

Policy

Protected Disclosure Procedures

Making and handling protected disclosures, and welfare management

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Quick reference guide to protected disclosures which may be made to Public Record Office Victoria

- Who can make a disclosure?** Any individual. A disclosure cannot be made by a business or company. (Refer to part 2 of these procedures for more information.)
- How do I make a disclosure?** Verbally or in writing (but not by fax) in accordance with specific procedures. (Refer to part 3 of these procedures for more information.)
- What can I make a disclosure about?** Improper conduct engaged in by any person or a 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 4 of these procedures for more information.)
- Who can I make a disclosure to?** A protected disclosure about PROV or any of its officers, may be made to the following:
- PROV's Protected Disclosure Officer whose name and contact details can be found at www.prov.vic.gov.au/protected-disclosures.
 - If you are a PROV officer, the person who directly or indirectly supervises or manages you.
 - If you are a PROV officer and the protected disclosure relates to another PROV officer, the person who supervises or manages the person to whom that protected disclosure 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 Background and purpose

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 protected disclosure.

These procedures have been prepared in accordance with the *Protected 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).

2 Who can make a protected disclosure?

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

You can make a protected disclosure 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 protected disclosure.

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 protected disclosure 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.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'protected disclosure'. You may also advise when making your disclosure that you do not want it to be treated as a 'protected disclosure'.

3 What can I make a protected disclosure about?

You may make a protected disclosure 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 protected disclosure.

3.1 Public officer and public body

The conduct you are disclosing about a public officer or public body must relate to the performance of that 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.

For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

3.2 Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action against another person in reprisal for a protected disclosure.

The definitions of improper conduct and detrimental action are explained in the diagram below.

'Improper conduct' is defined as: 'corrupt conduct' or 'specified 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; or
 - perverting the course of justice.

Specified conduct is:

Any of the following conduct which, if proved, would constitute a criminal offence or reasonable grounds for dismissing the officer who engaged in the conduct:

- conduct that adversely affects the honest performance of functions by a public officer or public body;
- conduct that involves the dishonest performance of functions by a public officer or public body;
- conduct that involves a breach of public trust;
- conduct that involves a misuse of information acquired in the performance of functions as a public officer or public body;
- conduct that could constitute a conspiracy or attempt to engage in any of the above conduct; or
- conduct that involves:
 - a substantial mismanagement of public resources;
 - a substantial risk to public health and safety; or
 - a substantial risk to the environment.

'Detrimental action' includes:

Action taken against a person which:

- causes 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 disciplinary action).

Detrimental action does not include 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 improper conduct

- A department employee takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.
- A department employee discloses confidential information to assist a former colleague to win a government contract.
- A public officer favours unmeritorious applications for jobs or permits by friends and relatives.

Examples of detrimental action prohibited by the Act

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

3.3 '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.

4 How do I make a protected disclosure?

You may make a protected disclosure:

- 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 protected disclosure by fax.

A protected disclosure must be made in private. When making your protected disclosure you should ensure that only the person to whom you are making it 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 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.

5 Who do I make my protected disclosure to?

Who you can make your protected disclosure to depends on the person or body your disclosure is about as only certain persons and entities can receive protected disclosures.

If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will **not** be a protected 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 an officer of IBAC, in which case the disclosure must be made to the Victorian Inspectorate; or
- a member of Parliament, in which case the disclosure must be made to the presiding officer of the House of which that person is a member.

5.1 Making a disclosure about PROV or its officers

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

- PROV's Protected Disclosure Officer(s) whose name(s) and contact details can be found at www.prov.vic.gov.au/protected-disclosures
- If you are a PROV officer, the person who directly or indirectly supervises or manages you.
- If you are a PROV officer and the protected disclosure relates to another PROV officer, the person who directly or indirectly supervises or manages you or the person to whom that protected disclosure 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

5.2 Making a disclosure about the Freedom of Information Commissioner or the Privacy Commissioner

If you wish to make a protected disclosure about the Freedom of Information Commissioner or the Privacy Commissioner, you should make your disclosure to:

- IBAC

OR

- The Victorian Ombudsman
Level 9, North Tower
459 Collins Street
Melbourne Vic 3000
www.ombudsman.vic.gov.au
ombudvic@ombudsman.vic.gov.au
(03) 9613 6222 and 1800 806 314

5.3 Making a disclosure about independent public officers, judicial officers and ministerial advisers

If you wish to make a disclosure about any of the following public bodies or public officers, you should make your disclosure to IBAC:

- the Chief Commissioner of Police;
- the Director of Public Prosecutions;
- the Chief Crown Prosecutor;
- the Solicitor-General;

- a judicial officer;
- a member of VCAT;
- a judicial employee; and
- a ministerial officer.

5.4 Making a disclosure about members of Victoria Police

If you wish to make a disclosure about a member of police personnel (other than the Chief Commissioner of Police), you should make your disclosure to IBAC or a prescribed member of police personnel.

6 What will happen after I make a disclosure?

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

6.1 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.

6.2 Assessing disclosures

Upon receipt of your disclosure, the Protected Disclosure Officer will consider whether that disclosure may be a protected disclosure for the purposes of the Act.

At this time, the Protected Disclosure Officer may also discuss with you the welfare 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 Parts 8 - 9 of these procedures.

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

6.3 Notification to IBAC

If PROV determines that your disclosure may be a protected disclosure 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 protected disclosure 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). You may then wish to consider having your disclosure dealt with in accordance with PROV's complaints handling process.

Once PROV notifies your disclosure to IBAC, IBAC must assess within a reasonable time whether (in its view) your disclosure is a protected disclosure complaint. It may seek additional information from you and/or PROV to make its decision.

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

- investigate your disclosure;
- refer your disclosure to the Ombudsman or the Victorian Inspectorate; or
- dismiss your disclosure (provided there are grounds for doing so).

Regardless of whether IBAC determines your disclosure is a protected disclosure complaint or not, the Act's protections for those making protected disclosures will still apply (provided it meets the requirements of a protected disclosure under the Act). This includes protection from detrimental action taken in reprisal for you making the disclosure.

If IBAC determines that your disclosure is not a protected disclosure, the confidentiality requirements set out in Part 11 of these procedures will no longer apply in relation to your disclosure.

7 What protections will I receive?

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

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information; (c) immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information;
- protection from an action for defamation; and
- protection from detrimental action in reprisal for making a protected 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 protected disclosure for the purposes of the Act, or IBAC determines that the disclosure is not a protected disclosure 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 protected disclosure knowing that claim to be false.

The protections will apply to further information relating to a protected disclosure 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 protected disclosures 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.

8 Welfare Management

If a DPC officer makes a protected disclosure 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 protected disclosure or is cooperating, or intending to cooperate, with an investigation of a protected disclosure.

A welfare manager is responsible for:

- examining the immediate welfare and protection needs of the PROV officer who made the protected disclosure, 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 protected disclosure, and any applicable witness, of the protections available under the Act;
- ensuring that the PROV officer who made the protected disclosure, 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 protected disclosure.

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

- whether the protected disclosure 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 protected disclosure 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.

9 Protection from detrimental action

PROV will take precautions to prevent its officers and agents from taking detrimental action in reprisal for a protected disclosure. 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 protected disclosure 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 5 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 protected 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 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.

10 What happens if a protected disclosure is made against me?

PROV recognises that its officers against whom protected disclosures 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.

11 Confidentiality

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

If you repeat your protected disclosure 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 Protected Disclosure Officer, 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 protected disclosure or information about the contents of such a disclosure unless permitted to do so in accordance with the Act.

The circumstances, in which a person may disclose this information, include:

- where IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure;
- where necessary for the purpose of the exercise of a function under the Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the *Independent Broad-based Anti-corruption Commission Act 2011*;
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of a disciplinary process or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation; and
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act.

IBAC or the relevant investigating entity may disclose the identity of a person who has made a protected disclosure, and the content of that disclosure, if it is necessary for the purposes of their investigative action. The person to whom the information has been disclosed will be bound by the same confidentiality requirements.

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

12 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 protected disclosure;
- 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 protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure;
 - claim that a matter is the subject of a protected disclosure 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 protected disclosure complaint; and
- it is an offence, in certain circumstances, for a person to:
 - disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act; and
 - disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

13 Alternatives to making a ‘protected disclosure’

These procedures are designed to complement usual methods of submitting complaints to PROV and its portfolio agencies.

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.

14 Review

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

Schedule 1- What is a public body what is a public officer?

A public body is:

- a public sector body within the meaning of s 4(1) of the *Public Administration Act 2004*;
- a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;
- the Electoral Boundaries Commission constituted under the *Electoral Boundaries Commission Act 1982*;
- a Council;
- a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise); and
- any other body or entity prescribed for the purposes of this definition.

A public officer is:

- a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the *Public Administration Act 2004*;
- a person to whom a provision of the *Public Administration Act 2004* applies as a result of the application of Part 7 of that Act;
- an ongoing employee or temporary employee in the teaching service under the Education and Training Reform Act 2006;
- a judicial employee employed under Part 6 of the Public Administration Act 2004;
- a Ministerial officer employed under Part 6 of the Public Administration Act 2004;
- an electorate officer within the meaning of the Parliamentary Administration Act 2005;
- a Parliamentary adviser employed under Part 6 of the Public Administration Act 2004;
- a Parliamentary officer within the meaning of the Parliamentary Administration Act 2005;
- a member of police personnel;
- a responsible Minister of the Crown;
- a member of the Legislative Assembly or the Legislative Council;
- a Councillor within the meaning of section 3(1) of the Local Government Act 1989;
- a member of Council staff employed under the Local Government Act 1989;
- a judge, a magistrate, a coroner or a member of VCAT;
- an associate judge or a judicial registrar;
- a Crown Prosecutor;
- the Chief Crown Prosecutor;
- the Director of Public Prosecutions;
- the Governor, the Lieutenant-Governor or the Administrator of the State;
- the Auditor-General;
- the Ombudsman;
- the Electoral Commissioner;
- the holder of any other statutory office or any other prerogative office;
- any other person in the service of the Crown or a public body;
- a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);
- a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition; and
- an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.

Schedule 2 – Who can receive disclosures about PROV and its officer

The subject of the disclosure	Who to make the disclosure to
PROV or an officer of PROV	PROV or IBAC
DPC or an officer of DPC	DPC or IBAC
An Administrative Office affiliated with DPC (such as the Office of the Governor) or the Victorian Public Sector Commission	The relevant Administrative Office or the State Services Authority, as applicable, or IBAC
A portfolio agency of DPC, or an officer of such a portfolio agency (such as National Gallery of Victoria)	IBAC
Chief Commissioner of Police	IBAC
Director of Public Prosecutions	IBAC
Chief Crown Prosecutor	IBAC
Solicitor-General	IBAC
A judicial officer	IBAC
A member of the Victorian Civil and Administrative Tribunal	IBAC
A judicial employee	IBAC
Freedom of Information Commissioner	IBAC or the Ombudsman
Privacy Commissioner	IBAC or the Ombudsman