

## PROTECTED DISCLOSURE

*“Strategic procedures provide a framework for consistent application and interpretation of matters by Wimmera CMA. Strategic Policies / Procedures are not intended to be applied inflexibly in all circumstances individual circumstances may require a modified application.*

On 5 March 2019, the Victorian Parliament passed legislation making changes to Victoria’s integrity system. The legislation established a new parliamentary oversight committee, the [Integrity and Oversight Committee](#), consolidating the oversight and performance review of a number of Victorian integrity agencies, including the Independent Broad-based Anti-corruption Commission (IBAC).

<https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures/changes-to-protected-disclosure-legislation>

The legislation also introduced changes to support people making disclosures which are in the public interest. Effective from 1 January 2020, these changes replaced previous ‘protected disclosure’ arrangements with ‘public interest disclosures’ under the updated [Public Interest Disclosures Act 2012](#) (Vic).

<https://www.legislation.vic.gov.au/in-force/acts/public-interest-disclosures-act-2012/>

Victoria's public interest disclosure scheme is vitally important in ensuring that people who report improper conduct and corruption in the Victorian public sector (disclosers) can do so in the knowledge that they will be protected.

Protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

Approved by Management Team	
CEO Signature	Meeting Date:
	17.04.2020

### PUBLIC INTEREST DISCLOSURE PROCEDURE QUICK REFERENCE GUIDE TO PUBLIC INTEREST DISCLOSURES

<p>How do I make a public interest disclosure (PID)?</p>	<ul style="list-style-type: none"> <li>• Verbally, or</li> <li>• in writing (but not by fax),</li> </ul> <p>to IBAC. PID's cannot be made directly to Wimmera CMA.</p> <p>(Refer to Part 2 of this procedure for more information)</p>
<p>Who can make a PID?</p>	<ul style="list-style-type: none"> <li>• Any individual or group of individuals can make a PID.</li> <li>• A business or company cannot make a PID.</li> </ul> <p>(Refer to Part 3 of this procedure for more information)</p>
<p>What can I make a PID about?</p>	<p>Improper conduct and/or detrimental action taken:</p> <ul style="list-style-type: none"> <li>• by public bodies or public officers performing public functions, and/or</li> <li>• members of the public seeking to improperly influence public officers.</li> </ul> <p>This includes the Wimmera CMA and its Directors, members of Board Committees, , employees of and contractors to the CMA.</p> <p>People seeking protection under the Act should carefully consider whether their complaint meets these basic thresholds before reporting.</p> <p>(Refer to Part 4 of this procedure for more information)</p>
<p>To whom can I make a PID?</p>	<p>If you wish to make a public interest disclosure about the Wimmera CMA and/or its officers or employees, you should contact:</p> <ul style="list-style-type: none"> <li>• The Independent Broad-based Anti-corruption Commission (IBAC)</li> </ul> <p>Level 1, North Tower 459 Collins Street Melbourne Vic 3000 or Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a></p> <p>IBAC also provides an <a href="#">online form</a>.</p> <ul style="list-style-type: none"> <li>• The Victorian Ombudsman can be contacted in writing at:</li> </ul> <p>Victorian Ombudsman Level 2, 570 Bourke Street Melbourne VIC 3000</p> <p>The Ombudsman also provides an <a href="#">online form</a>.</p> <p>(Remember that that [Wimmera ]CMA cannot receive PIDs. Refer to Part 5 of these procedures for more information)</p>

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## PUBLIC INTEREST DISCLOSURE PROCEDURE

### 1 ABBREVIATIONS AND DEFINITIONS

Act	Public Interest Disclosure Act 2012
CMA	Wimmera Catchment Management Authority
disclosure	An individual who makes a public interest disclosure
EAP	CMA's Employee Assistance Program
Guidelines	The Guidelines published by the IBAC under s57 of the Act as at January 1, 2020 copies of which may be downloaded from <a href="https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures/Information-for-Public-Interest-Disclosure-Coordinators">https://www.ibac.vic.gov.au/reporting-corruption/public-interest-disclosures/Information-for-Public-Interest-Disclosure-Coordinators</a> (last accessed 28/02/2020)
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
PIC	public interest complaint
PID	public interest disclosure
Procedure	This version of the CMA's public interest disclosure procedure established in accordance with the Act
PID Coordinator	Public Interest Disclosure Coordinator
PID Officer	Public Interest Disclosure Officer
PID Welfare Manager	Public Interest Disclosure Welfare Manager
Regulations	<i>Public Interest Disclosure Regulations 2019</i>

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### 2 SCOPE & PURPOSE

The Wimmera CMA encourages Directors, members of Board Committees, members of employees, contractors and members of the community to report known or suspected incidences of corrupt or improper conduct.

The Wimmera CMA will not tolerate the taking of reprisals against those who come forward to disclose any improper conduct. The Wimmera CMA will take all reasonable steps to protect those who make PIDs from any detrimental action in reprisal for coming forward.

Natural justice will be afforded to the person or body who is the subject of any PID.

The purpose of this document is to establish procedures for how:

- a person, whether a Wimmera CMA employee (past or present) or member of the public, can make a PID about the CMA and/or its officers or employees;
- the Wimmera CMA will protect persons who make a PID against detrimental action for making a PID;
- the Wimmera CMA will ensure natural justice is afforded to the person or body who is the subject of any PID; and
- the welfare of disclosers will be managed by the Wimmera CMA.

These procedures have been prepared in accordance with the Act and IBAC Guidelines.

### 3 HOW DO I MAKE A PID?

PIDs about the CMA and its members and staff should be made IBAC. The CMA cannot receive a PID under the Act. However, the CMA has established this Procedure to facilitate and encourage the making of PIDs.

You may make a PID to IBAC:

- in person;
- by phone;
- by leaving a voicemail message;
- in writing by post, personal delivery or email;
- by any other form of electronic communication; and/or
- anonymously.

You may not make a PID by fax.

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You can make a joint PID with a group of individuals at the same time.

You do not have to identify yourself when making a PID. However, if your PID is anonymous, this may affect how the PID is investigated and you will not be notified of the outcome of any investigation.

If you cannot be identified from the PID, the PID will be treated as anonymous.

You may make a PID about the CMA or any of its employees and/or officers to either:

- ***The Independent Broad-based Anti-corruption Commission (IBAC)***

Level 1, North Tower  
459 Collins Street  
Melbourne Vic 3000 or  
Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

IBAC also provides an [online form](#).

OR

- ***The Victorian Ombudsman:***

Level 2, 570 Bourke Street  
Melbourne VIC 3000

The Ombudsman also provides an [online form](#).

The Wimmera CMA is not permitted to receive PIDs.

#### 4 WHO CAN MAKE A PUBLIC INTEREST DISCLOSURE?

- Any person can make a PID about improper conduct engaged in, or detrimental action taken by, the CMA, its officers or employees (or any other public sector employee).
- You can make a PID if you are:
  - a member of the public,
  - an employee or officer of the Wimmera CMA.
- You can make a PID:
  - as an individual, or
  - together with a group of individuals.
- A company or business cannot make a PID.
- You can ask someone else to make a PID on your behalf. However, if you ask someone else to make a PID on your behalf, only that person will receive the full protection of the Act in relation to that PID. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the PID that has been made.

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You do not have to specifically refer to the Act or the protections in the Act for your PID to be a 'PID'.

### 5 WHAT CAN I MAKE A PID ABOUT?

You may make a PID about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, each of the following:

- a) a person, public officer or public body
- b) is engaging in, or proposing to engage in
- c) 'improper conduct' and/or 'detrimental action'.

The Wimmera CMA is a public body. Its officers and employees are public officers.

#### **What is improper conduct?**

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. If the conduct is trivial, it will not meet the threshold of improper conduct. There needs to be a link between the conduct and the official function of a public officer or public body.

#### **What Improper Conduct includes**

Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes any of the following:

- corrupt conduct
- 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
- substantial risk to health or safety of a person
- substantial risk to the environment

and conduct of any person that:

- adversely affects the honest performance by a public officer or public body of their public functions
- is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

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### 6 WHAT IS DETRIMENTAL ACTION?

Detrimental Action includes any of the following:

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

### 7 WHAT ARE REASONABLE GROUNDS?

Your belief that improper conduct or detrimental action has occurred, is occurring, or will occur 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. However, you must have reasonable grounds for your belief.

Mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be a PID under the Act. For example, it is not enough to say, "I know X is corrupt". 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.

### 8 WHAT WILL HAPPEN AFTER I MAKE A PUBLIC INTEREST DISCLOSURE?

PIDs made to IBAC will be handled in accordance with IBAC's guidelines and processes.

IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.

If IBAC determines that your disclosure is a PID, it must decide to either:

- dismiss your PID;
- investigate your PID; or
- refer your PID to another body for investigation, such as the Victoria Police, the Ombudsman or the Victorian WorkCover Authority.

Regardless of whether IBAC determines your disclosure is a PID or not, you will still receive the protections under the Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

However, if IBAC determines that your disclosure is not a PID, the confidentiality requirements set out in Part 12 of this procedure no longer apply in relation to your PID.

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### 9 WHAT PROTECTIONS WILL I RECEIVE AS THE DISCLOSER?

The Act sets out the protections provided to persons who make a PID. These include:

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the PID;
- immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the PID of information;
- immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the PID of information; and
- protection from an action for defamation.

These protections apply to a PID from the time you make the PID and continue to apply even if IBAC determines that the PID is not a PID.

The protections in the Act do not apply if you provide false or misleading information or claim that a matter is the subject of a PID knowing that claim to be false.

It is important to note that the IBAC is not required to contact the CMA about any PID you make, so you should not discuss any PID you make to IBAC with the CMA or any person in the CMA unless you have first obtained the permission of IBAC to do so, or IBAC has directed you to do so, or IBAC has contacted the CMA to provide it with information in order to allow the CMA to provide you with any necessary welfare and support.

Section 54 of the Act however provides circumstances in which you can contact CMA's Employee Assistance Program ("EAP") and other support persons or organisations (such as your doctor or a trade union of which you are a member) in order to seek assistance in connection with making a PID.

### 10 CMA RESPONSIBILITIES

There are a number of roles and responsibilities involved in coordinating a PID. These are detailed below:

#### **PID Coordinator**

The CMA has appointed Human Resources Coordinator as the organisation's PID Coordinator. This person is responsible for handling enquiries about the CMA's obligations under the Act. If you wish to obtain further information about CMA's PIDs policy or procedures, or if you wish to arrange a confidential meeting to discuss any matters of concern contact Human Resources Coordinator whose contact details are as follows:

**Human Resources  
Coordinator**  
Wimmera CMA  
PO Box 479  
Horsham Vic 3402  
Phone 0353 82544  
Email: Reception@wcma.vic.gov.au

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### The PID Coordinator is:

- the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- responsible for ensuring that the Wimmera CMA carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;
- Wimmera CMA's chief liaison with IBAC and any other investigating entities 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 PID 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 Wimmera CMA in its annual reports under the Act.

### PID Officer

If you have any concerns about contacting the PID Coordinator, or wish to speak to an alternative contact at the Wimmera CMA about PID matters, you can contact the PID Officer:

Human Resources Coordinator  
0353 821544  
EMAIL [netherwayn@wcma.vic.gov.au](mailto:netherwayn@wcma.vic.gov.au)

If your concern is more in the nature of a general complaint, more information about Wimmera CMA's complaints handling process can be found in the

[Customer Feedback Policy - OPS](#)

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### **PID Welfare Manager**

The Wimmera CMA's PID Coordinator will consider, on a case by case basis, appointing a PID Welfare Manager when a person has made a PID or is cooperating, or intending to cooperate, with an investigation of a PID. A PID Welfare Manager will be more likely to be appointed:

- where the PID has proceeded, or is likely to proceed, to an investigation;
- where there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
- where the CMA can provide effective support to the persons involved, including keeping them informed of the progress of the PID; and
- where it is within the CMA's power to protect the person/s involved from suffering repercussions.

If appointed, the PID Welfare Manager will:

- provide practical advice about the protections available to those associated with a PID;
- respond quickly and appropriately to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- not divulge any details relating to the PID to any person other than the PID Coordinator or the PID Officer as the case may be;
- ensure all meetings are conducted discreetly to protect the person from being identified as being involved in the PID; and
- refer or offer to refer internal persons associated with a PID to the EAP for further support and welfare assistance.

### **Directors, Employees and Contractors**

Directors, employees and contractors are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with this procedure, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All Directors, employees and contractors of the CMA have an important role to play in supporting those who have made a legitimate PID 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 PID. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a PID.

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### 11 PROTECTION FROM DETRIMENTAL ACTION

In addition to the protections described at 9 above, the CMA recognises that the welfare and protection from detrimental action of persons making genuine PIDs is essential for the effective implementation of the Act and is relevant to the CMA's obligation to create a safe working environment under the *Occupational Health and Safety Act 2004 (Vic)*, the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, the *Public Administration Act 2004 (Vic)* and the common law.

The CMA will take precautions to prevent its officers, employees and agents from taking detrimental action in reprisal for a PID. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by the CMA will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

A PID of detrimental action is itself a PID and, where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the CMA may consider reporting the matter to the Police or IBAC.

If you are an employee who has made a PID and you believe on reasonable grounds that detrimental action will be, is being, or has been taken against you, you may request a transfer of employment to another government agency on terms and conditions that are no less favourable overall to you. Note that all requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:

- the Chief Executive Officer of the CMA must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the Chief Executive Officer must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' government agency consents to the transfer.

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

Whilst there are these protections, there are also responsibilities. You must not take detrimental action against another person in reprisal for a PID.

Making a PID does not provide you with immunity for your own wrongdoing. If you have been involved in improper conduct or detrimental action which is the subject of your PID, you will still be held liable for your own involvement.

You must not disclose the content, or information about the content, of a PID made to IBAC or any information which is likely to lead to the identification of the person who made that PID unless permitted by the Act.

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### 12 CONFIDENTIALITY

There are a number of confidentiality obligations which arise under the Act and other laws relating to the receipt and investigation of PIDs.

If you repeat your PID to someone other than as provided for in these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a PID is repeated to the media and the media reports on it, you may not be protected from defamation action. This may also breach your confidentiality obligations.

If you are considering disclosing information about a PID made by you under the Act, you may wish to speak to the PID Coordinator, your PID Welfare Manager and/or obtain legal advice first.

The CMA will only disclose information about you or your PID in accordance with the law, including the Act.

The circumstances in which you may disclose information about the PID you have made to IBAC include:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the PID;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the PID including disciplinary process or action;
- where IBAC or the Ombudsman has determined that the PID is not a PID;
- where necessary for the purpose of exercising functions under the Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*;
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary proceedings or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation;
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act; and
- where an investigating body has published a report to Parliament or otherwise made public the content of the PID consistent with the confidentiality requirements of the Act.

The Act also prohibits disclosing information that is likely to lead to your identification except in accordance with the Act.

IBAC or the relevant investigating entity may disclose your identity and the content of your PID if it is necessary for the purposes of their investigative action. In that case, the public body or public officer

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to whom the information is disclosed is bound by the same confidentiality requirements as the investigating entity.

### ***Exemption from the Freedom of Information Act 1982 (Vic) (FOI Act)***

The FOI Act provides a general right of access for any person to seek documents in the possession of the CMA.

The Act, however, provides that certain information related to PIDs as contained in documents in the possession of the CMA will be exempt from the application of the FOI Act.

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

## **13 WHAT HAPPENS IF A PUBLIC INTEREST DISCLOSURE IS MADE AGAINST ME?**

The CMA recognises that employees against whom PIDs are made must also be supported during the handling and investigation of PIDs. In accordance with the principles of natural justice, if you are the subject of a PID, the CMA will provide welfare support to you during the handling and investigation of a PID as the circumstances permit and require.

The CMA will only disclose information about the subject of a PID in accordance with the law, including the Act (and as explained in these procedures).

Where any investigations following a PID involving you do not substantiate the PID made, 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 PID will remain confidential.

The CMA will give its full support to a person who is the subject of a PID where the allegations contained in a PID are clearly wrong or unsubstantiated. If the matter has been publicly disclosed by the CMA, the Chief Executive Officer will consider any request by that person to issue a statement of support.

## **14 LEGAL CONSIDERATIONS**

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. Key aspects of the Act to be aware of are that it is an offence to:

- take detrimental action against another person in reprisal for a PID;
- disclose the content, or information about the content, of a PID that has been notified to IBAC by the CMA or information which is likely to lead to the identification of the person who made that PID unless such disclosure is permitted by the Act;
- for any person to:

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- provide false or misleading information, or further information that relates to a PID, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a PID;
- claim that a matter is the subject of a PID knowing the claim to be false;
- falsely claim that a matter is the subject of a PID that IBAC has determined to be a PIC;
- disclose that a PID has been notified to IBAC for assessment unless permitted to do so by the Act; and
- disclose that a PID has been determined to be a PIC unless permitted to do so by the Act.

### 15 TRAINING FOR ALL STAFF

The CMA will:

- ensure that all Directors, employees and contractors have access to a copy of these procedures in hard or soft copy;
- incorporate into its induction procedures training about the CMA's general obligations under the Act and the rights and obligations of all Directors, employees and contractors;
- introduce periodic refresher courses for existing Directors, employees and contractors about their rights and obligations under the Act;
- provide additional training and assistance to:
  - any Directors, employees and contractors of the CMA with specific responsibilities and functions to handle and manage protected disclosures under the Act, including the PID Coordinator, PID Officer and PID Welfare Manager; 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.

### 16 MANAGING PUBLIC INTEREST INFORMATION

The PID Coordinator should keep all central files relating to a PID, whether paper or electronic, in a locked safe that can only be accessed by the PID Coordinator.

All printed material held by the PID Coordinator concerning PID matters should be kept in files that are clearly marked as a PID Act matter, and warn of the criminal penalties that apply to any unauthorised person disclosing information concerning a PID, including the content of a PID or the identity of a discloser.

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All electronic files should be stored outside the CMA's computer network (such as on an approved portable storage device) and be given password protection. These records should not be registered on the CMA's electronic document and records management system as, while it is possible to specify access rights, this does not remove the ability of high level EDRMS administrators to view them.

Care must be taken when emailing information relevant to a PID matter and all phone calls and meetings must be conducted in private. Additionally, hard copy documents for transmission should be placed in two successive windowless envelopes which are sealed and marked "private and confidential" and "to be opened by addressee only", and personally delivered wherever possible.

### **17 COLLATING AND PUBLISHING ANNUAL REPORT INFORMATION**

The CMA is required to publish certain information about the Act in its annual reports. That information relates mainly to how these procedures may be accessed and information about its educative role during the financial year.

The PID Coordinator will establish a secure register to record such information.

### **18 ALTERNATIVES TO MAKING A PID (COMPLAINTS AND FEEDBACK TO CMA)**

These procedures are designed to complement usual methods of submitting complaints to the CMA.

Members of the public are encouraged to use the CMA's feedback process to communicate complaints or concerns with the services provided by the CMA. More information is available CMA's website: [REFERENCE TO THE CMA'S WEBSITE]

Employees are encouraged to raise matters with their supervisors and managers at any time.

### **19 REVIEW**

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

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