

PUBLIC INTEREST DISCLOSURES PROCEDURES

These procedures are made under section 58 of the Public Interest Disclosures Act 2012 (the Act). They are intended for and available to Murray Valley Wine Grape Industry Development Committee (MVWG) officers and members and the public. They set out MVWG's commitment to the intent of the Act, and how we will protect people from detrimental action in reprisal for making disclosures about corrupt or improper conduct. The procedures should be read in conjunction with the Act and guidelines prepared by the Independent Broad-based Anti-Corruption Commission (IBAC).

1. Statement of support to disclosers

MVWG is committed to the aims and objectives of the Act. We do not tolerate improper conduct by our contractors, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

MVWG recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

MVWG will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

2. Object of the Act

The object of the Act is to encourage and facilitate the making of disclosures of:

1. improper conduct by public officers and public bodies and other persons, and
2. detrimental action taken in reprisal for a person making a disclosure under the Act.

The Act provides for protection to be afforded to people who have made disclosures and certain others involved from detrimental action in reprisal for those disclosures.

The Act provides for confidentiality of the content of disclosures and the identity of people who make public interest disclosures.

The Act imposes penalties for revealing, except in prescribed circumstances, the identity of disclosers and people who disclosures are about, and for revealing that a disclosure has been made.

3. Making disclosures

MVWG is not a public body prescribed under the Act to receive a public interest disclosure, so disclosures about MVWG, its contractors, officers or members must be made directly to the Independent Broad-based Anti-Corruption Commission (IBAC):

Address: IBAC, GPO Box 24234, Melbourne Victoria 3001

Website: www.ibac.vic.gov.au

Phone: 1300 735 135

Although MVWG is not able to receive disclosures we have made these procedures, as required under section 58 of the Act, setting out how we will protect people against detrimental action that might be taken against them in reprisal for making a public interest disclosure or cooperating in an investigation into a public interest disclosure complaint.

4. Definitions of key terms

Three key concepts related to public interest disclosure are improper conduct, corrupt conduct, and detrimental action. Definitions of these terms are set out below. Other key terms are defined below.

4.1 Improper conduct

A disclosure may be made about improper conduct by a public organisation or public official. Improper conduct means conduct that is corrupt, including a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Examples: To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste. An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock. A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

4.2 Corrupt conduct

Corrupt conduct means:

- a) Conduct of any person (whether a public official) that adversely affects the honest performance of a public officer's or public organisation's functions,
- b) The performance of a public officer's or public organisation functions dishonestly or with inappropriate partiality,
- c) Conduct of a public officer or a public organisation that amounts to a breach of public trust,
- d) Conduct by a public officer or a public organisation that amounts to the misuse of information or material acquired during the performance of their official functions, or

- e) A conspiracy or attempt by a public officer or public organisation to engage in the above corrupt activity; or
- f) Conduct intended to adversely affect the functions or powers of a public officer or the public organisation and result in the person or their associates or relatives obtaining a licence, approval or entitlement under any legislation, or an appointment to a statutory office or the board or a financial benefit or any other direct or indirect monetary gain that would not have otherwise be obtained or that would constitute a conspiracy.

Examples: A public officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty. A public officer favours unmeritorious application for jobs or permits by friends and relatives. A public officer sells confidential information.

4.3 Detrimental action

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a public interest disclosure. Detrimental action 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.

Examples A public organisation refuses a deserved promotion of a person who makes a disclosure. A public organisation demotes, transfers, isolates in the workplace or changes the duties of a discloser due to the making of a disclosure. A person threatens, abuses or carries out other forms of harassment directly or indirectly against the discloser, his or her family or friends. A public organisation discriminates against the discloser or his or her family and associates in subsequent applications for jobs, permits or tenders.

5. Responsibility/Delegation

The Chair is the responsible Coordinator for ensuring that these procedures and associated and forms are kept up to date, circulated to relevant committee members and meet review dates.

The Chair as the responsible Coordinator will ensure:

- a) that all committee members of MVWG and the public have access to MVWG's public interest disclosure policy and procedures
- b) committee members of MVWG know to direct anyone attempting to make a disclosure to IBAC

For anonymous disclosures:

- a) Determine whether the disclosure has been made in accordance with the Public Interest Disclosure Regulations and under section 13 of the Act,
- b) Impartially assess each disclosure to determine whether it is a public interest disclosure, and
- c) Refer all public interest disclosures to IBAC for assessment,

Where a disclosure is not considered to be a public interest disclosure, advise the discloser that MVWG considers the disclosure is not a public interest disclosure and the disclosure has not been notified to IBAC for assessment.

Regardless of whether the disclosure is notified to IBAC ensure that the protections set out in Part 6 of the Act are afforded to the discloser.

Where possible, advise the discloser of the progress of an investigation into the disclosed matter, establish and manage a confidential filing system, collate and publish statistics on disclosures made, take all necessary steps to ensure the identity of the discloser and the identity of the person who is the subject of the disclosure are kept confidential, and liaise with IBAC as required.

6. Confidentiality

MVWG will take all reasonable steps to protect the identity of the discloser. Maintaining confidentiality is crucial in ensuring reprisals are not made against a discloser.

The Act requires any person who receives information due to the handling or investigation of a public interest disclosure not to disclose that information except in certain limited circumstances.

The circumstances in which a person may disclose information obtained about a public interest disclosure include:

In accordance with section 54 of the Act, in accordance with a direction or authorisation given by the organisation investigating the disclosure, and when publishing statistics in the annual report.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the 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.

MVWG will ensure all files, whether paper or electronic, are kept securely and can only accessed by the Coordinator, a welfare manager (in relation to welfare matters) if appointed, and investigators.

All printed material will be kept in files that are clearly marked as a Public Interest Disclosure Act Matter and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a public interest disclosure.

All electronic files will be produced and stored on a stand-alone computer and be given password protection.

Backup files will be kept on hard drive.

All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the relevant Public Interest Disclosure Act Matter files.

The Public Interest Disclosures Act 2012 provides that information held in relation to public interest disclosure is not subject to the Freedom of Information Act 1982.

7. Register and reporting

MVWG will establish a secure register to record statistical information required to be published in the annual report, and to generally keep account of the status of disclosures. The register will be confidential and will not record any information that may identify disclosers or others involved in the disclosure.

The register will contain:

The number of enquiries received during a financial year about how to make a public interest disclosure,

The number and types of disclosures made during a financial year in relation to MVWG,

The number of disclosures referred to IBAC for determination, and

The number and types of matters referred to IBAC for investigation.

The Coordinator will ensure that MVWG's annual report includes information about how to access MVWG's public interest disclosure policy and procedures and the number of disclosures notified to IBAC under section 21 (2) of the Act in the financial year.

8. Managing welfare

8.1 Commitment to protecting the welfare of disclosers and co-operators

MVWG is committed to protecting the welfare of:

Genuine disclosers, co-operators (people who have cooperated or intend to cooperate with an investigation), and people who are the subject of a public interest disclosure complaint against direct and indirect detrimental action taken either in reprisal for the making of public interest disclosure or because a disclosure has been made about them.

MVWG is not able to receive disclosures so we will only be made aware that a person requires protection under the Act if we receive advice from IBAC or the Victorian Inspectorate or another organisation investigating a public interest disclosure complaint.

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

If the discloser or co-operator is an officer or member of MVWG, MVWG will ensure a supportive work environment and respond in accordance with these procedures and IBAC's guidelines to any reports of intimidation or harassment against the person.

If the discloser or co-operator is not an employee, officer, or member of MVWG, the Coordinator will take reasonable steps to provide appropriate support and discuss reasonable expectations with the person receiving welfare management in connection with a public interest disclosure.

In supporting a discloser or co-operator the Coordinator will:

Examine the immediate welfare and protection needs of a discloser who has made a disclosure and, where the discloser is an employee, seek to foster a supportive work environment,

Advise the discloser of the legislative and administrative protections available to him or her,

Listen and respond to any concerns of harassment, intimidation, or victimisation in reprisal for making disclosure,

Keep a contemporaneous record of all aspects of the case management of the discloser including all contact and follow-up action, and

Ensure the expectations of the discloser are realistic.

Detrimental action includes:

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).

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 Coordinator,

Ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the public interest disclosure, and

Ensure the discloser's or co-operator's expectations are realistic and reasonable, and that they understand the limits of the support MVWG can reasonably provide in the circumstances, particularly where they are not MVWG contractors, officers or members.

8.2 Commitment to welfare of a person who has had a public interest disclosure made against them

MVWG will also meet the welfare needs of a person who is the subject of a protected disclosure.

Until a public interest disclosure complaint is resolved, the information about the person and their conduct is only an allegation.

The Coordinator will decide 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 disclosure complaint, or if a decision is made to dismiss the disclosure. It may depend on the stage at which the relevant investigative organisation informs MVWG 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. MVWG may give information about the disclosure to the subject of the disclosure if it is:

Directed or authorised to do so by the organisation investigating the public interest disclosure complaint, or

Required for the purpose of acting with respect to the alleged conduct, including disciplinary action.

Investigative organisations may inform the subject of the public interest disclosure complaint during their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

If a person is made aware that they are the subject of a disclosure, the Coordinator will consider the matter on a case by case basis, taking into account the information provided by the investigative organisation and the person's particular circumstances.

MVWG is committed to the protection of disclosers against detrimental action taken in reprisal for the making of Public Interest disclosure. The Coordinator is responsible for ensuring disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of public interest disclosure being made.

8.3 If detrimental action occurs

MVWG will also meet the welfare needs of a person who is the subject of a public interest disclosure.

If a discloser or co-operator reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the public interest disclosure Coordinator will:

Record details of the incident;

Advise the discloser of his or her rights under the Act; and

Advise the managing director of the detrimental action.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure.

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

9. Further information

For further information on public interest disclosure, see IBAC's Guidelines for making and handling public interest disclosure (June 2013) and Guidelines for public interest disclosure welfare management (June 2013), both available on the IBAC website: www.ibac.vic.gov.au.

10. Review

This policy and set of procedures will be reviewed annually to ensure it meets the objectives of the Act and accords with IBAC's guidelines.

Related documents

- Public Interest Disclosures Act 2012
- The Guidelines published by IBAC under s 57 of the Act as of June 2013 and available on the Independent Broad-based Anti-corruption Commission (IBAC) website
- Independent Broad-based Anti-Corruption Commission Act 2011.
- Any one of the four bodies authorised to investigate a public interest disclosure complaint, being the IBAC, the Victorian Ombudsman, the Chief Commissioner of Police, and the Victorian Inspectorate.
- Public Interest Disclosure Regulations 2013