 30 days after requesting an update on progress;
  - an investigation has not been completed 12 months after the determination and the discloser has not received a response 30 days after requesting an update on progress;
  - an investigation has not been completed 12 months after determination and although the discloser has received a response within 30 days of a request for an update, the discloser has received no further update advising the investigation has been completed six months after that response.

Any external disclosure in accordance with the above must not contain information that might prejudice a criminal investigation or legal proceeding of which the discloser is aware and must not contain information about the investigative methods of the IBAC or the police.

The protections afforded under Part 6 of the Act will apply to this type of external disclosure.

### 5.6.5 Penalties apply for breach of confidentiality

## OFFICIAL

The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, fines or both.

The criminal offences set out in the Act relating to confidentiality include:

1. Divulging information obtained in connection with or as a result of the handling or investigation of a public interest disclosure without legislative authority. Maximum penalty: 60 penalty units (\$9,913.20 from 1 January 2020), six months' imprisonment, or both.
2. Disclosing that a disclosure has been notified to the IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months' imprisonment, or both.
3. Disclosing that a disclosure has been assessed by the IBAC or the VI to be a public interest complaint under the Act. Maximum penalty: 60 penalty units, six months' imprisonment, or both.

### 5.7 Collating and publishing statistics

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