



## PUBLIC INTEREST DISCLOSURES PROCEDURE

### 1. Overview

The *Public Interest Disclosures Act 2012* (Vic) (the Act) aims to make the public sector more open and accountable by encouraging people to report improper conduct. The Act ensures that people who report improper conduct and corruption in the Victorian public sector (whistleblowers) can do so in the knowledge that they will be protected.

The Family Violence Prevention Agency (operating as Respect Victoria) is committed to the aims and objectives of the Act.

This document describes the principles and procedures for receiving and handling public interest disclosures.

This procedure applies to all Respect Victoria directors, employees and contractors.

The procedure has been prepared in accordance with the Act and guidelines issued by the Independent Broad-based Anti-Corruption Commission (IBAC), which are available on the [IBAC website](#).

### 2. What is a public interest disclosure?

A public interest disclosure is a report made by an individual or group of individuals about:

- improper conduct of public bodies or public officers
- 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 a public interest disclosure investigation.

A disclosure can relate to conduct or action that:

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

The Family Violence Prevention Agency (operating as Respect Victoria) is a public body, and its employees are public officers.

### 3. Who can make a public interest disclosure?

Any individual or group of individuals can make a public interest disclosure. This includes members of the public, and employees of Respect Victoria.

A company or business cannot make a public interest disclosure, but its officers or employees can.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'public interest disclosure'. You may also advise that you do not want your disclosure to be treated as a 'public interest disclosure' when making your disclosure or within 28 days of making the disclosure.

## 4. How do I make a public interest disclosure?

You may make a public interest disclosure:

- in person
- by phone, or by leaving a voicemail message
- in writing by post, personal delivery, or email.

You may not make a public interest disclosure by fax.

**Anonymous disclosures:** 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.

**Disclosures by proxy:** You can ask someone else to make a disclosure on your behalf. However, if someone else makes 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.

A public interest disclosure must be made in private, so it is important that only the person to whom you are making the disclosure can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent only to the email address of the person to whom you are making the disclosure, rather than a group email.

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

## 5. What can I make a public interest disclosure about?

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

- a person, **public officer** or **public body** has engaged, is engaging or proposes to engage in **improper conduct**
- a **public officer** or **public body** has taken, is taking or proposes to take **detrimental action** against a person.

### 5.1 – Definitions

#### 5.1.1 Public officer and public body

The conduct you are disclosing must relate to 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' include Respect Victoria and 'public officers' include its employees.

For a full definition of 'public body' and 'public officer' see Schedule 1 of this document.

#### 5.1.2 Improper conduct and detrimental action

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

## Improper Conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in section 4 the Act. If the conduct is trivial, it will not meet the threshold of improper conduct.

When assessing allegations of improper conduct, there must be a link between the conduct and the official function of a public officer.

Improper conduct includes:

- Corrupt conduct, such as committing fraud, taking or offering bribes, awarding contracts to family or friends, and using or leaking privileged information for personal benefit.
- 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
  - 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 public functions
  - 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 any of the following that they would not have otherwise obtained:
    - 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
- Conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

### **EXAMPLES OF IMPROPER CONDUCT**

- A public officer takes a bribe or receives a payment other than their wages in exchange for the discharge of a public duty.
- A public officer employee sells confidential information.
- A public officer employee favours unmeritorious applications for jobs or permits by friends and relatives.

## Detrimental Action

Detrimental action is action taken against someone who has made a public interest disclosure, including:

- 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 disciplinary action).

However, 'detrimental action' is not legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

### EXAMPLES OF DETRIMENTAL ACTION

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

### 5.1.3 Reasonable grounds

Your belief that improper conduct or detrimental action has occurred, is occurring, or will occur does not have to be based on actual proof. It is enough if you believe (as opposed to know) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have reasonable grounds for your belief.

A mere suspicion, 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.

## 6. To whom do I make my public interest disclosure?

### DISCLOSURES ABOUT RESPECT VICTORIA

The Family Violence Prevention Agency (operating as Respect Victoria) is **not** a public body able to receive public interest disclosures under the Act. Disclosures about Respect Victoria or any of its employees and/or officers should be made directly to:

Independent Broad-based Anti-Corruption Commission (**IBAC**)

Assessment and Review Unit

GPO Box 24234

MELBOURNE VIC 3001

Telephone: 1300 735 135

Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

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

If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will not be a public interest disclosure and you will not be protected under the Act. It is therefore important that you check that you are providing your disclosure to the right person or body. If in doubt, disclosures should be made directly to IBAC (using the contact details above), unless the disclosure is about IBAC or one of its officers.

## 6.1 Misdirected disclosures

A public interest disclosure made to a wrong receiving entity can be redirected to a correct receiving entity without the discloser losing the protection of the Act. However, the wrong receiving entity must be an entity to which a public interest disclosure may usually be made and the person making the disclosure must honestly believe that the wrong receiving entity was the appropriate entity to receive the disclosure.

A misdirected public interest disclosure does not apply if it concerns Members of Parliament. Public interest disclosures about Members of Parliament must still be made to the President of the Legislative Council for members of the Legislative Council and to the Speaker of the House for members of the Legislative Assembly.

## 6.2 Permitted external disclosures

A person who has made a public interest disclosure may make further disclosure of that matter to external parties (such as the media and politicians) if:

- the original disclosure was not made anonymously
- the original disclosure was determined to be a public interest complaint; the discloser was notified of that determination; and one of the following applies:
  - The discloser has not been notified of any action in relation to the disclosure within six months of the determination and has not received a response 30 days after requesting an update on progress.
  - An investigation has not been completed 12 months after the determination and the discloser has not received a response 30 days after requesting an update on progress.
  - An investigation has not been completed 12 months after determination and although the discloser has received a response within 30 days of a request for an update, the discloser has received no further update advising the investigation has been completed six months after that response.

Any external disclosure in accordance with the above must not contain information that might prejudice a criminal investigation or legal proceeding of which the discloser is aware and must not contain information about the investigative methods of IBAC or the police.

# 7. What will happen after I make a disclosure?

IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector. If IBAC determines that your disclosure is a public interest disclosure, it must decide to either:

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

Regardless of whether IBAC determines your disclosure is a public interest 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 public interest disclosure, the confidentiality requirements set out in these procedures no longer apply in relation to your disclosure. You will be advised the outcome of the IBAC determination.

## 8. 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:

- a discloser cannot be dismissed, disciplined or bullied for making a disclosure
- 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
- protection from an action for defamation regarding information included in a public interest disclosure.

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

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

- IBAC
- an investigating entity.

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

## 9. Welfare management

Respect Victoria recognises that the welfare and protection from detrimental action of persons making genuine public interest disclosures is essential for the effective implementation of the Act. In addition, Respect Victoria has obligations to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* (Vic) and the common law.

Respect Victoria will provide welfare support to a discloser or a witness in an investigation as the circumstances require, in line with IBAC's [Guidelines for Public Interest Disclosure Welfare Management](#). Respect Victoria will also consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure. A welfare manager is responsible for monitoring the specific needs of the discloser or witness and providing them with practical advice and support.

In determining whether to appoint a welfare manager in any particular case, Respect Victoria 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 Respect Victoria can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure
- whether it is within Respect Victoria's power to protect the person/s involved from suffering repercussions, and respond swiftly and fairly to any allegations the person has suffered retribution.

Respect Victoria may appoint an internal person as welfare manager or engage a contractor to provide welfare services. Respect Victoria 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 will discuss the reasonable expectations with the person(s) they are supporting.

## 10. Protection from detrimental action

Respect Victoria will take precautions to prevent its employees and agents from taking detrimental action in reprisal for a public interest disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by Respect Victoria 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.

A disclosure of detrimental action can itself be a public interest disclosure and, in those circumstances, may be reported to IBAC or the Ombudsman in line with this policy.

If you are an employee who has made a public interest disclosure and you believe on reasonable grounds that detrimental action will be, is being, or has been taken against you, you may request a transfer of employment to another government agency on terms and conditions that are no less favourable overall to you. Note that all requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:

- the Chair of the Respect Victoria Board must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you
- the Chair of the Board must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action
- the head of the 'receiving' government agency must consent 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 protections under the Act, there are also responsibilities. You must not take detrimental action against another person in reprisal for a public interest disclosure and, if you have been involved in the improper conduct or detrimental action that 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 which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act.

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

Respect Victoria recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide welfare support during the handling and investigation of a disclosure as the circumstances require.

Respect Victoria 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.

## 12. Confidentiality

### 12.1 Confidentiality requirements

There are a number of confidentiality obligations under the Act and other laws relating to the receipt and investigation of public interest disclosures. If a public interest disclosure is made to you, or if you receive information about a public interest disclosure, then you must keep it confidential.

If you are a discloser and you repeat your disclosure to someone other than as provided by these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. If you are considering disclosing information about your disclosure, you may wish to obtain legal advice first.

Respect Victoria 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 except in certain circumstances. Confidentiality regarding disclosure of your identity when making a public interest disclosure won't apply if you give written consent to such disclosure.

### 12.2 Exceptions to confidentiality requirements

In some circumstances, confidentiality requirements do not apply. These include:

- in accordance with a direction or authorisation given by the entity 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 processes or actions
- IBAC, the Victorian Inspectorate, or the Integrity & Oversight Committee has determined that the disclosure is not a public interest 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 processes or actions in relation to conduct that would constitute an offence
- for the purpose of obtaining legal advice or representation
- for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program



- if the disclosure is to WorkCover for a workers' compensation claim or to the Fair Work Commission for an application
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act
- 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.

The Act also prohibits disclosing information that is likely to lead to identification of a person unless permitted to do so in accordance with the Act.

IBAC or the relevant investigating entity may disclose a person's identity and the content of their disclosure if it is necessary for the purposes of 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.

## 13. Criminal offences

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. It is an offence to:

- take detrimental action against another person in reprisal for a public interest disclosure
- disclose the content, or information about the content, of a disclosure
- disclose information which is likely to lead to the identification of a person who has made a disclosure
- disclose that a disclosure has been notified to IBAC for assessment
- disclose that a disclosure has been determined to be a public interest complaint.

In addition, it is an offence for any person to:

- provide false or misleading information, or further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure
- claim that a matter is the subject of a public interest disclosure knowing the claim to be false
- falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint.

## 14. Alternatives to making a public interest disclosure

These procedures are designed to complement usual methods of submitting complaints to Respect Victoria. Members of the public are encouraged to use Respect Victoria's feedback process to communicate complaints or concerns with the services provided by Respect Victoria.

Employees are encouraged to raise matters with their supervisors and managers at any time.

## 15. Policy Review

This procedure will be reviewed regularly to ensure it meets the objectives of the Act and accords with IBAC's guidelines.

# SCHEDULE 1 - WHAT IS A PUBLIC BODY AND WHAT IS A PUBLIC OFFICER?

A public body is:

1. a public sector body within the meaning of s 4(1) of the *Public Administration Act 2004*
2. a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university
3. the Electoral Boundaries Commission constituted under the *Electoral Boundaries Commission Act 1982*
4. a Council
5. 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)
6. any other body or entity prescribed for the purposes of this definition.

A public officer is:

1. a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the *Public Administration Act 2004*
2. a person to whom a provision of the *Public Administration Act 2004* applies as a result of the application of Part 7 of that Act
3. an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*
4. a judicial employee employed under Division 3 of Part 6 of the *Public Administration Act 2004*
5. a Ministerial officer employed under Division 1 of Part 6 of the *Public Administration Act 2004*
6. an electorate officer within the meaning of the *Parliamentary Administration Act 2005*
7. a Parliamentary adviser employed under Division 2 of Part 6 of the *Public Administration Act 2004*
8. a Parliamentary officer within the meaning of the *Parliamentary Administration Act 2005*
9. a member of Victoria Police personnel
10. a responsible Minister of the Crown
11. a member of the Legislative Assembly or the Legislative Council
12. a Councillor within the meaning of section 3(1) of the *Local Government Act 1989*
13. a member of Council staff employed under the *Local Government Act 1989*
14. a judge, a reserve judge, a magistrate, a reserve magistrate, a coroner or a member of VCAT
15. an associate judge or a judicial registrar
16. a Crown Prosecutor
17. the Chief Crown Prosecutor

18. the Director of Public Prosecutions
19. the Governor, the Lieutenant-Governor or the Administrator of the State
20. the Auditor-General
21. the Ombudsman
22. the Electoral Commissioner
23. the holder of any other statutory office or any other prerogative office
24. any other person in the service of the Crown or a public body
25. 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)
26. 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
27. 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.