

Protected Disclosure Procedures

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Summary guide

<p>Who can make a disclosure?</p>	<p>Any natural person A group of natural persons A disclosure cannot be made by a business or company</p>
<p>How do I make a disclosure?</p>	<p>Verbally (in person, by phone) In writing (post, personal delivery) Electronic communication (but not fax) A disclosure may be made anonymously</p>
<p>What can I make a disclosure about?</p>	<p>Information which shows or tends to show:</p> <ul style="list-style-type: none"> • A person, public officer or public body has engaged in, is engaging in, or proposes to engage in Improper Conduct (which includes both 'corrupt conduct' and 'specified conduct') • A public officer or public body has taken, is taking or proposes to take detrimental action against a person
<p>What protections are available?</p>	<p>If the disclosure meets all of the statutory criteria and is made in accordance with the correct statutory process, the discloser:</p> <ul style="list-style-type: none"> • Is protected from civil or criminal liability or administrative action (including disciplinary proceedings), • Is not committing an offence under any legislation that imposes an obligation of confidentiality, and • Cannot be held liable for defamation in respect of the information included in the disclosure.
<p>To whom can I make a disclosure?</p>	<p>If you wish to make a protected disclosure about the State Revenue Office (SRO) or any of its employees and/or contractors, you must contact:</p> <p>The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne VIC 3000 GPO Box 24234 Melbourne VIC 3001 Phone: 1300 735 135 Website: www.ibac.vic.gov.au</p>
<p>More information</p>	<p>For more general information about the protected disclosure regime, you may contact:</p> <p>Paula Thorne Protected Disclosure Coordinator Executive Director, Policy, Advisory and Legal Services State Revenue Office GPO Box 1641 Melbourne VIC 3001 Phone: 9628 6105 Email: paula.thorne@sro.vic.gov.au</p> <p>If you want to discuss details of a potential protected disclosure, it would be prudent for you to do so directly with IBAC. Disclosures that have been revealed to entities that are not authorised to receive protected disclosures under the <i>Protected Disclosure Act 2012</i> may neither be protected nor investigated by IBAC. Disclosures relating to SRO employees and officers that are assessed by IBAC as not protected disclosures may be dealt with in accordance with SRO's Fraud and Corruption Management Policy, Managing Misconduct Policy, Complaints Process or other applicable internal policies and procedures.</p>

1 Background

The State Revenue Office (SRO) is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the **PD Act**).

- 1.1 The SRO encourages employees, and members of the public, to report known or suspected incidences of corrupt or improper conduct. We do not tolerate improper conduct (including corrupt conduct) by our staff, and we do not take reprisals against those who come forward to disclose such conduct.
- 1.2 If you wish to report that the SRO (including our staff and contractors) has engaged in corrupt or improper conduct, to ensure that you are covered by the protections enshrined in the PD Act, you must report such conduct directly to the Independent Broad-based Anti-corruption Commission (**IBAC**). Please see section 6 below for more details. The SRO is not authorised to receive disclosures under the PD Act.

2 Purpose

- 2.1 This Guide outlines the procedures for making disclosures of improper conduct and/or detrimental action by SRO employees or officers.
- 2.2 This Guide has been prepared in accordance with the PD Act, the Guidelines issued by IBAC (see www.ibac.vic.gov.au) and the 'Making and Handling Protected Disclosures Procedures' issued by the Department of Treasury and Finance (DTF).

3 Who can make a protected disclosure?

- 3.1 Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by the SRO or its employees or officers. This includes members of the public and SRO employees and officers.
- 3.2 A disclosure can be made by an individual or a group of individuals.
- 3.3 A company or business cannot make a protected disclosure.
- 3.4 A person can make a disclosure on behalf of another. However, in these circumstances, only the person making the disclosure will receive the full protection of the PD Act in relation to that disclosure, the other person's protection may be limited.
- 3.5 A disclosure does not specifically have to refer to the PD Act or the protections in the PD Act for it to be a 'protected disclosure' under that Act.

4 How to make a protected disclosure?

- 4.1 A protected disclosure can be made:
 - (a) in person,
 - (b) by phone,
 - (c) by leaving a voicemail message,
 - (d) in writing by post, personal delivery or email,
 - (e) by any other form of electronic communication, and/or
 - (f) anonymously.
- 4.2 A protected disclosure cannot be made by fax.
- 4.3 A protected disclosure must be made in private so it is important that only the person to whom the disclosure is being made can hear or receive the disclosure. However, the PD Act does not preclude joint disclosures from a group of individuals at the same time.
- 4.4 Where a verbal disclosure is made, the person receiving the disclosure may take notes of the discussion. The person receiving the disclosure may also want to record the conversation, but will only do so with the discloser's permission.
- 4.5 A person making a disclosure does not have to identify themselves when making a disclosure. However, if a disclosure is anonymous, this may affect how the disclosure is investigated and the discloser will not be notified of the outcome.
- 4.6 If the discloser cannot be identified from the disclosure, it will be treated as an anonymous disclosure.

5 What can a protected disclosure be made about?

- 5.1 A protected disclosure is information that shows, or tends to show, or that the discloser believes on *reasonable grounds* to show or tend to show:
 - (a) a person, public officer or public body has engaged in, is engaging in, or proposes to engage in improper conduct, or
 - (b) a public officer or public body has taken in, is taking or proposes to take detrimental action against a person.

Public officer and public body:

- The conduct which is the subject of the disclosure must be related to the performance of a person's or a body's function as a public officer or public body.
- A public body includes the SRO. For a full definition of 'public body' and 'public officer' see Schedule 1 of this Guide.

Improper conduct and detrimental action:

- The conduct which is the subject of the disclosure must be improper conduct and/or detrimental action. These terms are defined in the following table.

'IMPROPER CONDUCT' IS DEFINED TO INCLUDE BOTH 'CORRUPT CONDUCT' AND 'SPECIFIED CONDUCT'

CORRUPT CONDUCT

Corrupt conduct is:

Conduct that:

- adversely affects the honest performance of functions by a public officer or public body,
- involves the dishonest performance of functions by a public officer or public body,
- involves a breach of public trust,
- involves a misuse of information acquired in the performance of functions as a public officer or public body,
- adversely affects the effective performance of functions by a public officer or public body and results in a person obtaining certain benefits that the person would not have otherwise obtained, or
- involves a conspiracy or an attempt to engage in any of the above conduct.

AND

- would constitute:
 - an indictable offence,
 - an attempt to pervert the course of justice,
 - bribery of a public official,
 - perverting the course of justice, or
 - misconduct in public office.

SPECIFIED CONDUCT

Specified conduct is:

Conduct that:

- adversely affects the honest performance of functions by a public officer or public body,
- involves the dishonest performance of functions by a public officer or public body,
- involves a breach of public trust,
- involves a misuse of information acquired in the performance of functions as a public officer or public body,
- adversely affects the effective performance of functions by a public officer or public body and results in a person obtaining certain benefits that the person would not have otherwise obtained, or
- involves a conspiracy or an attempt to engage in any of the above conduct,
- involves a substantial mismanagement of public resources,
- involves a substantial risk to public health and safety, or
- involves a substantial risk to the environment.

AND

- would not constitute corrupt conduct but would, if proved, constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct.

'DETRIMENTAL ACTION' IS DEFINED AS:

DETRIMENTAL ACTION IS:

Action taken against a person who has made a protected disclosure and includes:

- action causing injury, loss or damage,
- intimidation or harassment, or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

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.

- 5.2 A discloser's 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 that person *believes* (as opposed to *knows*) that improper conduct or detrimental action has occurred, is occurring or will occur. However, there must be *reasonable grounds* for this belief.
- 5.3 A mere suspicion, allegation or conclusion that is unsupported by further information, facts, evidence or circumstances will not be protected by the PD Act. For example, it is not enough to say 'I know X is corrupt'; there must be information available that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action by X.

6 To whom can a protected disclosure be made?

- 6.1 Only certain persons and entities can receive protected disclosures under the PD Act.
- 6.2 If a disclosure is made to a person or entity that **cannot receive a protected disclosure**, the disclosure will **not** be a protected disclosure and therefore, the discloser will **not** be entitled to the protections under the PD Act.
- 6.3 If in doubt, disclosures should be made directly to IBAC **unless** the disclosure is about IBAC or one of its officers. Disclosures about IBAC or its officers must be made to the Victorian Inspectorate.
- 6.4 The SRO is not authorised to receive protected disclosures under the PD Act. This is because the SRO is neither a public service body as defined in the *Public Administration Act 2004* nor a public body prescribed by the PD Act. A protected disclosure about improper conduct or detrimental action by the SRO or any of its employees or officers must be made to:

Independent Broad-based Anti-corruption Commission (IBAC)
Level 1 North Tower
459 Collins Street Melbourne VIC 3000
GPO Box 24234 Melbourne VIC 3001
Phone: 1300 735 135
www.ibac.vic.gov.au

7 What will happen after a protected disclosure is made?

- 7.1 Disclosures about the SRO or its employees or officers made to IBAC will be handled in accordance with IBAC's guidelines and processes — refer to www.ibac.vic.gov.au

8 What protections will the discloser receive?

- 8.1 The PD Act sets out the protections provided to persons who make a disclosure in accordance with the PD Act. These include:
 - (a) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure,
 - (b) immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information,
 - (c) immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information, and
 - (d) protection from an action for defamation.
- 8.2 These protections apply to a disclosure from the time you make the disclosure and continue to apply whether or not IBAC has determined that the disclosure is a protected disclosure.
- 8.3 The protections in the PD Act do not apply if you knowingly provide false or misleading information or incorrectly claim that a matter is the subject of a protected disclosure.
- 8.4 The protections will apply to further information relating to a protected disclosure that you have made to IBAC.

9 Welfare management

- 9.1 The SRO is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Protected Disclosure Coordinator is responsible for ensuring that disclosers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.
- 9.2 Where the SRO has been made aware of a protected disclosure by IBAC, the SRO will undertake to provide welfare support to the discloser and to any witness in an investigation as circumstances require. In complying with the PD Act, the SRO is also committed to maintaining a safe working environment in accordance with the *Occupational Health and Safety Act 2004*, the *Public Administration Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006* and the common law.
- 9.3 The Protected Disclosure Coordinator may consider appointing a welfare manager to look after the welfare of the discloser. The welfare manager will:
 - (a) Examine the immediate welfare and protection needs of a discloser who has made a protected disclosure and, where the discloser is an employee, seek to foster a supportive work environment,
 - (b) Advise the discloser of the legislative and administrative protections available to them,

- (c) Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure,
- (d) Ensure the expectations of the discloser and/or witnesses of the process and outcomes are realistic, and
- (e) Maintain confidentiality and act in a discreet manner to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

The welfare manager is only required to provide reasonable support and will discuss reasonable expectations with the discloser.

10 Protection from detrimental action

- 10.1 As far as practical and depending on the information known to the SRO, the SRO will take precautions to prevent its employees and officers from taking detrimental action in reprisal for a protected disclosure. All SRO employees will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units (\$38,685.60 for the 2018–19 financial year — this amount is subject to change every financial year) or two years imprisonment or both.
- 10.2 The nature of the precautions taken by the SRO will depend on individual circumstances and the discloser(s) and witness(es) will, where possible, be consulted before any action is taken.
- 10.3 A report of detrimental action (or threatened action) in reprisal against a discloser is in itself a protected disclosure. Such disclosures, as with any other protected disclosure, must be made in accordance with the process set out in Section 6 above.
- 10.4 Detrimental action includes:
- (a) Action causing injury, loss or damage,
 - (b) Intimidation or harassment,
 - (c) Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action).
- 10.5 A manager may take a reasonable management action against the discloser about other matters not relating to the making of a protected disclosure.
- 10.6 If an SRO employee has made a protected disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, that person may request a transfer of employment to a Public Service Body (which means a Victorian Government Department, Administrative Office or Victorian Public Sector Commission [formerly known as the State Services Authority]) or another area within the SRO on terms and conditions that are no less favourable overall. The Commissioner of State Revenue will consider all requests of this nature and will grant such requests only if all the following conditions are met:
- (a) the Commissioner is satisfied that there are reasonable grounds to suspect detrimental action will be, is being or has been taken against the employee, and

- (b) the Commissioner considers that the transfer will avoid, reduce or eliminate the risk of any detrimental action.

For a request to transfer to another Public Service Body, in addition to meeting all the above conditions, the Commissioner would only grant such requests where the head of the 'receiving' Public Service Body consents to the transfer.

11 Employees who have protected disclosures made against them

- 11.1 The SRO will provide support to any employee who had a disclosure made about them or their conduct during the handling and investigation of a disclosure by IBAC as the circumstances require.
- 11.2 Where the SRO is made aware of a protected disclosure about an SRO employee, the SRO will only disclose that information in accordance with the relevant laws.
- 11.3 Where an investigation does not substantiate the content of the disclosure about an SRO employee, the identity of the employee, the fact that an investigation has been conducted, and the results, will remain strictly confidential. The SRO will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Commissioner of State Revenue will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

12 Disclosers who are implicated in the protected disclosures

- 12.1 Where a person who makes a disclosure is implicated in misconduct, the protections in the PD Act will apply in relation to the disclosure. However, the person is still personally liable for the consequences arising from his/her involvement in the improper conduct and/or detrimental action. In some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.
- 12.2 Upon receiving notification from IBAC at the conclusion of the investigation, depending on the results, the Commissioner of State Revenue will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action is warranted against a discloser who is implicated in the protected disclosure.
- 12.3 In all cases where disciplinary or other action is being contemplated, the Commissioner must be satisfied that it has been clearly demonstrated that:
 - (a) The intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information),
 - (b) There are good and sufficient grounds that would fully justify action against any employee (who is not a discloser) in the same circumstances, and

(c) There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

12.4 The Protected Disclosure Coordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Protected Disclosure Coordinator will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors that have been taken into account.

13 Confidentiality of disclosures

13.1 A number of confidentiality obligations arise under the PD Act and other laws relating to the receipt and investigation of protected disclosures.

13.2 If a disclosure is repeated to someone other than as provided for in this Guide or permitted by the PD Act, the protections in the PD Act may be lost. For example, if a disclosure is repeated to the media and the media reports the allegations, the discloser may not be protected from defamation action and may have breached confidentiality obligations.

13.3 Before considering making a protected disclosure, it would be prudent for a potential discloser to consult with IBAC.

14 Alternatives to making a 'protected disclosure'

14.1 This guide is designed to complement usual methods of submitting complaints to, and about, the SRO.

14.2 Members of the public are encouraged to use the SRO's existing feedback process to communicate any general complaints or concerns about the services provided by the SRO. More information is available on the SRO website (www.sro.vic.gov.au).

14.3 SRO employees are encouraged to raise matters with their supervisors and managers at any time.

15 Review of these procedures

15.1 These procedures will be reviewed regularly to ensure they meet the objectives of the PD Act and align with IBAC's guidelines and the 'Making and Handling Protected Disclosures Procedures' issued by the Department of Treasury and Finance.

Schedule 1 – Definitions of public body and public officer

For the purposes of the *Protected Disclosure Act 2012*—

public body means:

- (a) a **public body** within the meaning of section 6 of the *Independent Broad-based Anti-Corruption Commission Act 2011*, or
- (b) the IBAC, or
- (c) any other body or entity prescribed for the purposes of this definition.

public officer means:

- (a) a **public officer** within the meaning of section 6 of the *Independent Broad-based Anti-Corruption Commission Act 2011*, or
- (b) an IBAC Officer, or
- (c) any other person prescribed for the purposes of this definition.

Section 6 of the *Independent Broad-based Anti-Corruption Commission Act 2011* provides—

public body means:

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

public officer means:

- (a) 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*,
- (b) 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,
- (c) an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*,
- (d) a judicial employee employed under Division 3 of Part 6 of the *Public Administration Act 2004*,
- (e) a ministerial officer employed under Division 1 of Part 6 of the *Public Administration Act 2004*,
- (f) an electorate officer within the meaning of the *Parliamentary Administration Act 2005*,
- (g) a parliamentary adviser employed under Division 2 of Part 6 of the *Public Administration Act 2004*,
- (h) a parliamentary officer within the meaning of the *Parliamentary Administration Act 2005*,
- (i) a member of Victoria Police personnel,
- (j) a responsible Minister of the Crown,
- (k) a member of the Legislative Assembly or the Legislative Council,
- (l) a councillor within the meaning of section 3(1) of the *Local Government Act 1989*,
- (m) a member of Council staff employed under the *Local Government Act 1989*,
- (n) a judge, a magistrate, a coroner or a member of VCAT,
- (o) an associate judge or a judicial registrar,
- (p) a Crown Prosecutor,
- (q) the Chief Crown Prosecutor,
- (r) the Director of Public Prosecutions,
- (s) the Governor, the Lieutenant-Governor or the Administrator of the State,

- (t) the Auditor-General,
- (u) the Ombudsman,
- (v) the Electoral Commissioner,
- (w) the holder of any other statutory office or any other prerogative office,
- (x) any other person in the service of the Crown or a public body,
- (y) 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),
- (z) 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,
- (aa) 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