



# Protected Disclosure Policy

Approved by: Melbourne Recital Centre Board

Date of effect: 26 June 2014

## Overview

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### 1. Purpose

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The purpose of these guidelines is to ensure that Melbourne Recital Centre fulfils its responsibilities under the *Protected Disclosure Act 2012* (Vic) (the PD Act). Specifically, these guidelines aim to:

- encourage and facilitate disclosures of improper conduct and detrimental action by Melbourne Recital Centre or any of its employees;
- provide appropriate protection for those who make disclosures, or who may suffer reprisals in relation to those disclosures; and
- to ensure information about disclosures is kept confidential.

### 2. Scope

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These guidelines apply to all persons employed by Melbourne Recital Centre, including temporary and contract employees, and the general public.

## Policy

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### 4. What is a protected disclosure?

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- 4.1 A protected 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 PD Act. A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a protected disclosure by any person.
- 4.2 A complaint or allegation that is already in the public domain will not normally be a protected disclosure, for example if the matter has already been subject to media or other public commentary. The term 'disclosure' is interpreted under the PD Act in the ordinary sense of the word as a 'revelation' to the person receiving it.
- 4.3 The disclosure can relate to improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or the public officer or public body

may be going to do it in the future. Disclosures can be made about conduct that occurred prior to the commencement of the PD Act on 10 February 2013.

- 4.4 A protected disclosure under the PD Act differs from an internal fraud and corruption report made to Melbourne Recital Centre staff, which are not protected under legislation. Melbourne Recital Centre employees should refer to the Fraud Control Policy for more information on internal reporting.

## 5. About what can a disclosure be made?

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- 5.1 A disclosure must be about the improper conduct or detrimental action of a person, public officer or public body in their capacity as a public body or public officer.

- 5.2 Examples of improper conduct include:

- a) Knowingly or recklessly breaching public trust by a public officer or public official;
- b) Misuse of information obtained by a public officer or public official;
- c) A conspiracy to commit or attempt to commit the above conduct;
- d) Conduct that implies:
  - A substantial mismanagement of public resources
  - A substantial risk to public health and safety
  - A substantial risk to the environment

- 5.3 Detrimental action involves action taken in reprisal for someone making a protected disclosure. Section 3 of the PD Act defines detrimental action by a person as including the following:

- 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.

- 5.4 The person need not have actually taken the action, but can just have threatened to do so. Further, the person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so. The detrimental action need not be taken against a discloser, but against any person.

#### *Our stance*

- 5.5 Melbourne Recital Centre does not tolerate improper conduct or detrimental action by its employees, officers or contractors, including detrimental action against those who come forward to disclose such conduct.
- 5.6 All Melbourne Recital personnel have the responsibility to report any known or suspected incidences of improper conduct or detrimental action. If a staff member chooses not to make a protected disclosure under the PD Act, but still wishes to make a report internally, that staff member must contact Arts Centre Melbourne's Fraud Control Officer. Refer to the *Fraud and Corruption Policy* for further guidance.

### 6. Who can make a protected disclosure?

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- 6.1 Anyone can make a disclosure under the PD Act, including employees, Trustees, patrons, customers, suppliers and members of the public.
- 6.2 A company or a business cannot make a disclosure. The person making the disclosure must be an individual or a group of individuals making joint disclosures.
- 6.3 A disclosure can be made anonymously. However, this creates potential difficulties in being able to assess whether a complaint is a protected disclosure under the PD Act.

### 7. How can a protected disclosure be made?

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- 7.1 Disclosures must be made directly to the Independent Broad-based Anti-corruption Commission (IBAC). IBAC states that any complaint delivered to IBAC must be in writing, unless it is determined by IBAC that there are exceptional circumstances as to why it is unable to be provided in this form. Complaints may also be made anonymously.
- 7.2 Complaints can be delivered to IBAC using one of these three options:

- a) complete the secure online IBAC Complaint Form located here:  
<https://www.ibac.vic.gov.au/report-corruption-or-misconduct/online-form>
- b) download a complaint form and return to IBAC by email, fax or post; or
- c) telephone IBAC on 1300 735 135 to request a form be sent to you.

7.3 To discuss any aspect of the complaints process IBAC can be contacted as follows:

Phone: 1300 735 135

Fax: (03) 8635 6444

St address: Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3000

Postal address: GPO Box 24234, Melbourne, VIC 3001

Email: For general email enquiries use the form located here.

7.4 Alternatively, any generic queries can be directed to Melbourne Recital Centre's Fraud Control Officer.

## 8. What happens after a disclosure has been made?

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- 8.1 Once a notification is made to IBAC, then IBAC must assess whether, in IBAC's view, the assessable disclosure is a protected disclosure. If IBAC is of the view that the assessable disclosure is a protected disclosure, then it must determine that the protected disclosure is a 'protected disclosure complaint'. In making its assessment, IBAC may seek additional information from the notifying entity or from the discloser if IBAC considers there is insufficient information to make a decision.
- 8.2 Once IBAC has determined whether or not the assessable disclosure is a protected disclosure complaint, then it determines what action it might take under the Independent Broad-based Anti-corruption Commission Act 2011 (the IBAC Act). Under section 58 of the IBAC Act, IBAC may dismiss, investigate, or refer a matter.
- 8.3 Once IBAC has determined that a disclosure is a protected disclosure complaint, the discloser cannot withdraw that disclosure (section 55(4) of the IBAC Act). An ordinary complaint made to IBAC differs in that it can be withdrawn at any time after making it. However, under section 68(2)(e) of the IBAC Act, IBAC can decide not to investigate a protected disclosure complaint if the discloser requests that it not be investigated.
- 8.4 IBAC is responsible for advising disclosers who have made their disclosures directly to IBAC, or who have had their disclosures notified to IBAC, of the determination and the

action IBAC intends to take. This advice must be provided within a reasonable time of the action being taken, or an investigation commenced.

## 9. Disciplinary Action

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- 9.1 Improper conduct or detrimental action committed by any Melbourne Recital Centre employee, Executive, Trustee or contractor will be dealt with appropriately, depending on the outcome of the investigation.
- 9.2 Disciplinary actions may also be enforced in the case of false reporting, or as a result of the unauthorised release of information.

## 10. Confidentiality

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- 10.1 The PD Act requires any person who is able to receive information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of confidential information constitutes an offence under the PD Act.
- 10.2 Melbourne Recital Centre, if informed of any details of a protected disclosure, will treat the disclosure and any information received in the investigation of a disclosed matter in the strictest of confidence. Reasonable steps will be taken to protect the identity of the discloser.
- 10.3 Melbourne Recital Centre can only disclose such information in the limited circumstances provided for under the PD 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 protected disclosure;
  - (e) Where necessary for the purpose of the exercise of functions under the PD 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.

## Review

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### 11. Review

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