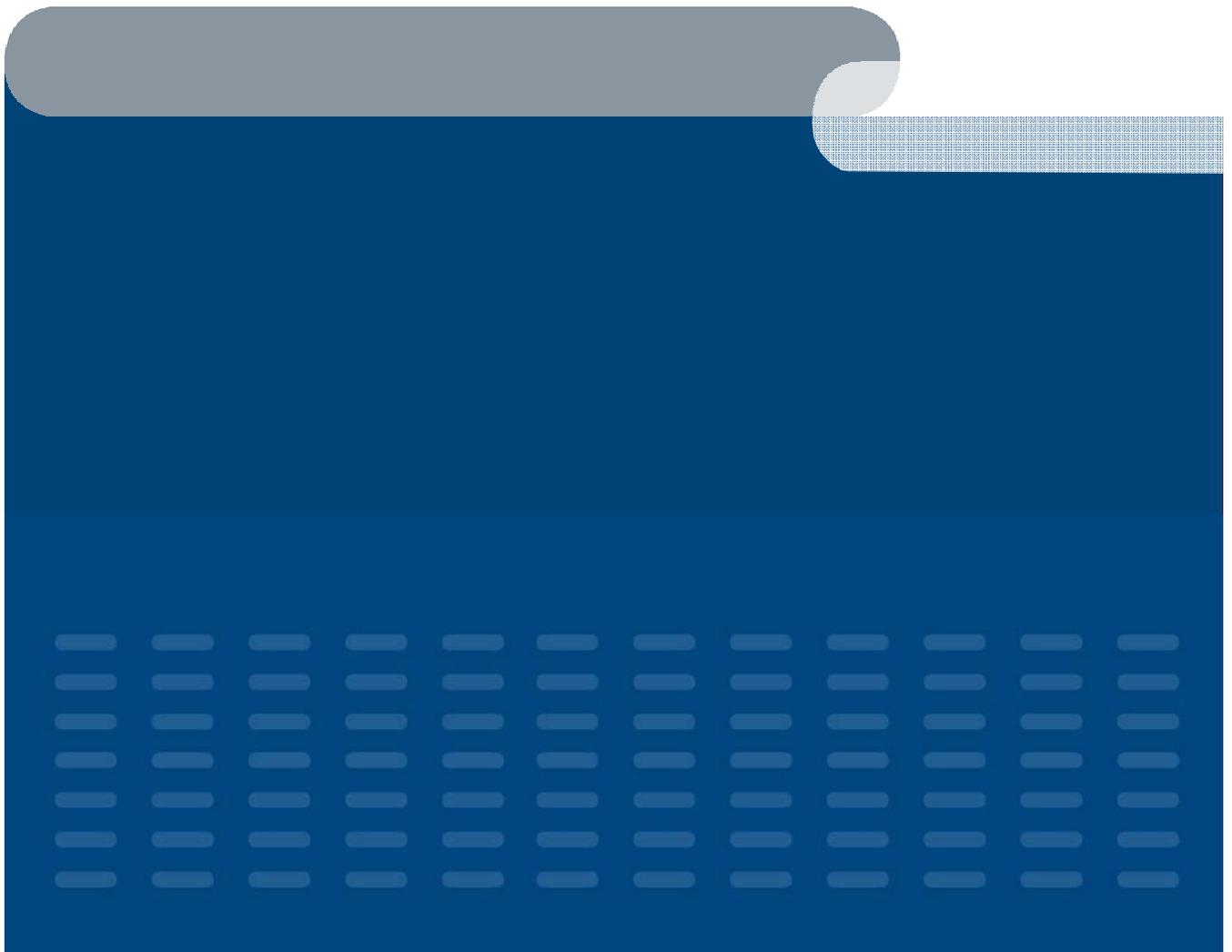


Making and Handling Protected Disclosures

Procedures

Information Integrity & Access



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1 Background and Purpose

The Department of Justice and Regulation (DJR) encourages employees and members of the public to report known or suspected incidences of corrupt or improper conduct.

The purpose of this document is to establish procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by the department and/or its employees.

These procedures have been prepared in accordance with the Protected Disclosure Act 2012 (the Act) and the guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) that are available on 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 taken by, the department or one of its officers.
- You can make a protected disclosure if you are a member of the public, an employee, officer or member of the department or one of its portfolio agencies, or an employee, officer or member of another department or public body.
- You can make a disclosure as an individual or together with a group of individuals.
- A company or business cannot make a protected disclosure.
- 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 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.
- 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 that you do not want your disclosure to be treated as a 'protected disclosure'.

3 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 so it is important that only the person to whom 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 to whom 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.

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, 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.

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

4 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'.

Public officer and public body

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.

Public bodies or public officers include the department and its agencies as well as statutory authorities that fall with the department's portfolio.

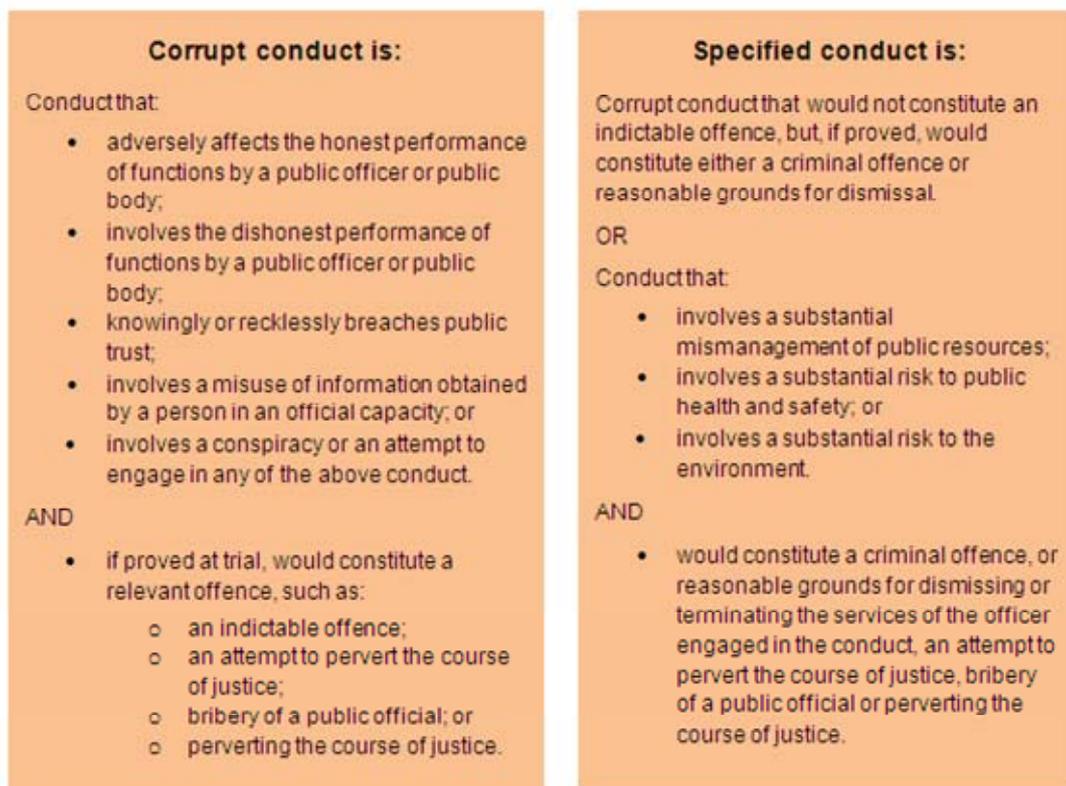
For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action.

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

Improper conduct – means corrupt conduct or specified conduct, undertaken by a public officer or public body in the performance of their duties. At its lowest threshold level, improper conduct must be serious enough to constitute, if proved, either criminal conduct or conduct serious enough to result in a person's dismissal.



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 sells confidential information.
- A public officer favours unmeritorious applications for jobs or permits by friends and relatives.

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. **'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, 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 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. A quick reference guide is provided at Schedule 2.

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 one of its officers.

Making a disclosure about the Department of Justice and Regulation and/or its employees and officers

If you wish to make a protected disclosure about the department or any of its employees and/or officers, you may make your disclosure to the following officers of DJR:

- Damien O'Shea, Protected Disclosure Coordinator
Information Integrity & Access
Department of Justice and Regulation
GPO Box 4356
MELBOURNE VIC 3000
Telephone: (03) 8684 0090
Email: Damien.O'Shea@justice.vic.gov.au
- Lesley Crombie, Deputy Protected Disclosure Coordinator
Information Integrity & Access
Department of Justice and Regulation
GPO Box 4356
MELBOURNE VIC 3000
Telephone: (03) 8684 0079
Email: Lesley.Crombie@justice.vic.gov.au
- the manager/supervisor of the person who is the subject of your disclosure
- if you are an employee of the department, your manager/supervisor
- Greg Wilson, Secretary of the Department, or
- a person acting in any of the above roles

OR

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

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 must 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, or
- A ministerial officer.

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 must make your disclosure to IBAC or prescribed members of police personnel.

Making a disclosure about a statutory entity that falls within the department's portfolio

If you wish to make a disclosure about any other statutory entity or office that falls within the department's portfolio, you should make your disclosure to IBAC.

6 What will happen after I make a disclosure?

The procedures in this part relate to disclosures made to the department. Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes. A flowchart is provided at Schedule 5.

Receipt of disclosures

The receipt of your disclosure to the department 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 Protected Disclosure Coordinator will assess whether the disclosure complies with the requirements of the Act (as set out in Parts - of these procedures).

At this time, the Protected Disclosure Coordinator may also discuss with you the welfare support it will provide (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. For more information on this, see Parts - of these procedures.

In some circumstances, it may be necessary for the department to report your 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 concealing evidence of criminal conduct. This action may take place before the department has decided whether your disclosure meets all of the requirements in the Act.

Notification to IBAC

If the department determines that your disclosure complies with the requirements of the Act, the department must notify your disclosure to IBAC, in writing, within 28 days of you making the disclosure to the department. Your disclosure will then be known as an 'assessable disclosure'.

The department will advise you verbally, or in writing (if a postal or email address is known) within 28 days of you making the disclosure to the department 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. The department may also provide to IBAC information that it has obtained whilst it was assessing whether your disclosure should be referred to IBAC.

If the department determines that your disclosure does not comply with the requirements of the Act, the department will advise you of this within 28 days of you making the disclosure to the department. In that event, you may wish to seek that your disclosure be dealt with under the department's complaint handling process. For more information about the department's complaint handling process, refer to the Department of Justice and Regulation website (www.justice.vic.gov.au).

Assessment by IBAC

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

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

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

- dismiss your disclosure
- investigate your disclosure, or
- refer your disclosure to another body for investigation, such as Victoria Police, the Ombudsman or WorkSafe Victoria.

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

However, if IBAC determines that your disclosure is not a protected disclosure, the confidentiality requirements set out in Part 11 of these procedures 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
- 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, and
- protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if the department determines the disclosure does not comply with the requirements of the Act or IBAC determines that the disclosure is not a 'protected disclosure'.

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 protected disclosure knowing that claim to be false.

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

- the department
- IBAC, or
- an investigating entity.

In addition to these protections, the department recognises that the welfare and protection from detrimental action of persons making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to the department's obligation to create a safe working environment.

8 Welfare Management

The department recognises that protecting the welfare of persons making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to the department's obligation to create a safe working environment under the following legislation: Occupational Health and Safety Act 2004; the Charter of Human Rights and Responsibilities Act 2006; the Public Administration Act 2004 (PAA 2004); and the common law.

Provision of support

The department should provide welfare support to a discloser or witness as set out in Schedule 3.

The department should also consider appointing a welfare manager when a person has made a protected disclosure or is cooperating, or intending to cooperate, with an investigation of a protected disclosure.

The department may appoint an internal person as the welfare manager or engage a contractor to provide welfare services.

The department should also consider referring an employee to its Employee Assistance Program.

Welfare Manager Responsibilities

A welfare manager is responsible for:

- examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment
- providing practical advice and support
- advising the discloser and/or witness of the protections available under the Act
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (eg harassment, intimidation or victimisation)
- ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic
- maintaining confidentiality, and
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

Appointment of a Welfare Manager

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

- whether the 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
- whether the department can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure, and
- whether it is within the department's power to protect the person/s involved from suffering repercussions.

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

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

The department will take precautions to prevent its employees 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 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) will record details of the incident and advise the person of the protections they will receive under the Act (as set out in Part 7 of these procedures).

A disclosure of detrimental action is itself a protected 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 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 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 DJR 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, and
- the head of the 'receiving' government agency consents to the transfer.

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

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

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 Act.

10 What happens if a protected 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 and 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 Act.

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

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

- a) If you repeat your disclosure to someone other than as provided for in these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. You may also breach your confidentiality obligations.
- b) If you are considering disclosing information about your disclosure, you may wish to speak to the Protected Disclosure Coordinator, your welfare manager and/or obtain legal advice first.
- c) The department will only disclose information about you or your disclosure in accordance with the law, including the Act. The Act prohibits the disclosure of information received in relation to a disclosure that has been notified to IBAC by the department except in certain limited circumstances.
- d) The circumstances in which a person may disclose information obtained about a protected 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 include:
 - in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure
 - 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
 - the IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure
 - where necessary for the purpose of the exercise of functions under the Act
 - by an investigating body where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-corruption Commission Act 2011
 - for the purpose of a proceeding for an offence under a relevant Act or provision
 - for the purpose of disciplinary process or action in respect of conduct that would constitute an offence
 - for the purpose of obtaining legal advice or representation
 - to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act, and
 - 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.
- e) The Act also prohibits disclosing information that is likely to lead to your identification unless permitted to do so in accordance with the Act.
- f) 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 the same confidentiality requirements.

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 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 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 for any 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.

Further detail of criminal and civil offences and penalties is contained in Schedule 6.

13 Alternatives to making a ‘protected disclosure’

These procedures are designed to complement usual methods of submitting complaints to the department and public bodies within the department's portfolio.

Members of the public are encouraged to use the department's feedback process to communicate complaints or concerns with the services provided by the department. More information is available on the DJR website (www.justice.vic.gov.au).

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

A public body is:

- a public sector body within the meaning of section 4(1) of the PAA 2004
- a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university
- the Electoral Boundaries Commission (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 PAA 2004
- a person to whom a provision of the PAA 2004 applies as a result 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 Division 3 of Part 6 of the PAA 2004
- a Ministerial officer employed under Division 1 of Part 6 of the PAA 2004
- an electorate officer within the meaning of the Parliamentary Administration Act 2005
- a Parliamentary adviser employed under Division 2 of Part 6 of the PAA 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 the Department of Justice and Regulation and its officers/employees

The Subject of the Disclosure	Who to Make the Disclosure To
The Department of Justice and Regulation	DJR or IBAC
The Department of Justice and Regulation employee/s	DJR or IBAC
The Department of Justice and Regulation officer/s	DJR or IBAC
A Justice portfolio statutory entity or office or an officer or employee of a Justice and Regulation portfolio statutory entity or office	IBAC
Chief Commissioner of Police	IBAC
The Director of Public Prosecutions	IBAC
The Chief Crown Prosecutor	IBAC
The Solicitor General	IBAC

Schedule 3 – Welfare services that should be provided by the department

Inform	<p>At a minimum:</p> <ul style="list-style-type: none"> confirm that the disclosure has been received make information about the legislative or administrative protections available to the person 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 Department 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 Department is be 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 kept in accordance with this policy 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.

<i>Protect the discloser/witness</i>	<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 protected disclosure.
<i>Manage the impact of any investigation</i>	<ul style="list-style-type: none"> • prevent the spread of gossip and rumours about an investigation into the disclosure.
<i>Keep records</i>	<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 accordance with the guidance provided in the <i>Protected Disclosure Act 2012</i>.

The content in this table is adapted from Queensland Ombudsman, Handling a public interest disclosure: A guide for public sector managers and supervisors, 2011, pp21-27.

Schedule 4 – Roles and Responsibilities

Employees

Employees are encouraged to report known or suspected incidents of improper conduct or detrimental action in accordance with these 'Making and Handling Protected Disclosures' procedures.

Members of the public or clients/users of the department's services may make a disclosure under the Act to an employee of the department. The disclosure may be made in correspondence or during a conversation with an employee.

The person making the disclosure does not have to state expressly that a protected disclosure is being made. Employees should keep this in mind when receiving complaints and be familiar with what may constitute a protected disclosure (refer to the department's 'Making and Handling Protected Disclosures' procedures for a detailed explanation).

If an employee receives what he or she believes may be a protected disclosure, the employee should handle the disclosure in the following way:

- if the disclosure is an oral disclosure about the department, record the disclosure in writing and refer the disclosure to your manager/supervisor
- if the disclosure is an oral disclosure about another public body, refer the person directly to the Protected Disclosure Coordinator of that public body or to IBAC
- if the disclosure is in writing, whether it is about the department or another public body, refer the correspondence to the Protected Disclosure Coordinator for an appropriate response, or
- if the disclosure is being made anonymously, refer the disclosure to the Protected Disclosure Coordinator.
- If an employee is unsure whether the complaint or report may be a protected disclosure, the employee should consult the Protected Disclosure Coordinator.

All employees have an important role to play in supporting those who have made a protected disclosure. Employees must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a protected disclosure. Employees must also protect and maintain the confidentiality of a person they know, or suspect, has made a protected disclosure. Taking detrimental action or disclosing the content or identity of a protected disclosure is an offence and may also be grounds for disciplinary action.

Managers/Supervisors

Managers and supervisors may receive protected disclosures from or about their direct reports. For the purposes of these procedures, managers and supervisors are also employees of the department and may receive protected disclosures as set out in paragraphs 2.1 to 2.5 above. Again, the person making a disclosure does not have to refer specifically to the Act or the protections found in the Act.

When a manager or a supervisor receives a disclosure, they are responsible for:

- making arrangements for disclosures to be made privately and away from the workplace if necessary
- receiving disclosures verbally or in writing and recording verbal disclosures in writing
- forwarding disclosures and supporting evidence to the Protected Disclosure Coordinator for assessment and assisting the Protected Disclosure Coordinator to assess the disclosure, and
- 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.

If a manager/supervisor is unsure whether the complaint or report may be a protected disclosure, the manager/supervisor should consult the Protected Disclosure Coordinator or the Deputy Coordinator.

In some circumstances, it may be necessary to report criminal conduct to Victoria Police for immediate investigation or to take action against an employee to prevent future conduct. In addition, a disclosure may disclose improper conduct that poses an immediate threat to the health and safety of individuals or preservation of property.

For example, a department employee may be concealing evidence of corrupt conduct. In these situations, the department may take immediate action before it has determined whether or not the disclosure meets all of the requirements in the Act to be a protected disclosure. A manager or supervisor should consult with the Protected Disclosure Coordinator prior to taking any action in such circumstances.

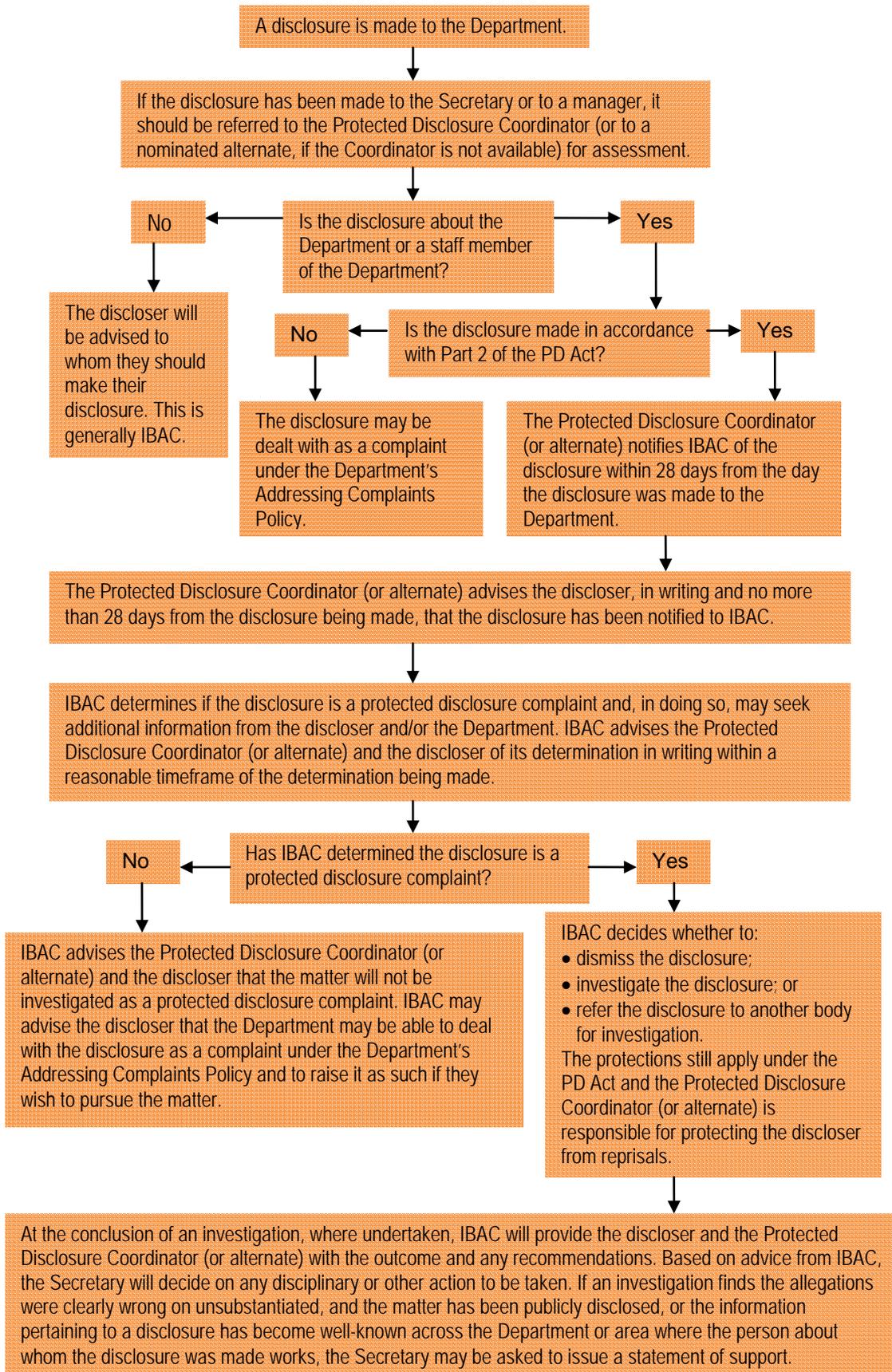
Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a central 'clearinghouse' role in the internal reporting system and is responsible for:

- giving general advice about the making of disclosures under the Act
- receiving disclosures from the Secretary of the department and managers/supervisors;
- receiving phone calls, e-mails and correspondence from members of the public making a disclosure
- assessing whether a disclosure meets all of the requirements in the Act to be a protected disclosure and an 'assessable disclosure' that must be notified to IBAC
- notifying IBAC, in writing, within 28 days of all assessable disclosures and, if required, providing to IBAC information obtained whilst assessing the disclosure
- within 28 days of receiving the disclosure, advising the person who made the disclosure (the discloser) whether or not their disclosure has been notified to IBAC
- if a disclosure is notified to IBAC, advising the discloser that it is an offence under the Act to inform anyone that the disclosure has been notified to IBAC
- if a disclosure is not notified to IBAC, dealing with the disclosure in accordance with the department's complaint handling process
- assessing and monitoring the welfare of the discloser and others involved in an assessable disclosure
- considering the appointment of a welfare manager
- liaising with managers/supervisors in situations where a disclosure discloses improper conduct that may constitute criminal conduct or poses an immediate threat to the health and safety of individuals or preservation of property, and
- maintaining confidentiality, including establishing a confidential filing system for disclosures.

Schedule 5 – Assessment and notification flow chart

Flow chart for disclosures made directly to the Department



Schedule 6 – Civil and criminal penalties under the Protected Disclosure Act

	Specific offences	Penalties	Limits on liability / defences
Criminal offences	Detrimental action		
	<p><i>Liability of an individual</i></p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> a protected disclosure has been made a person believes a protected disclosure has been made a person believes that another person intends to make a protected disclosure 	<ul style="list-style-type: none"> Criminal penalty: 240 penalty units¹ or 2 years imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage 	<ul style="list-style-type: none"> Reason for taking detrimental action is not a 'substantial' reason Discloser has made false disclosure or provided false information IBAC has determined the disclosure is not a protected disclosure complaint and the person taking the detrimental action knew about that determination
	<p><i>Vicarious liability of their employer</i></p> <p>Employer may also be held to be jointly and civilly liable for the detrimental action of their employee or agent</p>	As above	<ul style="list-style-type: none"> Public body proves on balance of probabilities that it took reasonable precautions to prevent the employee/agent from taking detrimental action Policies, procedures and systems will assist in establishing reasonable precautions have been taken
	Disclosure of content of an assessable disclosure		
	<p>A person/body must not disclose the content of an assessable disclosure or information about the content</p>	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both (person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in subsection 52(3) and section 54 of the PD Act
	Disclosure of identity of person making an assessable disclosure		
	<p>A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure</p>	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both (person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in subsection 53(2) and section 54 of the PD Act
Civil action	Detrimental action		
	<p>A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction</p>	<ul style="list-style-type: none"> Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages 	
	<p>Injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a protected disclosure</p>		

¹ Penalty units are used to define the amount payable for fines for many offences. The amount of one penalty unit is indexed and increases each year on 1 July. In Victoria, penalty units are set by the Treasurer. The current amount can be found at the Department of Treasury and Finance website (www.dtf.vic.gov.au)

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Document approval

This document requires the following approval:

Name	Title	Organisation
Damien O'Shea	Director – Information Integrity & Access	DJR

Audience

The audience for this document is DJR staff members and the Victorian public. It aims to establish procedures and provide guidance on the making and handling of disclosures relating to improper conduct or detrimental action by DJR or its staff.

Review

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

Reference material

Acronyms	Description
DJR	Department of Justice and Regulation
IBAC	Independent Broad-based Anti-corruption Commission
PAA 2004	Public Administration Act 2004