

Protected Disclosure Guidelines & Procedures

Approved by the CEO/Executive Team on 24 September 2013

1. Purpose

These ACMI Protected Disclosure Guidelines & Procedures aim to establish a system for the protection of persons who make a protected disclosure under the *Protected Disclosure Act 2012* (Vic) (“the Act”), from detrimental action by officers, members, employees and contractors of ACMI.

2. Scope

These guidelines and procedures apply to all ACMI staff, volunteers, contractors, visitors as well as members of the public.

These guidelines and procedures do not apply to allegations of conduct, workplace grievances or complaints which are not within the scope of the Act. Disclosures of improper or corrupt conduct that do not meet the definition of a protected disclosure under the Act and are therefore not made to IBAC, will be investigated in accordance with ACMI’s Financial Code of Practice or other relevant policy as required by the circumstances or by agencies external to ACMI.

Disclosures of improper conduct or detrimental action under the Act are to be made to the Independent Broad-based Anti-Corruption Commission (“IBAC”).

3. Definitions:

Three key concepts relevant to this policy are improper conduct, specified conduct and detrimental action. Definitions of these terms are set out below.

3.1. Improper conduct

Improper conduct means conduct that is corrupt, or conduct that is defined as ‘specified conduct’ as set out in clause 3.2, i.e. it is not corrupt conduct but is serious enough that if proved, would constitute a criminal offence or reasonable grounds for dismissal from employment or termination of the services of the officer engaged in the conduct.

3.2. Specified conduct

Specified conduct includes but is not limited to:

- a. **conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions;**
- b. **conduct of a public officer or public body that constitutes or involves the dishonest performance of their functions as a public officer or public body;**
- c. **conduct of a public officer, former public officer or a public body that knowingly or recklessly breaches public trust;**
- d. **conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions;**
- e. **a conspiracy or attempt to engage in the above conduct;**
- f. **conduct of a public officer or public body that involves the substantial mismanagement of public resources; or involves substantial risk to public health or safety; or substantial risk to the environment.**

3.3. Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in **reprisal for a protected disclosure.**

Detrimental action includes:

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

4. Managing the Welfare of those making Protected Disclosures

ACMI endeavours to support the aims and objectives of the Act. Persons making protected disclosures under the Act will be supported where ACMI is notified of this disclosure. ACMI will endeavour to protect individuals from detrimental action being taken against them in reprisal for the making of protected disclosures.

Accordingly:

- neither improper conduct by employees, members, officers or contractors, nor the taking of detrimental action against those who disclose such conduct will be tolerated;

- the value of transparency and accountability in its administrative and management practices is recognised;
- the making of disclosures to IBAC that reveal improper conduct, corrupt conduct, conduct involving a substantial mismanagement of public resources or conduct involving a substantial risk to public health and safety or the environment is encouraged and supported;
- reasonable steps will be taken to support and protect persons who make disclosures, from any detrimental action in contravention of section 45 of the Act, where we have notice of such disclosure;
- reasonable steps will be taken to support and protect people who have cooperated or intend to cooperate with an investigation into a protected disclosure complaint, from any detrimental action in contravention of section 45 of the Act, where we have notice of such disclosure;
- all information provided by IBAC to ACMI about a protected disclosure complaint will be handled confidentially. ACMI will take all reasonable steps to protect the identity of the discloser and ensure that the content and information about the content of the person's disclosure remains confidential;
- resources will be provided to implement ACMI's Protected Disclosure Guidelines including training for all personnel involved in protecting persons from detrimental action.

5. Persons implicated in improper Conduct

Where a person who makes a protected disclosure is implicated in misconduct, ACMI will continue to endeavour protect the individual from detrimental action.

ACMI acknowledges that the act of making a protected disclosure complaint does not shield individuals 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 Chief Executive Officer of ACMI will make the final decision about disciplinary or other action to be taken against the person who made the protected disclosure complaint and in doing so will consider the advice, of IBAC, if any.

Where disciplinary or other action relates to conduct that is the subject of the person's complaint, 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, the Chief Executive Officer of ACMI must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);

- there are valid and sufficient grounds that would justify action against a non complainant in the same or similar circumstances;
- there are valid and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

ACMI will document the disciplinary process, record the reasons for the disciplinary or other action, and the reasons why the action is not in retribution for the making of the disclosure. The Head of Human Resources will advise the affected individual of the proposed action and any mitigating factors that have been taken into account.

6. Management of the Person against whom a Disclosure has been made

ACMI recognises that employees against whom protected disclosures are made must also be supported during the handling and investigation of disclosures. During the assessment and investigation process ACMI will take reasonable steps to maintain the confidentiality of the person who is the subject of the disclosure.

ACMI will endeavour to ensure that where IBAC's investigations do not substantiate the protected disclosure, 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 protected disclosure will remain confidential so far as is practicable.

The Head of Human Resources will ensure the person who is the subject of a protected disclosure under investigation:

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

Where the allegations in a protected disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the Head of Human Resources will formally advise that person of any investigation outcomes where that information has been provided by IBAC.

ACMI will provide its full support to a person who is the subject of a protected disclosure where IBAC determines that the allegations contained in a protected disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Chief Executive Officer of ACMI will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

7. Review

These guidelines will be reviewed annually. The next scheduled review is August 2014, and the person responsible for the review is the Head of Human Resources.