# Museums Victoria Procedure Statement

### Public Interest Disclosures Procedures

Date of Approval: 04 July 2023

Responsible Executive: Chief Financial Officer

Responsible Officer Head, Strategic Information and Compliance

Review Cycle: Three-yearly

1. Purpose

Museums Victoria’s Public Interest Disclosures Procedures protect persons from detrimental action taken by Museums Victoria and its staff and Board members.

Museums Victoria cannot receive public interest disclosures in relation to the improper conduct or detrimental action of public bodies or public officials, for example, public servants, or Museums Victoria staff. Any such public interest disclosures should be directed to the Independent Broad-based Anti-corruption Commission (IBAC).

The Procedures are prepared in accordance with the *Public Interest Disclosures Act* *2012* and the guidelines of the IBAC available at https://www.ibac.vic.gov.au/.

1. Making a public interest disclosure

Who can make a public interest disclosure?

* + 1. Public interest disclosures about improper conduct engaged in or detrimental action taken by Museums Victoria or its staff and Board members can be made by an individual or by a group of individuals.

2.2 Public interest disclosures can be made by a member of the public, an employee, officer or member of a department or one of its portfolio agencies, or an employee, officer or member of another department or public body.

2.3 A company or business is not authorised to make a public interest disclosure.

Making a public interest disclosure

2.4 A public interest disclosure must be made in private; and may be made:

a) in person

b) by phone

c) by leaving a voicemail message

d) in writing by post, personal delivery or email;

e) by any other form of electronic communication; and/or

f) anonymously.

2.5 Public interest disclosures cannot be made by fax.

What could a public interest disclosure be about?

2.6 A public interest disclosure could be about information that a person believes on reasonable grounds, demonstrates or tends to demonstrate that a person, public officer or public body is engaging in, or proposing to engage in 'improper conduct' and/or 'detrimental action'.

2.7 The conduct being disclosed must be in the performance of a person or body's function as a public officer or public body. Public bodies include Museums Victoria. Public officers include Museums Victoria staff and Board Members. For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

2.8 The conduct being disclosed must be improper conduct and/or detrimental action. The definitions of improper conduct and detrimental action are explained in Section 7 of these procedures.

‘Reasonable grounds’

2.9 'Reasonable grounds' require belief that improper conduct or detrimental action has occurred, is occurring, or will occur. The belief 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. But, you must have reasonable grounds for your belief.

2.10 A mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be protected under the *Public Interest Disclosures Act*. 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.

Offences under the *Public Interest Disclosures Act*

2.11 Under the *Public Interest Disclosures Act*, it is an offence:

(a) To take detrimental action against another person in reprisal for a public interest disclosure. Penalties of up to 240 penalty units and/or 2 years imprisonment apply (s 45(1), *Public Interest Disclosures Act*);

(b) To disclose the content, or information about the content, of a disclosure that has been notified to IBAC by Museums Victoria or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the *Public Interest Disclosures Act*;

(c) For any person to:

(i) 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;

(ii) Claim that a matter is the subject of a public interest disclosure knowing the claim to be false; and

(iii) Falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint; and

(d) For any person to:

1. Disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the *Public Interest Disclosures Act*; and
2. Disclose that a disclosure has been determined to be a public interest disclosure complaint unless permitted to do so by the *Public Interest Disclosures Act*.
3. Protecting against detrimental action

3.1 Museums Victoria together with the Public Interest Disclosure Coordinator will take precautions to prevent Museums Victoria staff from taking detrimental action in reprisal for a public interest disclosure by identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

3.2 The Public Interest Disclosures Coordinator is Georgie Cox, Chief Financial Officer (telephone: 8341 7748).

3.3 The Public Interest Disclosures Coordinator will assess the individual circumstances of each case and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

3.4 A disclosure of detrimental action is itself a protected disclosure and should be made to IBAC. IBAC will assess it as a new disclosure according to its own guidelines and processes.

3.5 Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, Museums Victoria may consider reporting the matter to the police.

3.6 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 Public Interest Disclosures Coordinator will record details of the incident and advise the person of their rights under the *Public Interest Disclosures Act* to make a disclosure to IBAC. The Public Interest Disclosures Coordinator will also advise the person of the protections that they will receive under the *Public Interest Disclosures Act*.

3.7 If the Public Interest Disclosures Coordinator receives a disclosure, the details of the incident should be recorded and the discloser must be advised of his/her rights under the *Public Interest Disclosures Act* to make a disclosure to IBAC.

3.8 If you have sustained injury, loss or damage as a result of detrimental action taken against you in reprisal for making a disclosure, the *Public Interest Disclosures Act* sets out remedies that are available to you. You may wish to obtain legal advice about this.

3.9 Whilst there are these protections, there are also responsibilities. You must not take detrimental action against another person in reprisal for a public interest disclosure and, if you have been involved in the improper conduct or detrimental action which is the subject of your disclosure, you will still be held liable for your own involvement. Making a disclosure does not provide you with immunity for your own wrongdoing.

3.10 You must not disclose the content, or information about the content, of a disclosure that has been notified to IBAC by Museums Victoria or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the *Public Interest Disclosures Act*. See Part 5 of these procedures for further information.

Transfer of employees

3.11 A Museums Victoria staff member who has made a disclosure and believes on reasonable grounds that detrimental action is being taken against them may request a transfer of employment (s 51, *Public Interest Disclosures Act*).

3.12 A Museums Victoria staff member could be transferred internally to a different area of Museums Victoria on similar terms and conditions of employment. This can only happen on request or by consent to a transfer. Alternatively, a Museums Victoria staff member could also be transferred to duties within a Department, an Administrative Office or the State Services Authority, again only on request from the employee or with the employee's consent. The following further conditions apply to employee transfers:

(a) The President of the Museums Board of Victoria must have reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee;

(b) The President of the Museums Board of Victoria must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action;

(c) If a transfer to a Department, Administrative Office or the State Services Authority is proposed, the head of the relevant Department, Administrative Office or the State Services Authority must consent to the transfer.

1. Welfare Services

4.1 Museums Victoria recognises that the welfare and protection from detrimental action of persons making genuine public interest disclosures is essential for the effective implementation of the *Public Interest Disclosures Act* and is relevant to the Museums Victoria’s obligation to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004 (Vic)* and the common law.

4.2 Museums Victoria will provide welfare support to a discloser or a witness in an investigation, or persons who are the subject of the public interest disclosure, or those who have cooperated or intend to cooperate with an investigation of a public interest disclosure complaint, as the circumstances require.

4.3 The Public Interest Disclosures Coordinator is responsible for:

a) Examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment; and managing the impact of any investigation;

b) Providing practical advice and support; actively monitoring the workplace and anticipating problems and addressing them without waiting for complaint of victimisation;

c) Advising the discloser and/or witness of the protections available under the *Public Interest Disclosures Act*;

d) Keeping records of the case management of the person, including contact and follow up action;

e) Referring any disclosures of detrimental action in reprisal for making the disclosure (eg harassment, intimidation or victimisation) to IBAC;

f) Ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic;

g) Maintaining confidentiality:

1. ensuring that staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive; and

(ii) ensuring that hardcopy and electronic files relating to the disclosure are accessible only to the persons involved in dealing with the disclosure.

4.4 The Public Interest Disclosures Coordinator will only be required to provide reasonable support and will discuss the reasonable expectations with the person(s) they are supporting on what Museums Victoria is able to deliver; and whether their expectations are realistic.

4.5 The Public Interest Disclosure Coordinator will be the contact for MV staff who may wish to confidentially raise a concern about improper conduct or other integrity issues involving MV staff.

1. Confidentiality

5.1 Museums Victoria must keep certain information confidential, including the identity of the person making the disclosure. Ensuring that the person making the disclosure cannot be identified may help protect the discloser from detrimental action.

5.2 Museums Victoria cannot receive protected disclosures under the *Public Interest Disclosures Act*. Any public interest disclosures made to it will be referred to IBAC.

5.3 In circumstances where a disclosure about Museums Victoria or a Museums Victoria staff member or Board member has been made directly to IBAC, Museums Victoria may subsequently become aware of it by IBAC, who is assessing whether the disclosure is a public interest disclosure complaint. Having been made aware of the identity of a discloser, and/or the contents of the disclosure, the *Public Interest Disclosures Act* provides that Museums Victoria must keep this information confidential. Museums Victoria can only disclose such information in the limited circumstances provided for under the *Public Interest Disclosures Act*. These include disclosing this information:

(a) With the discloser's consent;

(b) In accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure (for example, IBAC);

(c) To the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the disclosure, including disciplinary process or action;

(d) Where the IBAC or the Victorian Inspectorate has already determined that the disclosure is not a public interest disclosure;

(e) Where necessary for the purpose of the exercise of functions under the *Public Interest Disclosures Act*;

(f) For the purpose of a proceeding for an offence under a relevant Act or provision;

(g) For the purpose of disciplinary process or action in respect of conduct that would constitute an offence;

(h) For the purpose of obtaining legal advice or representation;

(i) To an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act; and

(j) Where an investigating body (for example, IBAC) has already published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the Act.

5.4 IBAC or the relevant investigating entity may disclose the discloser's identity and the content of the disclosure if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information has been disclosed is bound by the same confidentiality requirements as Museums Victoria.

Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the disclosure will still remain confidential.

5.6 A person who makes a public interest disclosure cannot tell anyone about it except as permitted by the *Public Interest Disclosures Act,* which allows for specified categories of persons from who disclosers may seek advice and support: representatives from a trade union, employee assistance program, the Victorian Workcover Authority or for the purposes of an application to the Fair Work Commission.

If a person who makes a public interest disclosure repeats their disclosure other than as permitted by the *Public Interest Disclosures Act*, they may lose the protections provided for in the *Public Interest Disclosures Act*. For example, if a disclosure is repeated to the media and the media reports on it, the discloser may not be protected from defamation action.

1. Review

6.1 These procedures are reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC's guidelines.

1. Definitions

7.1 **“Public Interest Disclosure’** is a report made by a person about Improper Conduct of public bodies or public officers to any of the organisations specified in Part 2 of the *Public Interest Disclosures 2012 Act* (Vic.)*.*

7.2 ‘Improper Conduct’ is defined as ‘corrupt conduct’ or

Any of the following conduct by a public officer or public body in their capacity as a public officer or public body;

* A criminal offence
* Serious professional misconduct
* Dishonest performance of public functions
* An intentional breach or reckless breach of public trust
* An intentional or reckless misuses of information or material acquired in the course of the performance of public functions
* A substantial mismanagement of public resources
* A substantial risk to the health or safety of one or more persons
* A substantial risk to the environment.

Conduct by a third party that adversely affects the honest performance of a public officer or public body or is intended to adversely affect effective performance of a public officer or public body while obtaining an advantage for the third party, an/or

Conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above

Less serious or trivial compliants are excluded from the definition of improper conduct.

7.3 ‘Corrupt Conduct’ is conduct that:

• adversely affects the honest performance of functions by a public officer or public body;

• involves the dishonest performance of functions by a public officer or public body;

• involves a breach of public trust;

• involves a misuse of information acquired in the performance of functions as a public officer or public body; or

• involves a conspiracy or an attempt to engage in any of the above conduct

AND

* would constitute:
  + an indictable offence;
  + an attempt to pervert the course of justice;
  + bribery of a public official; or
  + perverting the course of justice.

7.4 ‘Detrimental Action’ is defined as:

Action taken against a person who has made a protected disclosure which:

• 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.

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

Some examples of Detrimental Action are intimidation, harassment, causing personal injury, threatening or prejudicing someone’s safety or damaging a person’s property.

1. Related Documents

* Code of Conduct for Victorian Public Sector Employees
* Independent Broad-based Anti-corruption Commission (IBAC) guidelines
* Integrity Framework
* *Occupational Health and Safety Act 2004*
* Public Interest Disclosures Policy
* *Public Interest Disclosures Act 2012 (Vic.)*

Schedule 1 - What is a public body and what is a public officer?

A public body is:

(a) a public sector body within the meaning of s 4(1) of the Public Administration Act 2004;

(b) a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;

(c) the Electoral Boundaries Commission constituted under the Electoral Boundaries Commission Act 1982;

(d) a Council;

(e) a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise); and

(f) any other body or entity prescribed for the purposes of this definition.

A public officer is:

(g) a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the Public Administration Act 2004;

(h) a person to whom a provision of the Public Administration Act 2004 applies as a result of the application of Part 7 of that Act;

(i) an ongoing employee or temporary employee in the teaching service under the Education and Training Reform Act 2006;

(j) a judicial employee employed under Division 3 of Part 6 of the Public Administration Act 2004;

(k) a Ministerial officer employed under Division 1 of Part 6 of the Public Administration Act 2004;

(l) an electorate officer within the meaning of the Parliamentary Administration Act 2005;

(m) a Parliamentary adviser employed under Division 2 of Part 6 of the Public Administration Act 2004;

(n) a Parliamentary officer within the meaning of the Parliamentary Administration Act 2005;

(o) a member of police personnel;

(p) a responsible Minister of the Crown;

(q) a member of the Legislative Assembly or the Legislative Council;

(r) a Councillor within the meaning of section 3(1) of the Local Government Act 1989;

(s) a member of Council staff employed under the Local Government Act 1989;

(t) a judge, a magistrate, a coroner or a member of VCAT;

(u) an associate judge or a judicial registrar;

(v) a Crown Prosecutor;

(w) the Chief Crown Prosecutor;

(x) the Director of Public Prosecutions;

(y) the Governor, the Lieutenant-Governor or the Administrator of the State;

(z) the Auditor-General;

(aa) the Ombudsman;

(bb) the Electoral Commissioner;

(cc) the holder of any other statutory office or any other prerogative office;

(dd) any other person in the service of the Crown or a public body;

(ee) a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);

(ff) a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition; and

(gg) an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.