

PUBLIC INTEREST DISCLOSURE MANAGEMENT

Quick reference guide to public interest disclosures

<p>Who can make a disclosure?</p>	<p>Any individual or group of individuals.</p> <p>A disclosure cannot be made by a business or company – but its officers or employees can make a disclosure.</p> <p>Refer to Part 2 of these procedures for more information.</p>
<p>How do I make a disclosure?</p>	<p>Verbally – disclosures can be made in person, by phone or by leaving a voice mail message. However, verbal disclosures must be made in private.</p> <p>In Writing – disclosures can be delivered in person, by mail, by email, or by completing the online form on the IBAC website. A disclosure cannot be made by fax.</p> <p>Refer to Part 3 of these procedures for more information.</p>
<p>What can I make a disclosure about?</p>	<p>Improper conduct of public bodies or public officers (such as corrupt conduct).</p> <p>Detrimental action that a public officer or public body has taken 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.</p> <p>Public bodies and/or public officers includes the Office of Public Prosecutions (“OPP”) and its employees and/or officers, the Solicitor for Public Prosecutions, Crown Prosecutors and the Chief Crown Prosecutor, and the Director of Public Prosecutions.</p> <p>Refer to Part 4 of these procedures for more information.</p>
<p>Who can I make a disclosure to?</p>	<p>If you wish to make a public interest disclosure about the OPP or any of its employees and/or officers, the Solicitor for Public Prosecutions, or a Crown Prosecutor, you may contact the Independent Broad-based Anti-Corruption Commission (IBAC), the Victorian Ombudsman, or the Victorian Inspectorate.</p> <p>If you wish to make a public interest disclosure about the Director of Public Prosecutions or the Chief Crown Prosecutor, you must contact IBAC.</p> <p>Refer to Part 5 of these procedures for more information.</p>

1. Background and purpose

- 1.1 The OPP, its employees or officers, the Solicitor for Public Prosecutions, the Director of Public Prosecutions, Crown Prosecutors and the Chief Crown Prosecutor encourage employees and members of the public to report known or suspected incidences of corrupt or improper conduct.
- 1.2 The purpose of this document is to establish procedures for how a person (whether an employee or member of the public) can make a disclosure about the OPP and its employees or officers and the above listed entities; how the OPP will protect disclosers against detrimental action for making a disclosure; and addressing welfare management arrangements for disclosers.
- 1.3 These procedures have been prepared in accordance with the *Public Interest Disclosures Act 2012 (the Act)* and the guidelines of the Independent Broad-based Anti-Corruption Commission (**IBAC**) which are available on the IBAC website (www.ibac.vic.gov.au).

2. Who can make a public interest disclosure?

- 2.1 Any person can make a public interest disclosure about improper conduct engaged in, or detrimental action taken by, the OPP or one of its employees or officers, the Solicitor for Public Prosecutions, the Director of Public Prosecutions, a Crown Prosecutor or the Chief Crown Prosecutor.
- 2.2 You can make a public interest disclosure if you are a member of the public, an employee or officer of the OPP, or an employee, officer or member of a department or public body.
- 2.3 You can make a public interest disclosure as an individual or together with a group of individuals.
- 2.4 A company or business cannot make a public interest disclosure, but its officers or employees can.
- 2.5 You can ask someone else to make a public interest 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 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.
- 2.6 You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be assessed as a 'public interest disclosure'. You may also advise that you do not want your disclosure to be treated as a 'public interest disclosure'.

3. How do I make a public interest disclosure?

- 3.1 You may make a public interest disclosure:
 - (a) in person
 - (b) by phone
 - (c) by leaving a voicemail message
 - (d) in writing by post, personal delivery or email
 - (e) by any other form of electronic communication, and/or

(f) anonymously.

3.2 You may **not** make a public interest disclosure by fax.

3.3 A public interest disclosure must be made in private so it is important that only the person who/entity that you are making the disclosure to can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent to the email address of the person who/entity that you are making the disclosure to, rather than a group email. You are not precluded from making a joint disclosure with a group of individuals at the same time.

3.4 If you are making your disclosure verbally, the person receiving your disclosure may take notes of your discussion. The person receiving your disclosure may also want to record the conversation, but will only do so with your permission.

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

3.6 If you cannot be identified from the public interest disclosure, the disclosure will be treated as an anonymous disclosure.

4. What can I make a public interest disclosure about?

4.1 You may make a public interest disclosure about information that shows or tends to show, or that you believe on *reasonable grounds* shows or tends to show, that:

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

Public officer and public body

4.2 The conduct you are disclosing must be in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

4.3 Public bodies or public officers include the entities referred to in paragraph 2.1.

'Improper conduct' and 'detrimental action'

- 4.4 The conduct you are disclosing must be improper conduct and/or detrimental action.
- 4.5 The definitions of improper conduct and detrimental action are explained below:

Improper Conduct:

Improper conduct includes both 'corrupt conduct' and other conduct specified in the Act.

Corrupt conduct:

Corrupt conduct is conduct that:

- adversely affects the honest performance of functions by a public officer or public body
- involves the dishonest performance of functions by a public officer or public body
- involves a breach of public trust
- involves a misuse of information acquired in the performance of functions as a public officer or public body, or
- involves a conspiracy or an attempt to engage in any of the above conduct

AND

- would constitute an indictable offence, an attempt to pervert the course of justice, bribery of a public official, perverting the course of justice, or misconduct in public office.

Specified conduct:

Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that is:

- a criminal offence
- serious professional misconduct (see More information on serious professional misconduct on page 11)
- dishonest performance of public functions
- an intentional or reckless breach of public trust
- 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 health or safety of one or more persons
- 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 public functions
- 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 or associate would not have otherwise obtained.

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

Examples of improper conduct

1. An OPP employee accepts a bribe to disclose confidential information about an individual's criminal history.
2. An OPP employee sells confidential information.
3. An OPP employee favours unmeritorious applications for jobs by friends and relatives.
4. An OPP employee falsifies documents in order to gain a favourable outcome in a criminal trial.

Detrimental action:

Detrimental action is action taken against another person in reprisal for making a public interest disclosure. This 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.

Detrimental action includes:

- a person taking action
- threatening to take action, and
- inciting or permitting someone else to take action.

Detrimental action is not:

- legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Examples of detrimental action

1. 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.
2. 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.
3. A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs.

'Reasonable grounds'

- 4.6 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.
- 4.7 A mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be protected by 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.

5. To whom do I make my public interest disclosure?

- 5.1 Only certain persons and entities can receive public interest disclosures.
- 5.2 If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will **not** be a public interest disclosure and you will **not** be protected under the Act. It is therefore important that you check that you are providing your disclosure to the right person or body. If in doubt, disclosures should be made directly to IBAC, **unless** the disclosure is about IBAC or one of its officers.

Making a disclosure about the OPP and/or its employees and officers, the Solicitor for Public Prosecutions, or a Crown Prosecutor

- 5.3 If you wish to make a public interest disclosure about the OPP or any of its employees and/or officers, you may make your disclosure to:
- (a) IBAC: <https://www.ibac.vic.gov.au/>
 - (b) Victorian Ombudsman: <https://www.ombudsman.vic.gov.au/>
 - (c) Victorian Inspectorate: <https://www.vicinspectorate.vic.gov.au/>

Making a disclosure about the Director of Public Prosecutions or the Chief Crown Prosecutor

- 5.4 If you wish to make a public interest disclosure about the Director of Public Prosecutions or the Chief Crown Prosecutor, you must make your disclosure to IBAC.

6. What will happen after I make a disclosure?

- 6.1 Disclosures made to IBAC, the Victorian Ombudsman, or the Victorian Inspectorate will be handled in accordance with the guidelines and processes of those organisations. Please refer to those for further information.

7. What protections will I receive?

- 7.1 The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These include:
- (a) immunity from civil, criminal or administrative liability (including disciplinary action) for making the public interest disclosure;

- (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the public interest disclosure;
- (c) absolute privilege in proceedings for defamation in respect of the public interest disclosure;
- (d) a contract to which the individual is a party must not be terminated on the basis that the public interest disclosure constitutes a breach of the contract.

7.2 These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines that the disclosure is not a 'public interest disclosure'.

7.3 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 public interest disclosure knowing that claim to be false.

7.4 The protections will apply to further information relating to a public interest disclosure that you provide to:

- (a) IBAC, or
- (b) an investigating entity.

7.5 In addition to these protections, the OPP recognises that the welfare and protection from detrimental action of persons making genuine public interest disclosures is essential for the effective implementation of the Act and is relevant to the OPP'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*, the *Public Administration Act 2004* (Vic) and the common law.

8. Welfare Management

8.1 The OPP will provide welfare support to a discloser or a witness in an investigation as the circumstances require and when advised of the identity of the discloser by IBAC

8.2 The OPP will also consider 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.

8.3 A welfare manager is responsible for:

- (a) examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment
- (b) providing practical advice and support
- (c) advising the discloser and/or witness of the protections available under the Act
- (d) responding to any disclosures made to IBAC of detrimental action in reprisal for making the disclosure (e.g. harassment, intimidation or victimisation)
- (e) ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic

- (f) maintaining confidentiality, and
- (g) operating discreetly to protect the discloser and/or witness from being identified as being involved in a public interest disclosure.

8.4 In determining whether to appoint a welfare manager in any particular case, the OPP will consider:

- (a) whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances
- (b) whether the OPP can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure, and
- (c) whether it is within the OPP's power to protect the person/s involved from suffering repercussions.

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

8.6 If a welfare manager is appointed to look after a discloser or witness, the welfare manager will only be required to provide reasonable support and should discuss the reasonable expectations with the person(s) they are supporting.

9. Protection from detrimental action

9.1 The OPP 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.

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

9.3 A disclosure of detrimental action is itself a public interest disclosure and will be assessed by IBAC as a new disclosure in accordance with these procedures.

9.4 Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, IBAC may consider reporting the matter to the police.

9.5 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:

- (a) the Solicitor for Public Prosecutions must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you
- (b) the Solicitor for Public Prosecutions must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action, and
- (c) the head of the 'receiving' government agency consents to the transfer.

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

10. What happens if a public interest disclosure is made against me?

- 10.1 The OPP recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide welfare support to you during the handling and investigation of a disclosure as the circumstances require.
- 10.2 The OPP will only disclose information about the subject of a disclosure in accordance with the law, including the Act (and as explained in these procedures).
- 10.3 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.

11. Confidentiality

- 11.1 You must not tell anyone else about your public interest disclosure except in the circumstances set out in these procedures or as permitted by the Act.
- 11.2 If you repeat your disclosure to someone other than as provided by these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. If you are considering disclosing information about your disclosure, you may wish to obtain legal advice first.
- 11.3 The OPP will only disclose information about you or your disclosure in accordance with the law, including the Act.
- 11.4 IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information has been disclosed is bound by confidentiality requirements that prohibit a person from:
- (a) Disclosing the content, or information about the content of an assessable disclosure, or
 - (b) Information likely to lead to the identification of a person who has made an assessable disclosure.
- 11.5 The circumstances in which a person may disclose the information referred to in paragraph 11.4 (and depending on the type of information in question) include:
- (a) in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure
 - (b) 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

- (c) where IBAC has determined that the disclosure is not a public interest disclosure
- (d) where necessary for the purpose of the exercise of functions under the Act
- (e) by an investigating body where necessary for the purpose of the exercise of functions under the *Independent Broad-based Anti-corruption Commission Act 2011*
- (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) an investigating body has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the Act.

12. Criminal offences

12.1 There are a number of offences set out in the Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

- (a) it is an offence to take detrimental action against another person in reprisal for a public interest disclosure
- (b) it is an offence to disclose the content of an assessable disclosure or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act
- (c) it is an offence for any person to:
 - (i) provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure
 - (ii) claim that a matter is the subject of a public interest disclosure knowing the claim to be false, or
 - (iii) falsely claim that a matter is the subject of a disclosure that IBAC or the Victorian Inspectorate has determined to be a public interest disclosure complaint, knowing that claim to be false.

13. Alternatives to making a public interest disclosure

- 13.1 These procedures are designed to complement usual methods of submitting complaints to the OPP about its employees or officers; the Solicitor for Public Prosecutions; the Director of Public Prosecutions; a Crown Prosecutor or the Chief Crown Prosecutor.
- 13.2 Members of the public are encouraged to use the OPP's feedback process to communicate complaints or concerns with the services provided by the OPP and the entities listed above. More information is available on the OPP's website.
- 13.3 Employees are encouraged to raise matters with their supervisors and managers at any time.

14. Review

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

Schedule 1 - Welfare services that should be provided by the OPP

Inform	<p>At a minimum:</p> <ul style="list-style-type: none"> • Confirm the disclosure has been received • Outline the legislative or administrative protections available • describe the action proposed to be taken • if action has been taken, provide details about results of the action
Provide active support	<ul style="list-style-type: none"> • Acknowledge the discloser for having come forward. • Provide the person with assurance that they have done the right thing and the OPP appreciates it • Make a clear offer of support • Assure the discloser that all reasonable steps will be taken to protect them • Give them an undertaking to keep them informed
Manage expectations	<p>Have an early discussion with the discloser about:</p> <ul style="list-style-type: none"> • what outcome they want • whether their expectations are realistic • what the OPP is able to deliver
Maintain confidentiality	<p>The identity of the discloser and the subject matter of their disclosure must be kept confidential:</p> <ul style="list-style-type: none"> • Make sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive • Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser • Make sure that hardcopy and electronic files relating to the disclosure are stored separately and securely and are accessible only to those who are involved in dealing with the disclosure

Assess the risks of detrimental action taken in reprisal	<ul style="list-style-type: none"> • Be proactive • Do not wait for a complaint of victimisation • Actively monitor the workplace, anticipate problems and deal with them before they develop
Protect the discloser/co-operator	<ul style="list-style-type: none"> • Examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment • Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions • Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a public interest disclosure
Manage the impact of any investigation	<ul style="list-style-type: none"> • Prevent the spread of gossip and rumours about an investigation into the disclosure
Keep records	<ul style="list-style-type: none"> • Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow- up action • Keep the records in secure storage facilities

The content in this table is adapted from IBAC, *Guidelines for managing a public interest disclosure welfare management*, January 2020, p 7 and Queensland Ombudsman, *Handling a public interest disclosure: A guide for public sector managers and supervisors*, 2011, pp 21-27.
