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| Department of Health Public Interest Disclosure Procedures |
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# 1. Background and purpose

The Department of Health (the department) is committed to building and demonstrating a strong ethical culture. A key part of demonstrating this culture is enabling people to feel encouraged and confident to report any incidents of improper conduct or detrimental action involving the Department of Health or of a member, officer or employee of the Department of Health, where a reasonable belief has been established (or exists).

The purpose of these procedures is to assist anyone who seeks to make a disclosure about the department and its functions, including employees and the general public, understand their rights, responsibilities, and protections when making disclosures under the *Public Interest Disclosures Act 2012* (the PID Act), and demonstrates the department’s commitment to supporting those who make disclosures about matters that are in the public interest. This document serves as the department’s public interest disclosure procedures for the purpose of section 58 of the PID Act.

The PID Act aims to:

* encourage and assist people to report improper conduct and detrimental action in reprisal for making a public interest disclosure;
* provide certain protections for people who make a disclosure or suffer detrimental action; and
* ensure that certain information about a disclosure is kept confidential.

**Improper conduct** can include corrupt conduct, criminal offences, or serious professional misconduct[[1]](#footnote-1).

**Detrimental action** includes:

* action causing 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.

These procedures have been prepared in accordance with the PID Act, in addition to guidance provided by the Independent Broad-based Anti-corruption Commission (IBAC), which is available on the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)). IBAC is Victoria’s anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. IBAC does this by:

* investigating corruption and police misconduct; and
* informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

# 2. What is a public interest disclosure?

Public interest disclosures are reports about:

* Improper conduct - A person, public body or public officer has engaged, is engaging or proposes to engage in improper conduct (such as corrupt conduct); or
* Detrimental action - A public officer or public body has taken, is taking or proposes to take detrimental action against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A public interest disclosure can relate to conduct or an action that may have already taken place, may be occurring now, may happen in the future.

Please refer to **Appendix 1** for what can be classified as improper conduct or detrimental action according to the PID Act.

## 2.1 Who can a public interest disclosure be about?

Disclosures can be made about:

* public bodies;
* public officers; or
* conduct of a person who is not a public officer or is not employed by a public body, where their conduct is adversely affecting the honest performance of a public body or public officer, or is intended to adversely affect their effective performance.

Public bodies include:

* public sector bodies, such as the department (including public entities and special bodies);
* incorporated or unincorporated bodies established under an Act for a public purpose, including universities;
* the Electoral Boundaries Commission
* a council (established under the *Local Government Act 1989*); or
* a body performing a public function on behalf of the State or a public body or public officer (for example, a regulatory function or a function that is publicly funded).

Public officers include:

* public servants, including IBAC officers;
* local government Councillors and council employees;
* university employees and teachers;
* Victoria Police personnel;
* members of Parliament, including Ministers;
* ministerial officers, parliamentary advisers and officers, electorate officers;
* judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal (VCAT), associate judges, judicial registrars;
* statutory office holders, including the Auditor General and the Victorian Ombudsman, and the Director of Public Prosecutions; or
* the Governor, Lieutenant-Governor or Administrator of the State.

Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act). Information can also be found on the Victorian Public Sector Commission website at vpsc.vic.gov.au.

## 2.2 Reasonable belief

When making a disclosure, you must have a reasonable belief that improper conduct or detrimental action has occurred, is occurring, or is going to occur. This requires more than a suspicion; the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person’s disclosure to consist simply of a one sentence statement like ‘I know XYZ is corrupt’. The test is whether a reasonable person, possessed of the same information, could believe that a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct, or a public officer or public body has engaged, is engaging or proposes to take detrimental action against a person.

# 3. Making a public interest disclosure

## 3.1 Who can make a public interest disclosure?

Anyone can make a disclosure about improper conduct or detrimental action, including both members of the public and employees of a public body. However, to ensure the protections available from the PID Act are afforded, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people but cannot be made by a company or business (however, its officers or employees can). Someone can still make a disclosure even if they cannot identify the person or the organisation to which the disclosure relates.

You can ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the PID Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made. In such circumstances, it is recommended to make the disclosure jointly.

## 3.2 To whom can I make a public interest disclosure?

If you would like to make a public interest disclosure about the conduct of this department or of a member, officer of employee of the department, you can make your disclosure to the following officers:

* the Secretary of the department;
* a manager, or supervisor of the person who is the subject of your public interest disclosure;
* your manager or supervisor; or
* a Public Interest Disclosure Coordinator (PID Coordinator) (refer to Section 3.3 of these procedures for information on how to contact a PID Coordinator and Section 6.3 on the role of a PID Coordinator).

Disclosures can also be made to other entities. You can make a disclosure direct to IBAC. Please refer to **Appendices 2 and 3** for details of the persons or bodies to which certain public interest disclosures **must** be made and other persons or bodies that can receive public interest disclosures. In certain circumstances, disclosures can also be made to other entities only if certain criteria are satisfied. These are referred to as external disclosures[[2]](#footnote-2). For example, a disclosure, that was not made anonymously, was determined to be a public interest complaint. An investigation has not been completed 12 months after the discloser was notified of the determination and the discloser has not received a response 30 days after requesting an update on progress. The discloser may make a further disclosure of substantially the same matter to external parties.

## 3.3 How to make a public interest disclosure

When making a disclosure, you must make the disclosure in accordance with the requirements set out in the PID Act to qualify for the protections provided under the PID Act. Please refer to **Table 1** for further details as to how to make a public interest disclosure.

**Table 1: How a disclosure can be made**

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| **Disclosure method**  |
| Private verbal disclosure  | Disclosures can be made in person, by phone or by leaving a voice mail message. Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation: * a lawyer representing the person making the disclosure (if any); or
* one or more people to whom a disclosure can be made under the PID Act or PID Regulations.

This does not preclude a group of individuals from making a joint disclosure. If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser[[3]](#footnote-3) objects.**For disclosures made over the phone, disclosers can contact the department’s PID Coordinators on 1300 024 324**. Alternatively, disclosures can be made directly to IBAC by phoning 1300 735 135. |
| Written disclosure  | A written disclosure can be provided to the relevant organisation by: * delivering it in person to the office of the organisation;
* mailing it to the office of the organisation;
* emailing to the email address of the office of the organisation, or to the official email address of a person nominated to receive a disclosure in the organisation’s procedures or in the PID Regulations; or
* completing the online form available on the respective websites of IBAC and the Victorian Ombudsman

A disclosure cannot be made by fax.**For disclosures made to this department over email, disclosers should contact** **publicinterestdisclosure@health.vic.gov.au****.****For written disclosures, disclosures should be addressed to the following address:****Public Interest Disclosure Coordinator Integrity Prevention and Detection Unit Department of Health 50 Lonsdale Street Melbourne VIC 3000**Alternatively, written disclosures can be made directly to IBAC at:**Independent Broad-based Anti-corruption Commission GPO Box 24234 Melbourne, VIC 3001** |
| Anonymous disclosure  | A person does not need to identify themselves to make a disclosure. An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the PID Regulations). If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure will be treated as an anonymous disclosure. The department’s or IBAC’s ability to assess a disclosure, request additional information or take necessary steps in response may be impeded if the discloser does not provide a method to be contacted by. Providing a method of contact does not mean that a discloser cannot remain anonymous. For example, an unverifiable email address can be set up for the purpose of making the disclosure and for the department’s PID Coordinators or IBAC to respond to.  |

## 3.4 Misdirected disclosures

The PID Act has a ‘no wrong door’ provision that allows for a public interest disclosure made to the wrong receiving entity to be redirected to the correct receiving entity, without the discloser losing the protections of the PID Act. This provision only applies where:

* the receiving entity is an entity to which a PID ordinarily may be made; and
* the person making the disclosure honestly believes that the receiving entity was the appropriate entity to receive the disclosure.

For example, if the Victorian Ombudsman receives a misdirected public interest disclosure about Victoria Police, it can redirect the public interest disclosure to IBAC for assessment. A misdirected public interest disclosure does not capture public interest disclosures about Members of Parliament. Public interest disclosures about Members of Parliament must be made to the President of the Legislative Council (for members of the Legislative Council) or Speaker of the House (for members of the Legislative Assembly).

In circumstances where the department receives a disclosure about another entity, it will consider if the disclosure shows that a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action. Where required, the department will notify the appropriate entity of the disclosure within 28 days. Beyond this notification, the department is prohibited from disclosing the content of the disclosure or information likely to reveal the identity of the discloser.4. Assessment and notification

Once a disclosure is received, the department will assess whether the disclosure is considered a public interest disclosure under the PID Act. In making this assessment, the department will look at all information provided about the alleged conduct, and the discloser.

As part of the assessment, the PID Coordinator may seek further information from you, and may discuss with you the welfare support available (for example, the appointment of a welfare manager) and the precautions the department will take to prevent detrimental action taken in reprisal for you having made a disclosure.

If it is not clear that you wish to make a public interest disclosure, the department will provide you with information about the provisions of the PID Act to confirm that the disclosure was intended as a public interest disclosure and therefore may be notified to IBAC. In circumstances where a disclosure is made anonymously and/or further contact cannot be made with a discloser, the department will proceed to notify IBAC, where required.

If you make a disclosure and inform the department that you do not want the disclosure to be dealt with as a public interest disclosure, you must expressly advise the department in writing that *‘the disclosure is not a public interest disclosure’* within 28 days of making the disclosure.

However, it is important to note that the department may still be obliged to notify IBAC of the disclosure. Under section 57 of the IBAC Act, the relevant principal officer of the department is required to notify IBAC of any matter in which there are reasonable grounds for suspecting corrupt conduct is occurring or has occurred.

In some circumstances, it may be necessary for the department to report the disclosure to Victoria Police for immediate investigation. It may also be necessary for the department to take action to prevent certain future conduct (including taking action against the person you have made the disclosure about). For example, a department employee may be accessing public money without authorisation and the department may need to terminate their access to prevent further monetary loss before the department has decided whether your disclosure meets all requirements in the PID Act.

After an assessment has been conducted, the process will differ depending on whether or not the disclosure is assessed as a public interest disclosure. If the department assesses that the disclosure is a public interest disclosure, the department will make a notification to IBAC. Please refer to **Appendix 4**for the process that the department will take.

## 4.1 IBAC assessment

Once IBAC receives a disclosure, they will assess whether the disclosure is a public interest complaint.

For a public interest disclosure to be determined a public interest complaint:

* it must be made in accordance with the PID Act (it must be made to a body who is able to receive the disclosure); and
* the information must show or tend to show (or the person who made the disclosure reasonably believes that information shows or tends to show) that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct or detrimental action.

Please refer to **Table 2** for further details as to how IBAC manages disclosures once an assessment has been made.

**Table 2: IBAC process**

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| **The disclosure is a public interest complaint** | **The disclosure is not a public interest complaint** |
| If the disclosure is assessed as a public interest complaint, IBAC may choose to:* investigate the complaint
* refer the complaint to one of the following agencies:
	+ Victorian Ombudsman
	+ Victorian Police (if a police matter)
	+ Chief Municipal Inspector
	+ Information Commissioner
	+ Racing Integrity Commissioner
	+ Judicial Commission

With the consent of the person who made the complaint, IBAC may also refer the complaint to another public body to manage. This includes referring the matter back to the department that received the disclosure initially. In this instance, the complaint may be dealt with under the department’s misconduct process.* take no further action if the complaint:
* lacks substance or credibility
* is vexatious or trivial

or* is about a matter that neither IBAC or a body specified in the IBAC Act may investigate.
 | If the disclosure is not a public interest complaint, the identity of the discloser does not have to be kept confidential, but a person cannot be fired, disciplined or bullied for making the complaint, and they are protected from legal actions such as defamation and civil liability.IBAC may choose to:* refer the disclosure to another agency (e.g. the Victorian Ombudsman) or the organisation named in the complaint. Police misconduct disclosures may be referred to the Chief Commissioner of Police.
* treat the disclosure as a complaint under the IBAC Act and refer the matter to a more appropriate agency to investigate, including the agency the complaint is about. IBAC will consult with the discloser prior to doing so.

This includes referring the matter back to the department that received the disclosure initially. In this instance, the complaint may be dealt with under the department’s misconduct process.* IBAC may choose to take no further action under the PID Act.
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## 4.2 Urgent action

In some circumstances, the disclosure may be about conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct. Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply. In these cases, the department may take immediate action while considering whether or not it is a disclosure that must be notified to IBAC. The department may also take immediate action while awaiting IBAC’s decision on a notified matter. It may also be necessary for the department to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

# 5. Protections

Certain protections are available for disclosures that are assessed as public interest disclosures by the department. These protections include:

* the discloser cannot be fired, disciplined, or bullied for making a disclosure
* the discloser is not subject to any civil or criminal liability for making a disclosure
* the discloser is not committing an offence against the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information
* the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality or otherwise restrict confidentiality.
* the discloser cannot be held liable for defamation in relation to information included in a public interest disclosure.

Please note, if IBAC determines a public interest disclosure to be a public interest complaint, the identity and nature of the complaint will remain confidential (unless required to be disclosed as part of investigation or disciplinary proceedings). If IBAC considers that the public interest disclosure is not a public interest complaint, then confidentiality protections do not apply to the discloser. Please refer to Section 5.3 for further information on confidentiality.

A number of the protections in the PID Act do not apply if a discloser:

* knowingly provides false or misleading information; or
* claims that a matter is the subject of a public interest disclosure knowing the claim to be false.

The PID Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct. A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

## 5.1 Protection from detrimental action

The department will take precautions to prevent its employees and agents from taking detrimental action in reprisal for a public interest disclosure. This includes identifying, assessing, controlling, and monitoring risks of reprisals faced by disclosers and witnesses. The precautions taken by the department will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the person receiving the report (irrespective of their role) should record details of the incident and advise the person of the protections they will receive under the PID Act. A disclosure of detrimental action can itself be a public interest disclosure and will be assessed by the department as a new disclosure in accordance with these procedures. Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the department may consider reporting the matter to the police or IBAC.

If you are an employee who has made a public interest disclosure 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 Secretary of the department must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
* the Secretary must consider that the transfer will avoid, reduce, or eliminate the risk of detrimental action; or
* 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 disclosure, the PID 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 public interest disclosure. 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.

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

## 5.2 What happens if a public interest disclosure is made against me?

The department recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures. The department will provide welfare support to you during the handling and investigation of a disclosure as the circumstances require.

The department will only disclose information about the subject of a disclosure in accordance with the law, including the PID Act.

There may be circumstances where the department is required to report your conduct to police should the conduct be criminal in nature. There may also be circumstances where you are stood down from work pending an investigation and are subject to an internal misconduct process, in addition to the public interest disclosure process managed by IBAC and the department’s PID Coordinators.

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 remain confidential.

## 5.3 Confidentiality

Confidentiality is another way that disclosers and other people involved in investigations are protected. There are two main restrictions on disclosing information. These restrictions are set out below in **Table 3**. Breaching either of these restrictions is an offence.

**Table 3: Confidentiality restrictions**

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| **Content of a public interest disclosure must be confidential** | **Identity of person making a public interest disclosure must be confidential** |
| The PID Act prohibits the disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure. This restriction applies to a person or body that receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating it. The restriction does not apply to the discloser. | The PID Act prohibits the disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure. This restriction applies to any person or body, other than the discloser. |

### 5.3.1 Exceptions to confidentiality requirements

There are certain circumstances where the confidentiality requirements do not apply, such as:

* when a body is exercising its functions under the PID Act;
* it is disclosed by an investigating entity for the purpose of the exercise of functions under the PID Act that authorises that investigating entity to investigate a public interest complaint;
* IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines the disclosure is not a public interest complaint;
* when a disclosure is to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct;
* it is for the purpose of a proceeding or for a disciplinary process under a relevant Act;
* the disclosure is necessary for the discloser to obtain legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18 years), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments);
* the disclosure is for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program; or
* the disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

A person who has made a disclosure is allowed to disclose the subject matter of their public interest disclosure as the confidentiality obligations in sections 52–54 of the PID Act do not apply to the discloser. However, the protections under Part 6 will not apply where the person contravenes section 72(1) or (2) of the PID Act, which provides that it is an offence to make false disclosure or provide false further information, and that a person must not:

* provide information under the PID Act that the person knows is false or misleading with the intention that the information be acted on as a public interest disclosure, or
* provide further information relating to a public interest disclosure made by the person, that the person knows is false or misleading.

IBAC and other investigating entities may issue a confidentiality notice in circumstances where disclosure of certain types of information is likely to prejudice the investigation, safety or reputation of a person or the fair trial of a person.

Note also that where IBAC has determined that a disclosure is **not** a public interest complaint, the confidentiality provisions do not apply in relation to the disclosure. However, the protections set out in Section 5 of these procedures will still apply.

### 5.3.2 Additional exceptions to confidentiality of the content of a public interest disclosure

Confidentiality does not apply if:

* it is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint; or
* the disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

### 5.3.3 Additional exceptions to confidentiality of the identity of a person making a public interest disclosure

Confidentiality does not apply if the discloser gives written consent.

## 5.4 Offences

Taking disciplinary or other action against a person who has made a disclosure creates the perception that it is being taken in reprisal for the disclosure. Where disciplinary or other action is being contemplated in accordance with department’s ‘Managing Unsatisfactory Work Performance Procedure’, ‘Management of Misconduct Procedure’ or other relevant department or VPS policies, the department must not take action unless it can show that:

* the fact that a person has made a public interest disclosure is not any part of the reason for taking action against the employee;
* there are good and sufficient grounds that would fully justify action against any other person in the same circumstances; and
* there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

If the department cannot demonstrate the above conditions have been met, it leaves itself open to allegations of taking detrimental action against a person for having made a disclosure.

Care should be taken to thoroughly document the process. This department will record all reasons why the disciplinary or other action is being taken and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure should be clearly advised of the proposed action to be taken and of any mitigating factors that have been considered. Please refer to **Table 4** for a list of civil and criminal penalties under the PID Act.

**Table 4: Civil and criminal penalties under the PID Act**

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| **Specific offences**  | **Penalties**  |
| **Detrimental action**  |
| Liability of an individual It is an offence for a person to take or threaten action in reprisal when: • another person has made or intends to make a public interest disclosure • the person believes another person has made or intends to make a public interest disclosure • another person has cooperated or intends to cooperate with the investigation of a public interest disclosure or• the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure. | Criminal penalty: 240 penalty units or two years imprisonment or both AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss, or damage. |
| Vicarious liability of their employer An employer may also be held to be liable for the detrimental action of their employee or agent. | Criminal penalty: 240 penalty units or two years imprisonment or both AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss, or damage. |
| **Disclosure of content of a public interest disclosure or police complaint disclosure** |
| A person/body must not disclose content of a disclosure or information about its content.Note: this does not apply if IBAC determines that the disclosure is not a public interest complaint. For advice, please contact a PID Coordinator on **publicinterestdisclosure@health.vic.gov.au**or **1300 024 324**. | * 120 penalty units or 12 months imprisonment or both (person); or
* 600 penalty units (body corporate).
 |
| **Disclosure of identity of person making a public interest disclosure or police complaint disclosure** |
| A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure.Note: this does not apply if IBAC determines that the disclosure is not a public interest complaint. For advice, please contact a PID Coordinator on **publicinterestdisclosure@health.vic.gov.au**or **1300 024 324**. | * 120 penalty units or 12 months’ imprisonment or both (person); or
* 600 penalty units (body corporate).
 |
| **Making false disclosure or providing false further information** |
| A person must not provide information intending it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading. | 120 penalty units or 12 months imprisonment or both. |
| **Falsely claiming a disclosure is a public interest disclosure** |
| A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure. | 120 penalty units or 12 months imprisonment or both. |

# 6. Roles and responsibilities

## 6.1 Employees

The *Code of Conduct for Victorian Public Sector Employees 2015* (the Code of Conduct) specifies that public sector employees are to report *‘workplace behaviour that violates any law, rule or regulation, or represents corrupt conduct, mismanagement of public resources, or is a danger to public health or safety, or to the environment’* (section 3.6 ‘Reporting Unethical Behaviour of the Code of Conduct). Employees are encouraged to report incidents of improper conduct or detrimental action (where a reasonable belief has been established) in accordance with these procedures.

Members of the public, employees, clients, and users of the department's services may make a disclosure under the PID Act to a departmental PID Coordinator or any of the persons set out in Section 3.2 of these procedures. The disclosure may be made in correspondence or during a conversation with these employees outlined in these procedures

Employees must not engage in any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a public interest disclosure. Employees must also protect and maintain the confidentiality of a person they know, or suspect, has made a public interest disclosure. Taking detrimental action or disclosing the content or identity of a public interest disclosure is an offence and may also be grounds for disciplinary action.

## 6.2 Managers and supervisors

A direct or indirect manager or supervisor of a person who has made a disclosure is permitted to receive a public interest disclosure on behalf of the department. When a manager or a supervisor receives what may be a public interest disclosure from a departmental employee, they are responsible for:

* notifying a PID Coordinator or referring the discloser to a PID Coordinator directly
* arranging for disclosures to be made privately and away from the workplace if necessary
* forwarding potential disclosures and supporting evidence to a PID Coordinator for assessment
* taking necessary steps to ensure the identity of the person who made the disclosure and the person who is the subject of the disclosure is kept confidential.

The person making the disclosure does not have to state expressly that a public interest disclosure is being made. Managers should keep this in mind when receiving complaints or information from staff and be familiar with what may constitute a public interest disclosure.

If the manager or supervisor makes the disclosure on behalf of another person to a PID Coordinator or the Secretary, then it is the manager or supervisor who is deemed to have made the disclosure, and therefore is afforded protections under the PID Act. It is important that managers or supervisors refer the discloser in the first instance, or consider making a joint public interest disclosure.

With the exception of notifying a department PID Coordinator, the department Secretary or speaking to IBAC, managers and supervisors who have received disclosures must maintain confidentiality and not notify others of the disclosure or the identity of the discloser. This includes not ‘reporting up’. A breach of confidentiality may constitute a criminal offence. If a manager or supervisor is unsure about confidentiality requirements or whether a complaint is a public interest disclosure, always consult with a department PID Coordinator.

## 6.3 Public Interest Disclosure Coordinators

The PID Coordinators have a central role in the internal reporting system, and are responsible for:

* giving general advice about the making of disclosures under the PID Act;
* receiving disclosures referred from managers/supervisors, Directors, Deputy Secretaries, Secretary of the department, or any other natural person;
* receiving phone calls, e-mails, and correspondence from members of the public wishing to make a disclosure;
* conducting assessments of public interest disclosures and notifying IBAC when the legislative threshold is met;
* notifying IBAC in writing within 28 days of disclosures that are assessed as being public interest disclosures, and providing IBAC with information obtained whilst assessing the disclosure;
* within 28 days of receiving the disclosure, advising the discloser whether or not their disclosure has been notified to IBAC (if the discloser has provided a method of contact);
* liaising with managers/supervisors in situations where a discloser discloses improper conduct that may constitute criminal conduct or poses an immediate threat to the health and safety of individuals or preservation of property;
* maintaining confidentiality, including establishing a confidential filing system for disclosures;
* having working knowledge of the legislation under which IBAC operates and working to ensure that the department is compliant with this legislation, including maintaining confidentiality for disclosers and the subject matter of public interest disclosures;
* responding to IBAC and other investigating entities under the PID Act for the purpose of informing public interest disclosure investigations;
* collecting information and evidence to inform the assessment of public interest disclosures;
* performing a liaison function between the department and integrity agencies for public interest disclosures that are subject to assessment, investigation or review by IBAC and other external integrity agencies, including providing evidence to IBAC and integrity agencies;
* securely recording and storing confidential information regarding public interest disclosures;
* providing an educative function for how to raise disclosures and increasing knowledge of the public interest disclosure framework;
* collecting statistics on public interest disclosures for annual reporting purposes;
* performing a witness and discloser welfare function, including:
	+ assessing and monitoring the welfare of the discloser and others involved in an assessable disclosure;
	+ considering the appointment of a welfare manager;
	+ providing disclosers and witnesses with information about public interest disclosures and the IBAC process;
	+ managing witnesses and discloser expectations;
	+ assisting with the practical operation of public interest disclosure investigations, such as discreetly arranging leave for staff where required for the purpose of giving evidence;
	+ connecting disclosers and witnesses with access to legal representation and specialist welfare support;
	+ monitoring witness work arrangements to minimise detrimental action and the adverse impact of investigations; and
	+ reminding witnesses about their legal obligations under IBAC legislation.

# 7. Welfare management

The department recognises that protecting the welfare of persons making public interest disclosures is essential for the effective implementation of the PID Act and is relevant to the department'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*, andthe *Public Administration Act 2004*.

The department will provide welfare support to a discloser, including considering appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure. The department will also provide welfare support to those employees against whom disclosures are made.

The department may appoint an internal person as the welfare manager or engage a contractor to provide welfare services. The department will also consider referring an employee to the Employee Assistance Program.

For further guidance on welfare management, please refer to the department’s Guideline for Public Interest Disclosures Welfare Management.

# 8. Review

These procedures are reviewed every two years, or if there is a significant change in structure within the department to ensure that it meets the objectives of the PID Act and accords with IBAC's guidelines. IBAC may also at any time review these procedures to ensure they are consistent with:

* the PID Act; and
* the guidelines issued by IBAC.

# 9. Related documents

* *Public Interest Disclosures Act 2012*
* *Independent Broad-based Anti-corruption Commission Act 2011*
* *Constitution Act 1975*
* *Occupational Health & Safety Act 2004*
* *Charter of Human Rights and Responsibilities Act 2006*.
* Department of Health– Guideline for Public Interest Disclosures Welfare Management

# Appendix 1: Improper conduct and detrimental action

A disclosure will be assessed as a public interest disclosure is when a person, public officer or public body subject to the disclosure is believed to have engaged in improper conduct or detrimental action.

**Improper Conduct**

According to the PID Act, improper conduct includes:

* corrupt conduct
* conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes:
	+ a criminal offence
	+ serious professional misconduct
	+ dishonest performance of public functions
	+ an intentional or reckless breach of public trust; or an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body
	+ a substantial mismanagement of public resources
	+ a substantial risk to the health or safety of one or more persons

or

* + a substantial risk to the environment
* conduct of any person that:
	+ adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body
	+ is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining:
		- a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
		- an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
		- a financial benefit or real or personal property
		- any other direct or indirect monetary or proprietary gain

 that the person would not have otherwise obtained

or

* conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct.

*Examples of Improper Conduct*

* Taking or offering bribes.
* Misusing information or material acquired at work.
* Committing fraud, theft, or embezzlement.
* Misuse of power to harm, oppress or disadvantage a person.

**Detrimental Action**

The PID Act describes detrimental action as:

* action causing 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.

A person takes detrimental action against another person in reprisal for a public interest disclosure if:

* the person takes or threatens to take detrimental action against the other person because, or in belief that:
	+ the other person or anyone else has made, or intends to make, the disclosure
	+ the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
* for either of those reasons, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

Prior to making a disclosure relating to improper conduct, disclosers should consider the definition of improper conduct and detrimental action described above (and as outlined within the PID Act), as this is what will be used by the department to determine whether the disclosure is classified as a public interest disclosure, and therefore warrants a referral to IBAC.

*Examples of Detrimental Action*

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

# Appendix 2: Persons or bodies to which certain public interest disclosures must be made

|  |  |
| --- | --- |
| **Subject of the disclosure** | **Report to**  |
| Chief Commissioner of Police | IBAC |
| Director of Public Prosecutions |
| Chief Crown Prosecutor |
| Solicitor General |
| Governor |
| Lieutenant Governor or Administrator |
| Director, Police Integrity |
| Electoral Commissioner |
| Commissioner or member of a Board of Inquiry appointed under the Inquiries Act 2014 |
| A judicial employee |
| A Ministerial officer |
| A Parliamentary adviser |
| An electorate officer |
| A Parliamentary officer |
| Minister of the Crown who is not a member of Parliament |
| A Councillor | IBAC or the Victorian Ombudsman |
| The Information Commissioner |
| Health Complaints Commissioner |
| The Chief Examiner or an Examiner appointed under the Major Crimes (Investigative Powers) Act 2004 | IBAC or the Victorian Inspectorate |
| A Victorian Ombudsman officer |
| A Victorian Auditor-General’s Office officer |
| Judicial Commission officer (other than a judicial member of the Board of the Judicial Commission) |
| A member of police personnel (other than the Chief Commissioner) | IBAC or a prescribed member of police personnel |
| Member of Parliament (Legislative Council) | President of the Legislative Council |
| Member of Parliament (Legislative Assembly) | Speaker of the Legislative Assembly |
| A Public Interest Monitor | Victorian Inspectorate |
| An IBAC officer |
| A Victorian Inspectorate Officer | Integrity and Oversight Committee, the Speaker of the Legislative Assembly, or the President of the Legislative Council |
| Judicial officer or a member of VCAT who is not a judicial officer | IBAC or the Judicial Commission |

# Appendix 3: Persons or bodies to which public interest disclosures may be made

|  |  |
| --- | --- |
| **Organisation** | **Officers who can receive disclosures**  |
| IBAC | * The Commissioner
* A Deputy Commissioner
* The Chief Executive Officer
* An IBAC employee
* An IBAC consultant
 |
| Victorian Ombudsman | * A Victorian Ombudsman officer
 |
| Victorian Inspectorate | * The Victorian Inspectorate
* A Victorian Inspectorate employee
 |
| Public service body Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers, or employees. Disclosures about public sector bodies can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.  | * Head of the relevant public service body
* A person defined in the public service body’s procedures as a person who can receive a disclosure about that body, for example a Public Interest Disclosure Coordinator
* Manager or supervisor of the discloser
* Manager or supervisor of the person who is the subject of the disclosure
 |
| CouncilAll councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers, or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate. | * Chief Executive Officer
* A person identified in the council’s procedures as a person who can receive a disclosure about that council, for example a Public Interest Disclosure Coordinator
* Manager or supervisor of the discloser
* Manager or supervisor of the person who is the subject of the disclosure
 |

# Appendix 4: Processing a disclosure

After a disclosure is received, the department will assess the disclosure to determine whether it meets the criteria of a public interest disclosure under the PID Act. The department will then follow one of the procedures set out below, dependent on the result of the assessment.

|  |  |
| --- | --- |
| **Disclosure is assessed by the department as a potential public interest disclosure** | **Disclosure is assessed as not being a public interest disclosure by the department** |
| The department will notify IBAC in writing, within 28 days after the disclosure was made, that: * the disclosure may be a public interest disclosure
* the department is sending the disclosure for assessment.

The department will provide IBAC with any information obtained regarding the disclosure in the course of our inquiries. This information can be provided at the time of notification, or at any later time.IBAC is the appropriate agency for all disclosures except the following:* disclosures about IBAC or the Public Interest Monitor must be notified to the Victorian Inspectorate
* disclosures about the Victorian Inspectorate must be notified to the Integrity and Oversight Committee.

Provided that the department is aware of the discloser’s contact information, the department will also notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.  | Provided that the department is aware of the discloser’s contact information, the department will advise the discloser in writing, within 28 days after the disclosure was made, that: * the department does not consider the disclosure shows or tends to show improper conduct or detrimental action
* the disclosure has not been sent to IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment
* the discloser’s identity does not have to be kept confidential, but protections under Part 6 of the PID Act apply, for example:
	+ they cannot be fired, disciplined, or bullied for making the disclosure
	+ they are protected from legal actions such as defamation and civil liability.

The department does not have to provide the discloser with the above information unless the discloser has indicated, or it otherwise appears the discloser wishes to receive the protections that apply to a public interest disclosure under the PID Act.The department will also consider whether the disclosure could be dealt with according to the department’s complaint handling procedures or misconduct process. |

1. Additional examples of what constitutes improper conduct are outlined in Appendix 1 and Section 4 of the PID Act. [↑](#footnote-ref-1)
2. External disclosures are disclosures that can be made to a person or body who is not an entity to whom a public interest disclosure can be made under the PID Act. For further information on external disclosures, please refer to section 38A of the PID Act. [↑](#footnote-ref-2)
3. The discloser is the person who has made the disclosure about improper conduct or detrimental action. [↑](#footnote-ref-3)