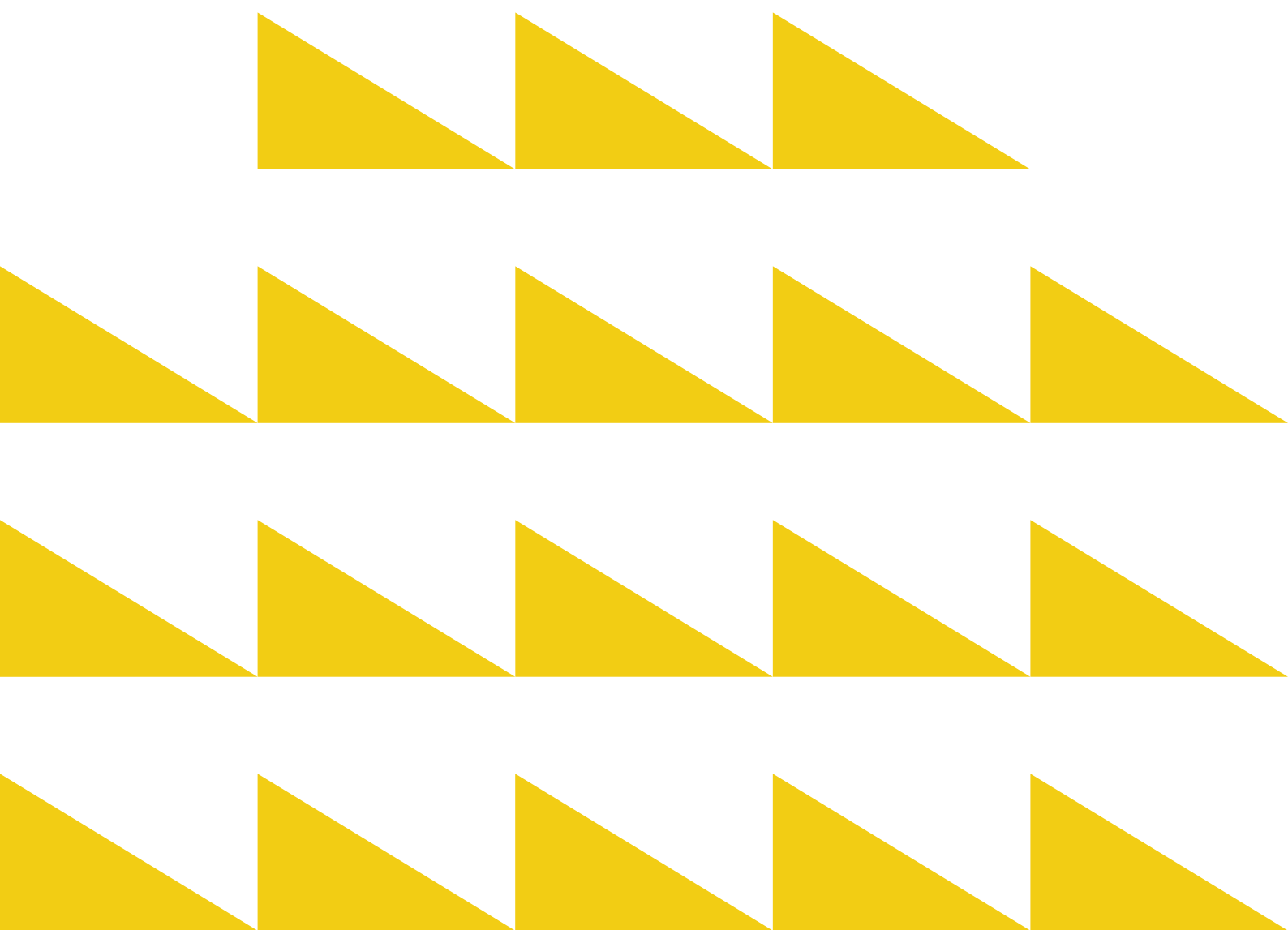


Guidelines for handling public interest disclosures

January 2020



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January 2020

IBAC is required to issue and publish guidelines under Part 9 of the *Public Interest Disclosures Act 2012* (Vic) (the PID Act). These guidelines are issued pursuant to section 57 of the PID Act.

These guidelines are not a substitute for reading the PID Act and Public Interest Disclosures Regulations 2013. It may be necessary to seek your own legal advice or advice from IBAC when determining how to handle disclosures or manage welfare for disclosers and others.

If you would like to receive this publication in an accessible format, such as large print or audio, please phone IBAC's Communication team on 1300 735 135, using the National Relay Service 13 36 77 if required, or email communications@ibac.vic.gov.au

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About the guidelines

This document provides guidance for people and organisations in the public sector that receive reports about improper conduct and detrimental action that may be public interest disclosures.

For the people who make genuine disclosures about improper conduct, it is critical that these disclosures are promptly and appropriately identified and handled.

These guidelines answer the following questions:

- What is a public interest disclosure?
- Who can make a disclosure – and to who?
- How do I assess if I have received a public interest disclosure?
- What do I do if I receive a disclosure?
- What protections does the *Public Interest Disclosures Act 2012* (PID Act) provide?
- What procedures do I need to have in place?

These guidelines should be read in conjunction with IBAC's 'Guidelines for public interest disclosure welfare management', available at www.ibac.vic.gov.au

Who should use these guidelines?

These guidelines are a resource for:

- Public Interest Disclosure Coordinators
- entities that can receive disclosures (including public service bodies and local councils)
- Victorian public sector organisations that cannot receive disclosures but may be the subject of a disclosure.

ABOUT IBAC

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

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

ABOUT THE PUBLIC INTEREST DISCLOSURES (PID) ACT

The PID Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for a public interest disclosure
- provide certain protections for people who make a disclosure or those who may suffer detrimental action in reprisal for a disclosure
- ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure and the content of that disclosure.

1 About public interest disclosures

1.1 What is a public interest disclosure?

Public interest disclosures are reports about:

- improper conduct of public bodies or public officers (such as corrupt conduct)
- detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- may have already taken place
- may be occurring now
- may happen in the future.

1.2 Who a public interest disclosure can be about

Disclosures can be made about:

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

Public bodies include:

- public sector bodies (including public entities and special bodies)
- incorporated or unincorporated bodies established under an Act 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 (for example, a regulatory function or a function that is publically funded).

Public officers include:

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

Further information about the types of public bodies and public officers about whom disclosures can be made is in the *Public Administration Act 2004*, and the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act).

Information can also be found on the Victorian Public Sector Commission website at vpssc.vic.gov.au

Someone can still make a disclosure even if they can't identify the person or the organisation to which the disclosure relates.

1.3 Who can make a disclosure

Anyone can make a disclosure about improper conduct or detrimental action – both members of the public and employees of a public body. However, to fall within the scheme, disclosures must be made to an organisation that is authorised to receive disclosures.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure—but its officers or employees can.

1.4 Organisations that can receive disclosures

Disclosures about some public bodies or officers must only be made to particular entities. For example, for PID Act protections to apply, disclosures about members of the Legislative Assembly must be made to the Speaker of the Legislative Assembly and disclosures about members of the Legislative Council must be made to the President of the Legislative Council.

WHERE TO MAKE DISCLOSURES ABOUT SPECIFIC PUBLIC BODIES OR OFFICERS

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

1 About public interest disclosures

Subject of the disclosure	Report to
A Public Interest Monitor	Victorian Inspectorate
An IBAC officer	
A Victorian Inspectorate Officer	Integrity and Oversight Committee, the Speaker of the Legislative Assembly or the President of the Legislative Council
Judicial officer or a member of VCAT who is not a judicial officer	IBAC or the Judicial Commission

If the subject of the disclosure is not listed in the table above, the disclosure can be made to the following organisations that are authorised to receive public interest disclosures.

ORGANISATIONS THAT CAN RECEIVE DISCLOSURES

Organisation	Officers who can receive disclosures
IBAC	<ul style="list-style-type: none"> • The Commissioner • A Deputy Commissioner • The Chief Executive Officer • An IBAC employee • An IBAC consultant
Victorian Ombudsman	<ul style="list-style-type: none"> • A Victorian Ombudsman officer
Victorian Inspectorate	<ul style="list-style-type: none"> • The Victorian Inspector • A Victorian Inspectorate employee
<p>Public service body</p> <p>Public service bodies can only receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about public sector bodies can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.</p> <p>See Appendix 1 for a list of public service bodies that are authorised to receive disclosures.</p>	<ul style="list-style-type: none"> • Head of the relevant public service body • A person defined in the public service body's procedures as a person who can receive a disclosure about that body, eg Public Interest Disclosure Coordinator • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure
<p>Council</p> <p>All councils can receive disclosures that relate to the conduct of themselves, or disclosures made by their own members, officers or employees. Disclosures about councils can also be made to IBAC, or to the Victorian Ombudsman or the Victorian Inspectorate.</p>	<ul style="list-style-type: none"> • Chief Executive Officer • A person identified in the council's procedures as a person who can receive a disclosure about that council, eg Public Interest Disclosure Coordinator • Manager or supervisor of the discloser • Manager or supervisor of the person who is the subject of the disclosure

Disclosures made to an organisation that is not authorised to receive public interest disclosures

If someone makes a disclosure to an agency that isn't authorised to receive public interest disclosures, the disclosure will not be protected under the PID Act. The person should be advised what organisations can receive disclosures.

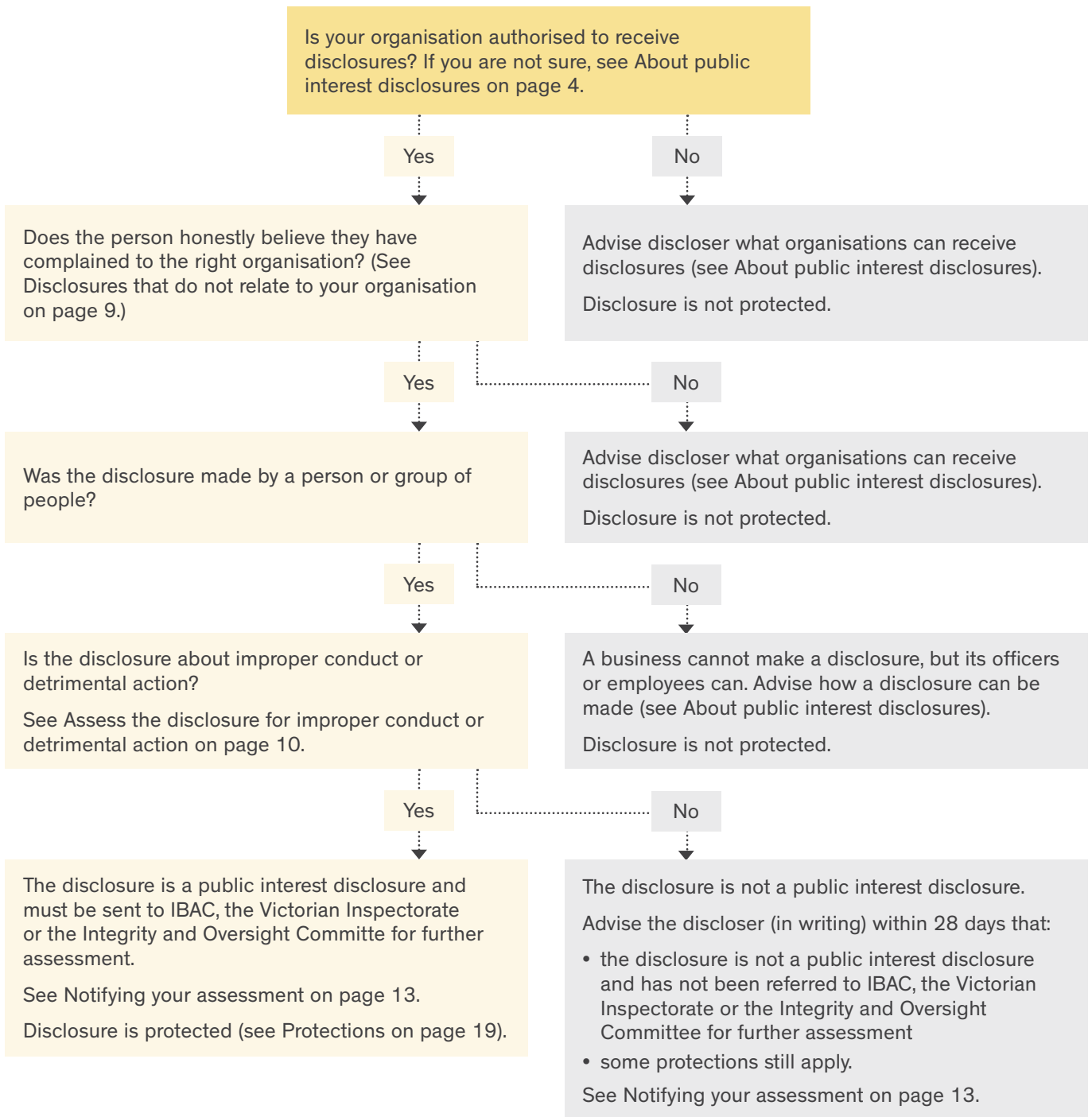
1.5 How a disclosure can be made

<p>Private verbal disclosure</p>	<p>Disclosures can be made in person, by phone or by leaving a voice mail message.</p> <p>Verbal disclosures must be made in private. This means the person making the disclosure must reasonably believe that only the following people (other than themselves) are present or able to listen to the conversation:</p> <ul style="list-style-type: none"> • a lawyer representing the person making the disclosure (if any) • one or more people to whom a disclosure can be made under the PID Act or PID Regulations. <p>This does not preclude a group of individuals from making a joint disclosure.</p> <p>If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but should give prior warning that the conversation will be recorded. The conversation should not be recorded if the discloser objects.</p>
<p>Written disclosure</p>	<p>A written disclosure can be provided to the relevant organisation by:</p> <ul style="list-style-type: none"> • delivering it in person to the office of the organisation • mailing it to the office of the organisation • emailing to the email address of the office of the organisation, or to the official email address of a person nominated to receive a disclosure in the organisation's procedures or in the PID Regulations • completing the online form available on the IBAC and the Victorian Ombudsman websites. <p>A disclosure cannot be made by fax.</p>
<p>Anonymous disclosure</p>	<p>A person doesn't need to identify themselves to make a disclosure.</p> <p>An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls, or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided the meeting or conversation takes place in private in accordance with the PID Regulations).</p> <p>If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.</p>

2 Handling disclosures

2.1 Assessing disclosures

This flow chart provides guidance for how a disclosure should be handled and how to decide if it is a public interest disclosure.



What to do if your organisation is not authorised to receive disclosures

Public bodies that are not authorised to receive disclosures will need to identify whether disclosures, reports or allegations made to them might be public interest disclosures. If so, they should advise the discloser how they can make a disclosure.

Disclosures that do not relate to your organisation (misdirected disclosures)

If your organisation is authorised to receive disclosures and someone makes a disclosure that is not about your organisation, how you handle the disclosure will depend on whether the person honestly believes they have complained to the right organisation:

Honestly believes it is the right organisation	Knows it is not the right organisation
Continue to assess the disclosure to decide if it is a potential public interest disclosure.	Advise the discloser what organisations can receive the disclosure. The disclosure is not protected under the PID Act.

EXAMPLE

The Department of Health and Human Services receives a disclosure from a person about the conduct of a hospital employee working at a Victorian public hospital.

This is not a disclosure about the department, but about a public health provider.

The disclosure cannot be made to the public hospital. The Department of Health and Human Services (which is authorised to receive disclosures) must assess if the disclosure is about improper conduct or detrimental action and if appropriate notify the matter to IBAC for determination.

2.2 Assess the disclosure for improper conduct or detrimental action

For an allegation or a report to be considered a public interest disclosure, it must tend to show improper conduct or detrimental action.

What is improper conduct?

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.

MORE INFORMATION ON SERIOUS PROFESSIONAL MISCONDUCT

Serious professional misconduct is not defined in the PID Act but a way to think about it is where there is a serious failure to exhibit the skills and experience required to perform the responsibilities of the office, as well as a serious breach of professional conduct expected in the workplace.

To identify whether serious professional misconduct has occurred, consider if:

- the person has behaved in a way that is inconsistent with the expectations, skills and responsibilities of their office
- the behaviour the person engaged in was in their capacity as a public officer
- the misconduct was serious.

Factors to consider when assessing whether misconduct is serious are:

- persistent, repeated or premeditated behaviour
- risks posed to others or the consequences of the behaviour (including for the public officer and others)
- the level of public trust and responsibility attached to the public office
- the amount of money involved in the wrongdoing
- how the conduct is perceived by the person's peers
- whether the conduct would result in significant disciplinary or potentially criminal penalties
- the size of the discrepancy between what the person should have done and what they did
- whether it should have been apparent to the person that they were wrong.

What is 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 public interest disclosure.

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.

A person doesn't need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so.

What to consider as part of your assessment:

- Consider both the nature of the detrimental action and whether it is being taken in reprisal for a public interest disclosure.
- Did the person take or threaten the action (or incite or permit another person to take or threaten the action) because (or in the belief) that:
 - the other person (or anyone else) has made, or intends to make, the disclosure
 - the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

The PID Act does not prevent a manager taking management action against a person who has made a disclosure provided that the making of the disclosure is not the reason for the management action being taken.

2 Handling disclosures

What standard needs to be applied?

The disclosure needs to be assessed to decide if it is about improper conduct or detrimental action. There are two standards that should be considered.

Shows or tends to show improper conduct or detrimental action	Reasonable belief that improper conduct or detrimental action has occurred
<p data-bbox="113 616 794 683">Does the information provided show or tend to show there is improper conduct or detrimental action?</p> <p data-bbox="113 694 794 728">Reliability of the information</p> <p data-bbox="113 739 794 828">In assessing if there is improper conduct or detrimental action, look at all the information provided about the alleged conduct and about the discloser:</p> <ul data-bbox="113 840 794 1198" style="list-style-type: none">• What is the discloser's connection to the alleged conduct? Are they a victim, a witness, or a participant?• How did they come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it?• How detailed is the information provided? Is there sufficient information to enable you to consider whether there is improper conduct or detrimental action?• How reliable is the information? Is it supported by other information?	<p data-bbox="801 616 1476 683">Does the discloser believe on reasonable grounds that improper conduct or detrimental action has occurred?</p> <p data-bbox="801 694 1476 728">Reasonable belief</p> <p data-bbox="801 739 1476 828">A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur.</p> <p data-bbox="801 840 1476 996">This requires more than a suspicion, the belief must have supporting facts and circumstances. For example, it would not be sufficient for a person's disclosure to consist simply of a one sentence statement like 'I know XYZ is corrupt'.</p> <p data-bbox="801 1008 1476 1108">The test is whether a reasonable person, possessed of the same information, could believe that the improper conduct had occurred.</p> <p data-bbox="801 1120 1476 1310">Other matters that can be considered to determine if there are reasonable grounds for the discloser's belief is the reliability of the information they have provided, even if it is second or third hand. You can consider how the person would have obtained the information and the amount of detail that has been provided.</p> <p data-bbox="801 1321 1476 1373">You can also consider the credibility of the discloser or the people who provided the discloser with information.</p>

2.3 Notifying your assessment

It is a public interest disclosure	It is NOT a public interest disclosure
<p>Notify the appropriate agency</p> <p>You must notify the appropriate agency in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> • the disclosure may be a public interest disclosure • you are sending the disclosure for assessment. <p>You may also provide the agency with any information you have obtained regarding the disclosure in the course of your inquiries. This information can be provided at the time of notification or at any later time.</p> <p>IBAC is the appropriate agency for all disclosures except the following:</p> <ul style="list-style-type: none"> • Disclosures about IBAC or the Public Interest Monitor must be notified to the Victorian Inspectorate. • Disclosures about the Victorian Inspectorate must be notified to the Integrity and Oversight Committee. <p>Notify the discloser</p> <p>You must notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment.</p> <p>See page 19 for protections that apply to public interest disclosures.</p>	<p>You must advise the discloser in writing, within 28 days after the disclosure was made, that:</p> <ul style="list-style-type: none"> • you do not consider the disclosure shows or tends to show improper conduct or detrimental action • the disclosure has not been sent to IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee for assessment • the discloser’s identity doesn’t have to be kept confidential, but protections under Part 6 of the PID Act apply, for example: <ul style="list-style-type: none"> – they can’t be fired, disciplined or bullied for making the disclosure – they are protected from legal actions such as defamation and civil liability. <p>You do not have to provide the discloser with this information unless the discloser has indicated, or it otherwise appears to you, that they wish to receive the protections that apply to a public interest disclosure under the PID Act.</p> <p>You should consider whether the disclosure could be dealt with according to your organisation’s normal complaint handling procedures.</p>

Can a discloser ask that a complaint not be dealt with as a public interest disclosure?

Yes. A discloser can advise that they do not want the disclosure treated as a public interest disclosure by stating so in writing at the time of making the disclosure or within 28 days of making the disclosure.

Protection for public officers

When a public officer acts in good faith and in accordance with the PID scheme, they do not commit an offence under section 95 of the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, and do not breach confidentiality obligations or information disclosure restrictions.

2.4 If urgent action is required while a disclosure is being assessed

In some circumstances, the disclosure may be about conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct.

Examples could include a child protection worker allegedly assaulting children in care, a council worker allegedly lighting bush fires, or a person threatening to poison the water supply.

In these cases, you can take immediate action while considering whether or not it is a disclosure that must be notified to IBAC. You can also take immediate action while awaiting IBAC's decision on a notified matter.

It may be necessary to report criminal conduct to Victoria Police for immediate investigation, or take management action against an employee to prevent future conduct.

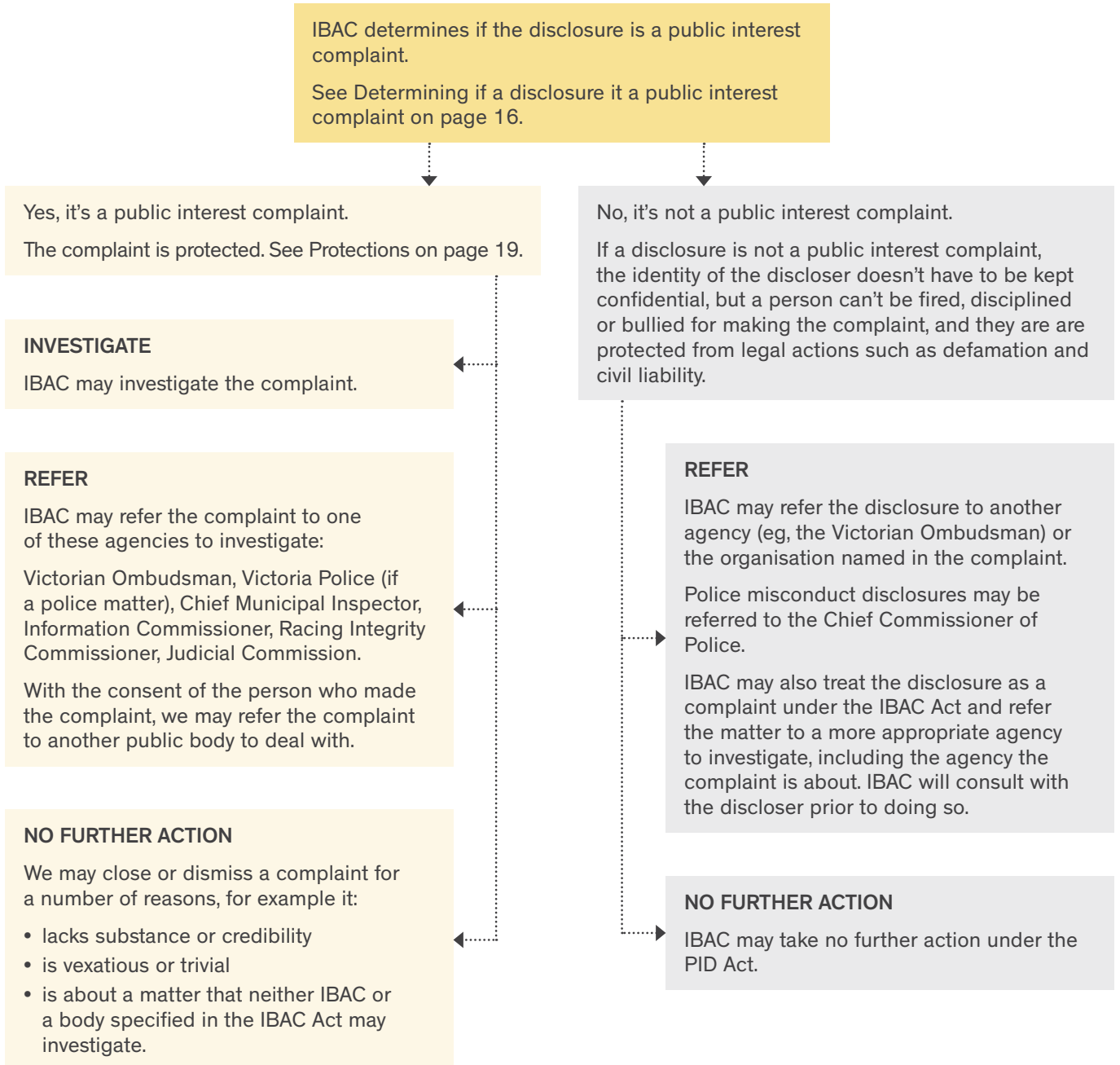
While the PID Act limits the release of information about disclosures, it allows you to disclose the content of the disclosure 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of a disclosure, including disciplinary process or action. However, this does not allow you to reveal the identity of the discloser.

There is also an exception that allows both disclosure content and the discloser's identity to be shared with 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.

3 IBAC assessment

3.1 What happens when IBAC is sent a disclosure

The following flow chart outlines what happens when IBAC receives a notification of a public interest disclosure from an organisation that is authorised to receive disclosures.



3.2 Determining if a disclosure is a public interest complaint

Once IBAC receives a notification, it must determine whether the disclosure is a public interest complaint.

In making its assessment, IBAC may seek additional information from the notifying entity or from the discloser.

If IBAC determines that a disclosure is a public interest complaint, it will investigate or refer a disclosure, or it may take no further action.

Notifying entities and the discloser of the determination

Once IBAC has determined whether a disclosure is a public interest disclosure, it:

- advises the relevant notifying entity of its determination
- advises the discloser of the determination and the action it intends to take (this applies to disclosers who have made their disclosures directly to IBAC and those who have had their disclosures notified to IBAC).

INFORMATION IBAC WILL PROVIDE TO A DISCLOSER FOLLOWING ITS DETERMINATION

If it is a public interest complaint	If it is NOT a public interest complaint
<p>IBAC must advise the discloser of the determination and the action it will take. This includes advising the discloser whether IBAC has decided to investigate or refer the complaint or take no further action.</p> <p>If IBAC decides to take no further action it must give reasons for its decision.</p> <p>If IBAC decides to investigate or refer the complaint it must provide a written statement advising the discloser that it is an offence to disclose IBAC's action.</p> <p>See Providing information at the end of an investigation on page 18 for more information.</p> <p>IBAC must notify the discloser in writing and within a reasonable time. However, IBAC may decide not to notify the discloser or the entity that has notified the disclosure if it considers that notifying would have one of the adverse consequences set out in subsection 59(4) of the IBAC Act. These adverse consequences include putting a person's safety at risk, or prejudicing an investigation under the IBAC Act.</p>	<p>IBAC must advise the discloser in writing within a reasonable time, that:</p> <ul style="list-style-type: none"> • IBAC has determined their disclosure is not a public interest complaint • the disclosure will not be investigated as a public interest complaint • their identity does not have to be kept confidential. <p>IBAC will advise the notifying entity of its determination.</p> <p>IBAC may also consider treating the disclosure as a complaint under the IBAC Act which engages its powers to refer the matter to a more appropriate agency to investigate, including the agency the complaint is about. IBAC will consult with the discloser prior to doing so.</p>

3.3 Investigating complaints

IBAC may choose to investigate the alleged conduct if it is corrupt conduct that is serious or systemic.

Confidentiality and welfare issues

During the investigation of a public interest complaint, IBAC or another investigating entity may need to contact the public body that is the subject of the complaint.

If so, the public body or public officer will be able to disclose information about the public interest complaint without breaching the confidentiality requirements of the PID Act.

IBAC or the relevant investigating entity may also disclose the identity of the discloser and the content of the complaint if necessary. If so, the public body or public officer to whom the information has been disclosed is bound by the confidentiality requirements of the PID Act (for further information about confidentiality see page 20).

In addition, if the public body or public officer is advised of the identity of the discloser, then they will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

If you would like information on how to manage the welfare of disclosers, witnesses and any person who is the subject of a public interest disclosure investigation refer to the 'Guidelines for public interest disclosure welfare management' available at www.ibac.vic.gov.au

3.4 Referring a complaint

IBAC may refer a public interest complaint to another investigating entity:

- Complaints about the conduct of a member of Victoria Police may be referred to the Chief Commissioner of Police.
- Other complaints may be referred to the Victorian Ombudsman, or depending on the nature of the complaint, the Judicial Commission, the Chief Municipal Inspector, the Racing Integrity Commissioner or the Information Commissioner. If there is another public body that may be more suited to investigating a complaint (for example, a council or Victorian Government department), IBAC may refer the complaint to that body if the person who made the complaint gives their consent.

3.5 No further action

If IBAC dismisses a public interest complaint, it must do so for reasons set out in section 68 of the IBAC Act, for example if the complaint:

- lacks substance or credibility
- is vexatious or trivial
- is about a the matter that neither IBAC or a body specified in the IBAC Act may investigate.

3.6 Providing information to the discloser at the end of an investigation

IBAC's obligations

IBAC must provide the discloser with information about the results of its investigation. This will include any action taken by IBAC and any recommendation by IBAC that action or further action be taken.

IBAC may provide written information to the relevant principal officer about the commencement, conduct or result of an investigation. This includes any actions taken and any recommendations for action or further action. However, IBAC must not provide any information that is likely to lead to a discloser being identified.

IBAC does not have to provide this information to either the discloser or the relevant principal officer if it considers the disclosure might result in any of the possible adverse outcomes specified in section 163(4) of the IBAC Act.

The Victorian Ombudsman's obligations

Where a complaint is referred to the Victorian Ombudsman for investigation, the Ombudsman must inform the discloser of the result of the investigation or other action taken, the recommendations made and comments on them (in certain specified circumstances). The Ombudsman may also disclose any additional information they consider proper to disclose.

The Victorian Ombudsman must not provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in section 24(3) of the *Ombudsman Act 1973*.

Chief Commissioner of Police's obligations

The Chief Commissioner of Police must inform the discloser of the outcome of the investigation unless they consider that to do so might result in any of the possible adverse outcomes specified in section 182 of the *Victoria Police Act*.

The Victorian Inspectorate's obligations

The Victorian Inspectorate must provide the discloser with information about the results of its investigation. This will include any action taken by the Victorian Inspectorate and any recommendation by the Victorian Inspectorate that action or further action be taken.

The Victorian Inspectorate must not provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in section 88(3) of the *Victorian Inspectorate Act 2011*.

The Chief Municipal Inspector's obligations

The Chief Municipal Inspector must inform the discloser of the results of the investigation and any other information that the Chief Municipal Inspector thinks proper.

The Chief Municipal Inspector must not provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in section 223BG(2) of the *Local Government Act 1989*.

The Racing Integrity Commissioner's obligations

The Racing Integrity Commissioner must inform the discloser of the results of the investigation and any other information that the Racing Integrity Commissioner thinks proper.

The Racing Integrity Commissioner must not provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in section 37Q(2) of the *Racing Act 1958*.

The Information Commissioner's obligations

The Information Commissioner must inform the discloser of the results of the investigation and any other information that the Information Commissioner thinks proper.

The Information Commissioner must not provide this information to the discloser if they consider that the disclosure might result in any of the possible adverse outcomes specified in section 61TG(2) of the *Freedom of Information Act 1982*.

4 Protections

4.1 Protections provided by the PID Act

Types of disclosures that are protected

- Any disclosure assessed as public interest disclosure (where the assessment has been made by an organisation that is authorised to receive disclosures). The protections apply even if the public body receiving the disclosure does not notify IBAC.
- Any notification that IBAC receives and determines to be a public interest complaint.

How the discloser is protected

- 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
- 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.

4.2 Confidentiality

Confidentiality is another way that disclosers and other people involved in public interest complaint investigations are protected.

There are two main restrictions on disclosing information. Breaching either of these restrictions is an offence (see Offences on page 22 for more information).

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

These restrictions and their exceptions are set out in sections 52, 53 and 54 of the PID Act.

Exceptions to confidentiality requirements

There are certain circumstance where the confidentiality requirements do not apply:

- 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.

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

Confidentiality doesn't apply if:

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

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

Confidentiality doesn't apply if the discloser gives written consent.

4.3 An employee may request a transfer of employment

An employee of a public service body or public entity who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

4.4 Limits on protections

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

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

The PID Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct.

A person who makes a disclosure is not protected against legitimate management action being taken in relation to them.

5 Offences

5.1 Disciplinary action against a person who has made a disclosure

Taking disciplinary or other action against a person who has made a disclosure creates the perception that it is being taken in reprisal for the disclosure.

Where disciplinary or other action is being contemplated, the Chief Executive Officer or other responsible public officer must be able to clearly demonstrate that:

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

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

A public body may therefore wish to obtain legal advice before taking any action against the person making a public interest disclosure.

Care should be taken to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The person making a public interest disclosure should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

See Appendix 2: Civil and criminal penalties under the PID Act.

6 Developing internal procedures

All public bodies must have procedures to protect people against detrimental action being taken because someone makes a disclosure.

If your organisation can receive public interest disclosures, you must also have effective procedures to facilitate the making of disclosures, and to receive and manage disclosures (including notifications to IBAC).

Procedures for entities that can receive public interest disclosures

Bodies that can receive public interest disclosures should have:

- Secure information management systems for the receipt, storage, assessment and notification of disclosures. These systems will include an internal reporting structure and will identify the roles and responsibilities of those in that reporting structure.
- A secure process for receiving disclosures.
- A means of identifying a person (or persons) who can receive disclosures (known as a Public Interest Disclosure Coordinator).
- A secure means of notifying IBAC of assessable disclosures.
- Education for selected staff in the receipt, handling, assessment and notification of disclosures.
- Education and training for selected staff in the welfare management of those associated with a public interest disclosure.
- A way to collect and collate statistics on public interest disclosures for annual reporting.

Procedures must be consistent with the PID Act, the Public Interest Disclosure Regulations 2013 and guidelines issued by IBAC (collectively referred to as the PID Scheme). Except for the procedures of the Victorian Inspectorate, the Victorian Ombudsman and the Integrity and Oversight Committee, IBAC may review procedures at any time to ensure they are consistent with the PID Scheme.

Read 'Public interest disclosure procedures: key issues to consider' for guidance about developing public interest disclosure procedures for your organisation. It is available at www.ibac.vic.gov.au/pid under the page for Public Interest Disclosure Coordinators.

THE FREEDOM OF INFORMATION ACT

Documents may not be subject to the *Freedom of Information Act 1982* if they disclose information that:

- relates to a public interest disclosure or police complaint disclosure
- is likely to identify a person who has made a public interest disclosure.

Public bodies should ensure that any officers handling freedom of information requests are aware of this section.

A public body should contact IBAC before providing any document originating from IBAC or relating to a public interest disclosure, if requested under the Freedom of Information Act.

Appendices

Appendix 1: Public service bodies that can receive disclosures

'Public service body' is defined in the *Public Administration Act 2004* to mean 'a Department, an Administrative Office, or the Victorian Public Sector Commission'.

Government Departments

Department of Education and Training

Department of Environment, Land, Water, Water and Planning

Department of Health and Human Services

Department of Jobs, Precincts and Regions

Department of Justice and Community Safety

Department of Premier and Cabinet

Department of Transport

Department of Treasury and Finance

Victorian Public Sector Commission

Administrative Offices

Family Safety Victoria

Latrobe Valley Authority

Local Government Inspectorate

Major Transport Infrastructure Authority

Office of the Chief Parliamentary Counsel (OCPC)

Office of the Governor

Office of Projects Victoria

Office of the Victorian Government Architect

Public Record Office Victoria (PROV)

Safer Care Victoria: the Office for Safety and Quality Improvement

Service Victoria

Victorian Agency for Health Information

Victorian Government Solicitors Office (VGSO)

Appendix 2: Civil and criminal penalties under the PID Act

Specific offences	Penalties
Detrimental action	
<p>Liability of an individual</p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • another person has made or intends to make a public interest disclosure • the person believes another person has made or intends to make a public interest disclosure • another person has cooperated or intends to cooperate with the investigation of a public interest disclosure • the person believes another person has cooperated or intends to cooperate with the investigation of a public interest disclosure 	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
<p>Vicarious liability of their employer</p> <p>An employer may also be held to be liable for the detrimental action of their employee or agent</p>	<p>Criminal penalty: 240 penalty units or two years imprisonment or both</p> <p>AND (if person is convicted or found guilty of an offence) possible order of court for reinstatement or reemployment of person subjected to detrimental action.</p> <p>Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage.</p>
Disclosure of content of a public interest disclosure or police complaint disclosure	
<p>A person/body must not disclose content of a disclosure or information about its content</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months imprisonment or both (person) • 600 penalty units (body corporate)
Disclosure of identity of person making a public interest disclosure or police complaint disclosure	
<p>A person/body must not disclose information likely to lead to the identification of a person who has made a disclosure</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate)
Making false disclosure or providing false further information	
<p>A person must not provide information intending it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading</p>	<p>120 penalty units or 12 months imprisonment or both</p>
Falsely claiming a disclosure is a public interest disclosure	
<p>A person must not falsely claim a matter is the subject of a public interest disclosure or the subject of a disclosure determined to be a public interest disclosure</p>	<p>120 penalty units or 12 months imprisonment or both</p>

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