

The Protected Disclosure Act 2012 (the Act)

1. Establishes the Independent Broad-based Anti-corruption Commission (IBAC) and facilitates the making of disclosures about corrupt or improper conduct by public bodies, or public officers and individuals who may seek to influence public officers.
2. Prescribes a system for such matters to be confidentially disclosed and impartially investigated.
3. Provides the discloser and their family with protection from detrimental action.

This document has been prepared in accordance with the Act and the guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) which are available on the IBAC website (www.ibac.vic.gov.au).

Purpose

The purpose of this document is to describe the management of protected disclosures by DELWP.

Definitions

Corrupt conduct means:

- conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions
- the performance of a public officer functions dishonestly
- conduct of a public officer, former public officer or a public body that amounts to a breach of public trust
- conduct by a public officer, former public officer or a public body that amounts to the misuse of information or material acquired in the course of their official functions
- a conspiracy or attempt to engage in the above conduct.

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.

Improper conduct: means conduct that is corrupt, a substantial mismanagement of public resources or conduct involving substantial risk to public health or safety or to the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

Protected disclosure: means a complaint made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the *Protected Disclosures 2012 Act* (Vic).

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Principal Officer: Obligated to notify IBAC when there are reasonable grounds to suspect corruption is occurring or has occurred in agency.

Protected Disclosure Coordinator: Nominated to receive and notify IBAC of potential protected disclosures. Fosters a supportive work environment and manages the impact of any investigation.

Protected Disclosure Officer:

Roles and Responsibilities

Employees

Employees should report known or suspected incidents of corrupt conduct, improper conduct, or detrimental action to the Protected Disclosure Coordinator (see below).

Members of the public or clients/users of the department's services may also 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.

If an employee receives what he or she believes may be a protected disclosure, because the matter relates to corrupt or improper conduct, the employee must treat the disclosure in the following way:

- if the disclosure is a verbal disclosure about the department or a departmental employee, refer the disclosure immediately, to the Protected Disclosure Coordinator and keep the information strictly confidential.
- if the disclosure is a verbal 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 DELWP or another public body, refer the correspondence to the Protected Disclosure Coordinator immediately for an appropriate response.
- if the disclosure is being made anonymously, immediately refer the disclosure to the Protected Disclosure Coordinator. If in doubt consult the Protected Disclosure Coordinator.

All employees have an important role to play in supporting those who have made a protected disclosure. Employees must maintain the confidentiality of a disclosure they have referred, or suspect has been made. It is an offence under the Act to disclose the content or identity of a protected disclosure. All 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. Taking detrimental action is also an offence and may be grounds for disciplinary action.

Managers/Supervisors

Managers and supervisors are also employees of the department and may, in the performance of their duties receive disclosures from staff or the public, that may be protected disclosures due to their serious nature. 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 suspect of being a protected disclosure, they are responsible for:

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- forwarding disclosures and supporting evidence to the Protected Disclosure Coordinator, immediately, for assessment and providing any information the Protected Disclosure Coordinator may need to assess the disclosure
- taking necessary steps to ensure both the identity of the person who made the disclosure and the person who is the subject of the disclosure are kept confidential.

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

Where suspected corrupt or improper conduct poses an immediate threat to the health and safety of individuals or preservation of property, the department may need to 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. 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 dangerous or unlawful conduct. A manager or supervisor must consult with the Protected Disclosure Coordinator prior to taking any action in such circumstances.

Key Contacts

Protected Disclosure Coordinator	Protected Disclosure Officer
Primary Contact Kim Reeves Telephone: (03) 9637 9730 1800 903 877	Secondary Contacts Stuart Atkins - (03) 9637 8331 Ari Perlow - (03) 9637 8394
Confidential email: protected.disclosures@delwp.vic.gov.au	

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

- educating all staff regarding their responsibilities regarding protected disclosures
- giving general advice about the making of disclosures under the Act
- receiving disclosures from the public, officers of the department, the Secretary of the department
- receiving phone calls, e-mails and correspondence from members of the public wishing to make a protected 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 receiving all assessable disclosures and, if required, providing to IBAC information obtained whilst assessing the disclosure
- advising the person who made the disclosure (the discloser) whether or not their disclosure has been notified to IBAC within 28 days of receiving the disclosure
- 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

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- assessing and monitoring the welfare of the discloser and others involved in an assessable disclosure
- 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
- maintaining confidentiality,
- establishing and maintaining a confidential filing system for disclosures
- collating statistics about the number of protected disclosures received by the department for the annual report.

The Protected Disclosure Officer may also receive protected disclosures and will act on behalf of the Protected Disclosure Coordinator when necessary.

Welfare Manager

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 *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* and the common law.

The department will provide welfare support to a discloser or witness of a protected disclosure. Where appropriate the department will appoint a welfare manager, when a person has made a protected disclosure and/or is cooperating, or intending to cooperate, with an investigation of a protected disclosure. The department will also consider referring an employee to its Employee Assistance Program.

The welfare manager is responsible for:

- identifying the discloser's 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
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

In determining whether it is appropriate 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.

When 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.

Management of a Disclosure

Dealing with 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 potential 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.

Any reports of harassment, discrimination or adverse treatment may amount to detrimental action, and therefore should be made to the Protected Disclosure Coordinator. A disclosure of detrimental action is, itself, a protected disclosure and will be assessed by the Protected Disclosure coordinator.

Where the detrimental action is of a serious nature, that is, likely to amount to a criminal offence, it will be necessary to consider reporting the matter to the police. In these situations, the Protected Disclosure Coordinator will consult with a manager/supervisor the welfare manager and the Executive Director's of Legal Services Division and People and Culture Division, prior to taking any action.

If an employee has made a disclosure and believes on reasonable grounds that detrimental action is being taken against them as a result, they may request a transfer of employment. The request will only be granted if:

- the Secretary has reasonable grounds to suspect detrimental action has, is or will be taken against the employee
- the Secretary considers that the transfer will avoid, reduce or eliminate the risk of detrimental action
- the head of the proposed public body consents to the transfer.

The transfer can be temporary or permanent and the employee's service in the new public body is regarded as continuous with their pre-transfer service.

Managing a disclosure where the discloser is implicated in the conduct and/or detrimental action disclosed

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 *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* as well as the common law.

The department will provide welfare support to a discloser or witness. The department will appoint a welfare manager when a person has made a protected disclosure or is co-operating, or intending to co-

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operate, with an investigation of a protected disclosure. The department may also consider referring an employee to its Employee Assistance Program.

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
- whether it is within the department's power to protect the person/s involved from suffering repercussions.

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.

Dealing with persons who are the subject of protected disclosures

The department will protect the confidentiality of persons who are the subject of protected disclosures regardless of whether the allegations are ultimately substantiated or not.

Not all persons who are the subject of a disclosure will need to be informed about the disclosure. For example, the subject of a disclosure may not be informed of the disclosure, if that disclosure/complaint is dismissed without investigation.

The department may give information about the disclosure to the person who is the subject of the disclosure if it is directed or authorised to do so by IBAC, or the body investigating the disclosure, or for the purpose of taking lawful action with respect to the conduct alleged, including disciplinary action.

IBAC, or the investigating body may give information about the disclosure to the person who is the subject of a disclosure in the course of its investigation, or prior to any actions it proposes to take as a result of its investigation.

The department and IBAC or any other investigating body, will take steps to ensure that there are no adverse consequences for persons who are the subject of protected disclosures that are ultimately unsubstantiated.

Managing protected disclosure information

The Protected Disclosure Coordinator will keep all files relating to a protected disclosure, whether paper or electronic, in a locked cabinet that can only be accessed by the Protected Disclosure Coordinator and the Protected Disclosure Officer.

All printed material held in the department concerning protected disclosure matters will be kept in files that are clearly marked as a Protected Disclosure Act matter, and warn of the criminal penalties that apply to any unauthorised person disclosing information concerning a protected disclosure. This includes the content of a protected disclosure or the identity of a discloser.

All electronic files will be stored outside the department's computer network and be given password protection. These records will not be held on any electronic document management system or content management system that resides on the department's network.

Care will be taken when emailing information relevant to a protected disclosure matter and all phone calls and meetings will be conducted in private. Additionally, hard copy documents for transmission will



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be placed in two successive windowless envelopes which are sealed and marked “private and confidential” and “to be opened by addressee only”, and personally delivered wherever possible.

Collating and publishing statistics

The department is required to collect and publish in its annual report, for each financial year, information about:

- how to access the procedures established by the department under the Act; and
- the number of disclosures notified to IBAC for determination.

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Overview

Who can make a disclosure?	<p>Any individual or group of individuals.</p> <p>A disclosure cannot be made by a business or company.</p>
How do I make a disclosure?	<p>Verbally or in writing (but not by fax) to IBAC or the DELWP Protected Disclosure Coordinator (see below).</p>
What can I make a disclosure about?	<p>Corrupt or improper conduct and/or detrimental action taken by, public bodies or public officers performing public functions and members of the public seeking to improperly influence public officers.</p> <p>This includes the department and/or its officers or members of the public in relation to the agency.</p>
Who can I make a disclosure to?	<p>If you wish to make a protected disclosure about this department or any of its employees and/or officers, or an individual who may be seeking to influence the department or its officers you may contact:</p> <p>Protected Disclosure Coordinator Department of Environment, Land, Water and Planning PO Box 500 East Melbourne 8002</p> <p>Telephone: 1800 903 877 Email: protected.disclosures@delwp.vic.gov.au</p> <p>or</p> <p>Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000</p> <p>PO Box 24234 Melbourne VIC 3001</p> <p>Telephone: 1300 735 135 Website: www.ibac.vic.gov.au</p> <p>If you wish to make a disclosure about any other statutory entity that falls within the department's portfolio, you should make your disclosure to IBAC.</p>

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Disclosures about unrelated entities:

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

IBAC

or

The Victorian Ombudsman
Level 2
570 Bourke Street
Melbourne Vic 3000
DX: 210174

Telephone: (03) 9613 6222 / 1800 806 314

Website: www.ombudsman.vic.gov.au

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 the Victorian Civil and Administrative Tribunal (VCAT)
- A judicial employee
- A ministerial officer

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.

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