

Policy

Public Interest Disclosure Policy

Making and handling Public Interest Disclosures, and welfare management

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Table of Contents

1	Introduction	3
1.1	Quick reference guide to Public Interest Disclosures (PIDs)	3
1.2	Purpose and background	4
1.3	Who can make a PID?	4
1.4	What can I make a PID about?	4
2	PID Process	6
2.1	How do I make a PID?	6
2.2	Who do I make my PID to?	6
2.3	What will happen after I make a disclosure?	7
2.4	What protections will I receive?	7
2.5	Welfare Management	8
2.6	Protection from detrimental action	9
3	Further Information	10
3.1	What happens if a PID is made against me?	10
3.2	Confidentiality	10
3.3	Criminal offences	11
3.4	Alternatives to making a 'PID'	11
3.5	Review	11
4	Appendix 1 – Public Bodies and Public officers	12

1 Introduction

1.1 Quick reference guide to Public Interest Disclosures (PIDs)

Who can make a disclosure?	individuals or group of people – members of the public and employees of PROV . A disclosure cannot be made by a business or company. (Refer to part 1.3 of these procedures for more information.)
What can I make a disclosure about?	Improper conduct engaged in by a public officer or public body. Detrimental action taken by a public officer or a public body. This includes Public Record Office Victoria (PROV) and/or its officers. (Refer to Part 1.4 of these procedures for more information and appendix 1.)
How do I make disclosure?	Verbally or in writing (but not by fax) in accordance with specific procedures. (Refer to Part 2.1 of these procedures for more information.)
Who can receive disclosures?	A public interest disclosure (PID) about PROV or any of its officers, may be made to the following: <ul style="list-style-type: none">• PROV’s PID Coordinator whose name and contact details can be found at https://prov.vic.gov.au/about-us/legislation-and-governance/protected-disclosure.• If you are a PROV officer, the person who directly or indirectly supervises or manages you.• If you are a PROV officer and the PID relates to another PROV officer, the person who supervises or manages the person to whom that PID relates.• The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne VIC 3000 GPO Box 24234, Melbourne VIC 3001 Telephone: 1300 735 135 www.ibac.vic.gov.au

1.2 Purpose and background

Public Record Office Victoria (**PROV**) encourages its officers and members of the public to report known or suspected incidences of improper conduct and detrimental action.

The purpose of this document is to establish procedures for PROV's receipt and handling of disclosures about improper conduct engaged in, and/or detrimental action taken by, PROV or its officers, and protection of individuals from detrimental action in reprisal for a PID.

These procedures have been prepared in accordance with the *Public Interest Disclosure Act 2012 (the Act)* and the guidelines prepared by the Independent Broad-based Anti-corruption Commission (**IBAC**) which are available from the IBAC website (www.ibac.vic.gov.au).

1.3 Who can make a PID?

Any person can make a PID about improper conduct engaged in, or detrimental action against another person, in reprisal for a PID taken by PROV or one of its officers.

You can make a PID if you are a member of the public, an officer of PROV, or an officer or member of another Victorian Government department or public body.

A company or business cannot make a PID.

You can ask someone else to make a disclosure on your behalf, although only that person will receive the full protection of the Act in relation to that disclosure. The content of that PID will be subjected to the Act's confidentiality requirements, and you will be covered by the Act's protections against detrimental action taken against you in reprisal for that disclosure.

The act provides protection for people who make a disclosure.

1.4 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, that:

- a person, public officer or public body;
- is engaging in, or proposing to engage in;
- improper conduct and/or detrimental action against another person in reprisal for a PID.

Public officer and public body

The conduct you are disclosing about a public officer or public body must relate to the performance of that officer or public body functions. 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. Appendix 1 provides further details about public officers and public bodies.

Improper conduct and detrimental action

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the PID Act. If the conduct is trivial, it will not meet the threshold of improper conduct. When assessing allegations of improper conduct, you need to identify that there is a link between the conduct and the official function of a public officer or public body.

What improper conduct includes

Corrupt conduct

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

- 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 conduct referred to above.

‘Detrimental Action’

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a PID. Detrimental action includes:

- 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

‘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.***

A mere suspicion, allegations 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

2 PID Process

2.1 How do I make a PID?

You may make a PID 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.

A PID must be made in private. When making your PID you should ensure that only the person to whom you are making it 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 to whom you are making the disclosure, rather than a group email.

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.

You do not have to identify yourself when making a disclosure. However, it may be necessary to investigate an anonymous disclosure in a different manner than if the person making that disclosure revealed their identity, and it will not be possible to notify you of the outcome of any investigation.

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

2.2 Who do I make my PID to?

If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will **not** be a PID 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. PROV can only receive PIDs about PROV or its officers.

Making a disclosure about PROV or its officers

If you wish to make a PID about PROV or any of its officers, you may make your disclosure to:

- PROV's PID Coordinator(s) whose name(s) and contact details can be found at <https://prov.vic.gov.au/about-us/legislation-and-governance/protected-disclosure> If you are a PROV officer, your direct or indirect manager.
- If you are a PROV officer and the PID relates to another PROV officer, the person who directly or indirectly supervises or manages you or the person to whom that PID relates.

OR

- IBAC
Level 1, North Tower
459 Collins Street
Melbourne Vic 3000
GPO Box 24234, Melbourne, VIC 3001
www.ibac.vic.gov.au
1300 735 135

2.3 What will happen after I make a disclosure?

The procedures in this part relate to disclosures made to PROV.

Receipt of disclosures

Unless your disclosure is made anonymously, the receipt of your disclosure to PROV will be acknowledged verbally or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure, including the timeframes involved.

Assessing disclosures

Upon receipt of your disclosure, the PID Coordinator will consider whether that disclosure may be a PID for the purposes of the Act.

At this time, the PID Coordinator may also discuss with you the welfare¹ support PROV may provide (for example, the appointment of a welfare manager) and the precautions PROV will take to prevent detrimental action being taken against you in reprisal for having made the disclosure. For more information on this, see Part 2.5 and 2.6 of these procedures.

The person to whom you make your PID and PROV must not disclose the content, or information about the content, of your disclosure except in accordance with the Act.

Notification to IBAC

If PROV determines that your disclosure may be a PID for the purposes of the Act, it must notify your disclosure to IBAC, in writing, ***within 28 days of you making the disclosure***.

Where it is not prohibited by the Act, PROV will advise you verbally, or in writing (if a postal or email address is known) within 28 days of you making the disclosure that your disclosure has been notified to IBAC and that it is an offence under the Act to inform anyone that your disclosure has been notified to IBAC. PROV may also provide to IBAC information it has obtained whilst it was assessing whether your disclosure should be referred to IBAC.

If PROV determines that your disclosure may not be a PID for the purposes of the Act, it will advise you of this within 28 days of you making the disclosure (provided that you indicated that you wished to receive the protections under the Act).

Once PROV notifies your disclosure to IBAC, IBAC must assess within a reasonable time whether (in its view) your disclosure is a PID complaint. It may seek additional information from you and/or PROV to make its decision. IBAC will advise the discloser of the determination (a PID or not) and the action/s it will take (or not take)².

2.4 What protections will I receive?

The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. The discloser:

- Cannot be fired, disciplined or bullied for making a disclosure
- is not subject to any civil or criminal liability for making a disclosure
- 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

¹ Guidelines for welfare management available on IBAC website at www.ibac.vic.gov.au 'Guidelines for public interest disclosure welfare management'

² Refer to IBAC "Guidelines for handling public interest disclosures" at www.ibac.vic.gov.au

- 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
- cannot be held liable for defamation in relation to information included in a public interest disclosure.

These protections apply to a disclosure which meets the requirements in the Act from the time you make it and continue to apply even if PROV determines the disclosure may not be a PID for the purposes of the Act, or IBAC determines that the disclosure is not a PID complaint.

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

The protections will apply to further information relating to a PID that you provide to:

- PROV;
- IBAC; or
- an investigating entity.

In addition to these protections, PROV recognises that the welfare and protection from detrimental action of persons making PIDs is essential for the effective implementation of the Act and is relevant to its 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* and the common law.

2.5 Welfare Management

If discloser is a PROV officer they can contact Converge International for advice and support. PROV has contracted Converge to provide Employee Assistance Program (EAP). To make an appointment to speak with a Converge EAP counsellor:

Telephone 1300 687 327 (1300 OUR EAP)
Website www.convergeinternational.com.au/ and click on 'Contact Us' to access the Live Chat service
App download EAP Connect App and connect through the Appointment icon

If a PROV officer makes a PID, PROV will provide welfare support to that officer and, if necessary, his or her associates, and any witness involved in an investigation regarding that disclosure, as the circumstances may require.

If necessary, PROV will appoint a welfare manager when a PROV officer has made a PID or is cooperating, or intending to cooperate, with an investigation of a PID.

A welfare manager is responsible for:

- examining the immediate welfare and protection needs of the PROV officer who made the PID, any relevant associates of that person, and any witnesses involved in an investigation regarding that disclosure;
- providing practical advice and support;
- advising the PROV officer who made the PID, and any applicable witness, of the protections available under the Act;
- ensuring that the PROV officer who made the PID, and any applicable witnesses, have realistic expectations of the process and outcomes;
- maintaining confidentiality; and
- operating discreetly to protect the PROV officer making that disclosure, and any applicable witness, from being identified as being involved in a PID.

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

- whether the PID has proceeded, or is likely to proceed, to an investigation;

- whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances; and
- whether PROV can provide effective support to the persons involved.

PROV may appoint another officer to act as a welfare manager or engage a contractor to provide welfare services.

If a welfare manager is appointed to look after a PROV officer who has made a PID or any applicable 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.

2.6 Protection from detrimental action

PROV will take precautions to prevent its officers 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 PROV takes will depend on the individual circumstances and the person making the disclosure, and any applicable witnesses will, where possible, be consulted about any action that is taken.

A report of detrimental action in reprisal for making a PID is, in itself, a disclosure which must be handled in accordance with the Act. A person reporting an incident of harassment, discrimination or adverse treatment that may amount to detrimental action should therefore make that disclosure to the relevant person specified in Part 2.2 if they wish for the Act's protections to apply.

PROV will assess any such disclosure as a new disclosure in accordance with these procedures.

If you are a PROV officer 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 area of PROV or another Victorian Government agency on terms and conditions that are no less favourable overall. While all requests of this nature will be considered, a number of conditions must be satisfied before they are granted, including:

- the Director of PROV must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the Director of PROV must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' Victorian Government agency must consent to the transfer.

Your transfer can be temporary or permanent, and your service in a public body to which you are transferred is to be regarded as continuous with your pre-transfer service.

You may also wish to make an application to the Supreme Court seeking an injunction if you believe that a person has taken, or intends to take, detrimental action against you.

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.

If it is found that detrimental action has been taken against a PROV officer, then a court may order that PROV reinstate or re-employ that officer in his or her former position or, if that position is not available, in a similar position.

3 Further Information

3.1 What happens if a PID is made against me?

PROV recognises that its officers against whom PIDs are made must also be supported during the handling and investigation of disclosures and will provide welfare support to them during the handling and investigation of a disclosure as the circumstances require. Converge International can be used for assistance.

3.2 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, such disclosures will not receive the protections under the Act. For example, if you release your disclosure to the media, you may not be protected from any resulting defamation action. You may also breach confidentiality obligations.

If you are considering disclosing information about your disclosure, before doing so you may wish to speak to the PID Coordinator, your welfare manager and/or obtain legal advice.

PROV will only disclose information about you or your disclosure in accordance with the law, including the Act.

The Act prohibits the disclosure of information that is likely to lead to the identification of a person who has made a PID or information about the contents of such a disclosure unless permitted to do so in accordance with the Act.

Exceptions to confidentiality requirements include:

- 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 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
- the disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application.

If you are considering disclosing information that is likely to lead to the identification of a person who has made a PID or information about the contents of such a disclosure you may wish to obtain legal advice.

3.3 Criminal offences

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:

- it is an offence to take detrimental action against another person in reprisal for a PID;
- it is an offence to disclose the content, or information about the content, of a disclosure or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act;
- it is an offence for any person to:
 - 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; and
 - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a PID complaint; and

3.4 Alternatives to making a 'PID'

These procedures are designed to complement usual methods of submitting complaints to PROV. Members of the public are encouraged to contact PROV to communicate complaints or concerns with the services it provides. More information is available in the Contact Us section of PROV's website (prov.vic.gov.au/contact-us).

PROV's officers are encouraged to raise matters with their managers or Assistant Director at any time.

3.5 Review

These procedures are reviewed regularly to determine whether they meet the Act's objectives and are consistent with IBAC's guidelines.

4 Appendix 1 – Public Bodies and Public officers

Disclosures can be made about public bodies or public officers.

Public bodies include:

- public sector bodies;
 - ‘public service body’ as defined in section 4 of the Public Administration Act 2004 (Vic)
 - ‘public entity’ as defined in section 5 of the Public Administration Act 2004 (Vic)
 - ‘special body’ as defined in section 6 of the Public Administration Act 2004 (Vic)
- incorporated or unincorporated bodies established for a public purpose, including universities
- Electoral Boundaries Commission
- a Council (established under the Local Government Act 1989)
- a body performing a public function on behalf of the State or a public body or public officer.

Public officers is defined in section 6 of the IBAC Act and include:

- the Governor, Lieutenant-Governor or Administrator of the State
- Members of Parliament, including Ministers
- Ministerial officers, Parliamentary advisers and officers, electorate officers
- judicial officers, including coroners, members of VCAT, associate judges, judicial registrars
- statutory office holders, including the Auditor-General and the Ombudsman, the Director of Public Prosecutions
- public servants, including IBAC officers
- local government Councillors and Council employees
- university employees and teachers
- police personnel.