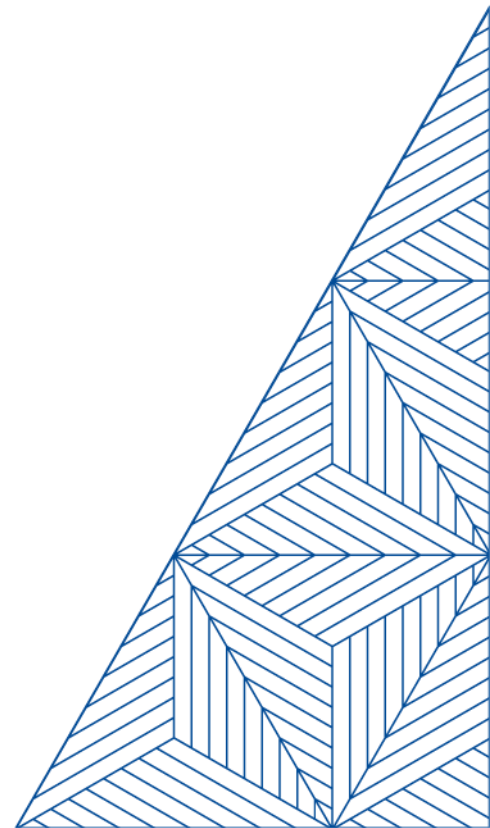


# Public Interest Disclosures Procedures

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# Summary

QUESTION	ANSWER
<b>Who can make a disclosure?</b>	<ul style="list-style-type: none"><li>• A person or group of people.</li><li>• A disclosure cannot be made by a business or company.</li></ul>
<b>How do I make a disclosure?</b>	<ul style="list-style-type: none"><li>• Verbally (in person, by phone).</li><li>• In writing (post, personal delivery). Electronic communication (but not fax). A disclosure can be made anonymously.</li></ul>
<b>What can I make a disclosure about?</b>	Information which shows or tends to show: <ul style="list-style-type: none"><li>• A person, public officer or public body has engaged in, is engaging in, or proposes to engage in improper conduct (this includes 'corrupt conduct').</li><li>• A public officer or public body has taken, is taking or proposes to take detrimental action against a person.</li></ul>
<b>What protections are available?</b>	If the disclosure meets all of the statutory criteria and is made in accordance with the correct statutory process, the discloser: <ul style="list-style-type: none"><li>• Is protected from civil or criminal liability or administrative action (including disciplinary proceedings).</li><li>• Is not committing an offence under any legislation that imposes an obligation of confidentiality.</li><li>• Cannot be held liable for defamation in respect of the information included in the disclosure.</li></ul>
<b>To whom can I make a disclosure?</b>	If you want to make a public interest disclosure about the State Revenue Office or any of its employees and/or contractors, you must contact: <p>The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne, VIC 3000</p> <p>GPO Box 24234 Melbourne VIC 3001 Phone: 1300 735 135 <a href="http://ibac.vic.gov.au">ibac.vic.gov.au</a></p>
<b>Where can I get more information?</b>	For general information about public interest disclosures, contact: <p>Paula Thorne, Public Interest Disclosures Coordinator Executive Director Policy, Advisory and Legal Services State Revenue Office GPO Box 1641 Melbourne VIC 3001</p> <p>Phone: 13 21 61 Email: <a href="mailto:paula.thorne@sro.vic.gov.au">paula.thorne@sro.vic.gov.au</a></p> <p>If you want to discuss details of a potential public interest disclosure, do so directly with IBAC. Disclosures revealed to entities not authorised to receive public interest disclosures under the <i>Public Interest Disclosures Act 2012</i> may neither be protected nor investigated by IBAC. Disclosures relating to State Revenue Office employees and contractors assessed by IBAC as not public interest disclosures may be dealt with in accordance with the State Revenue Office's Fraud and Corruption Management Policy, Managing Misconduct Policy, Complaints Process or other internal policies and procedures. IBAC, with the consent of the complainant and the State Revenue Office, may refer a public interest disclosure back to the State Revenue Office for action.</p>

## Background

- The State Revenue Office is committed to the aims and objectives of the *Public Interest Disclosures Act 2012* (the PID Act).
- We encourage 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 employees and contractors, and do not take reprisals against those disclosing such conduct.
- If you want to report that the State Revenue Office, including our employees and contractors, has engaged in corrupt or improper conduct, and you want to be covered by the protections enshrined in the PID Act, you must report the conduct directly to the Independent Broad-based Anti-corruption Commission (IBAC).
- The State Revenue Office is not authorised to receive disclosures under the PID Act.

## Purpose

- This guide, prepared in accordance with the PID Act, outlines the procedures for making disclosures of improper conduct engaged in, or detrimental action taken by, the State Revenue Office and its employees and contractors.

## Who can make a public interest disclosure?

- Any person, including State Revenue Office employees and contractors, can make a public interest disclosure about improper conduct engaged in, or detrimental action taken by, the State Revenue Office or its employees and contractors.
- A disclosure can be made by an individual or a group of individuals.
- A company or business cannot make a public interest disclosure.
- While a person can make a disclosure on behalf of another, only the person making the disclosure will receive the full protection of the PID Act in relation to that disclosure. The person on whose behalf they are making the disclosure may only receive limited protection.
- A disclosure does not specifically have to refer to the PID Act or the protections in the PID Act for it to be a public interest disclosure under the Act.

## How do you make a public interest disclosure?

- A public interest disclosure can be made:
  - in person,
  - by phone,
  - by leaving a voicemail message,
  - in writing by post, personal delivery or email,
  - by any other form of electronic communication,
  - anonymously.
- A public interest disclosure cannot be made by fax.

- A public interest disclosure must be made in private to a person permitted to receive a disclosure. The PID Act allows joint disclosures from a group of individuals at the same time.
- Where a verbal disclosure is made, the person receiving the disclosure can take notes of the discussion, and may, with the discloser's permission, record the conversation.
- A person making a disclosure does not have to identify themselves, but if a disclosure is anonymous, this may affect how the disclosure is investigated and the discloser will not be notified of the outcome.
- If the discloser cannot be identified from the disclosure, it will be treated as an anonymous disclosure.

## What can a public interest disclosure be made about?

- A public interest disclosure is information that shows or tends to show, or that the discloser believes on reasonable grounds to show or tend to show:
  - a person, public officer or public body has engaged in, is engaging in, or proposes to engage in improper conduct, or
  - a public officer or public body has taken, is taking or proposes to take detrimental action against a person.
- In relation to a 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 State Revenue Office. For a full definition of 'public body' and 'public officer' see Appendix A of this guide.
- In relation to improper conduct and detrimental action:
  - The conduct which is the subject of the disclosure must be improper conduct and/or detrimental action. See definitions below.
- 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. There must, however, be reasonable grounds for this belief.
- A mere suspicion, allegation or conclusion that is unsupported by further information, facts, evidence or circumstances will not be protected by the PID Act. For example, it is not enough to say "I know B 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 B.

### Improper conduct definition

Improper conduct is defined to include both corrupt conduct and other 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.
- 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,
  - misconduct in public office.
- **Other conduct is:**
  - Conduct engaged in by a public officer or public body in their capacity as such that constitutes:
    - A criminal offence.
    - Serious professional misconduct.
    - Dishonest performance of public functions.
    - An intentional breach 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 the health or safety of one or more persons.
    - A substantial risk to the environment.
  - Conduct of any person that:
    - Adversely affects the honest performance of functions by a public officer or public body.
    - Is intended to adversely affect the effective performance of a public officer or public body while obtaining an advantage for the third party.
  - Conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above.

## **Detrimental action definition**

- Detrimental action is defined as:
  - Action taken against a person who has made a public interest disclosure and 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 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.

## Who can a public interest disclosure be made to?

- Only certain persons and entities can receive public interest disclosures under the PID Act.
- If a disclosure is made to a person or entity that cannot receive a public interest disclosure, the disclosure will not be a public interest disclosure and the discloser will therefore not be entitled to the PID Act protections.
- 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.
- The State Revenue Office is not authorised to receive public interest disclosures under the PID Act. A public interest disclosure about improper conduct or detrimental action by the State Revenue Office or its employees and contractors must be made to 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

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

## What happens after a public interest disclosure is made?

- Disclosures to IBAC about the State Revenue Office or its employees or contractors are handled in accordance with IBAC's guidelines and processes — [ibac.vic.gov.au](http://ibac.vic.gov.au).

## What protections does the discloser receive?

- The PID Act sets out the protections for people making a disclosure in accordance with the PID Act, which include:
  - Immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure.
  - Immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information.
  - Immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information.
  - Protection from an action for defamation.
- These protections apply to a disclosure from the time it is made and continue to apply, irrespective of whether IBAC has determined that the disclosure is a public interest disclosure.



- The protections in the PID Act do not apply if a person knowingly provides false or misleading information or incorrectly claims that a matter is the subject of a public interest disclosure.
- The protections apply to further information relating to a public interest disclosure that a person has made to IBAC.

## Welfare management

- The State Revenue Office is committed to protecting genuine disclosers against detrimental action taken in reprisal for making a public interest disclosure. The Public Interest Disclosures Coordinator is responsible for ensuring that disclosers are protected from direct and indirect detrimental action, and that the culture of the State Revenue Office is supportive of public interest disclosures being made.
- Where the State Revenue Office has been made aware of a public interest disclosure by IBAC, it undertakes, as circumstances require, to provide welfare support to the discloser and to any witness in an investigation. In complying with the PID Act, the State Revenue Office 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 common law.
- The Public Interest Disclosures Coordinator may consider appointing a welfare manager to look after the welfare of a discloser to:
  - Examine the immediate welfare and protection needs of a discloser and, where the discloser is an employee, seek to foster a supportive work environment.
  - Advise the discloser of the legislative and administrative protections available to them.
  - Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure.
  - Ensure the expectations of the discloser and/or witnesses, related to the process and outcomes of a disclosure, are realistic.
  - Maintain confidentiality and act in a discreet manner to protect the discloser and/or witness from being identified as being involved in a public interest disclosure.
- The welfare manager is only required to provide reasonable support and discuss reasonable expectations with the discloser.

## Protection from detrimental action

- As far as practical, and depending on the information known to it, the State Revenue Office will take precautions to prevent its employees and contractors from taking detrimental action in reprisal for a public interest disclosure. All its employees and contractors are advised that it is an offence (with a fine and/or imprisonment resulting if proven) for a person to take detrimental action in reprisal for a public interest disclosure.
- The nature of the precautions taken by the State Revenue Office will depend on individual circumstances and disclosers and witnesses will, where possible, be consulted before any action is taken.
- A report of detrimental action (or threatened action) in reprisal against a discloser is in itself a public interest disclosure and must therefore be made in accordance with the process set out under the section titled 'Who can a public interest disclosure be made to?' on page 8.

- 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 manager may take reasonable management action against the discloser about other matters not related to the making of a public interest disclosure.
- If a State Revenue Office employee has made a public interest disclosure and believes, on reasonable grounds, that detrimental action will be, is being, or has been taken against them, they may request a transfer of employment to a public service body (which means a Victorian Government department, administrative office or Victorian Public Sector Commission) or another area within the State Revenue Office on terms and conditions no less favourable. The Commissioner of State Revenue considers all requests of this nature and grants them only if these conditions are met:
  - The Commissioner is satisfied that there are reasonable grounds to suspect detrimental action will be, is being or has been taken against the employee or contractor.
  - The Commissioner considers that the transfer will avoid, reduce or eliminate the risk of any detrimental action. For a transfer request to another public service body, in addition to meeting all the above conditions, the Commissioner would only grant it where the head of the ‘receiving’ body consents to the transfer.

## State Revenue Office employees who have public interest disclosures made against them

- The State Revenue Office will provide support to any employees or contractors who have had a disclosure made about them or their conduct during the handling and investigation of a disclosure by IBAC as the circumstances require.
- Where the State Revenue Office is made aware of a public interest disclosure about an employee or contractor, it will only disclose that information in accordance with relevant laws.
- Where an investigation does not substantiate the content of the disclosure about an employee or contractor, their identity, the fact that an investigation has been conducted, and the results, remains strictly confidential. The State Revenue Office 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 are clearly wrong or unsubstantiated.

## Disclosers implicated in public interest disclosures

- Where a person who makes a disclosure is implicated in misconduct, the protections in the PID Act apply in relation to the disclosure. However, the person is still personally liable for the consequences arising from their 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.

- Upon receiving notification from IBAC at the conclusion of an investigation, the Commissioner of State Revenue will, depending on the results, make the final decision on the advice of the Public Interest Disclosures Coordinator about whether disciplinary or other action is warranted against a discloser who is implicated in the public interest disclosure.
- In all cases, where disciplinary or other action is contemplated, the Commissioner must be satisfied that:
  - 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).
  - There are good and sufficient grounds that would fully justify action against any employees or contractors (who is not a discloser) in the same circumstances.
  - There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.
- The Public Interest Disclosures 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 retribution for making the disclosure. They will clearly advise the discloser of the proposed action to be taken, and of any mitigating factors taken into account.

## Confidentiality of disclosures

- A number of confidentiality obligations arise under the PID Act and other laws relating to receiving and investigating public interest disclosures.
- If a disclosure is repeated to someone other than as provided for in this guide or permitted by the PID Act, the protections in the PID 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.
- Before considering a public interest disclosure, it is prudent for a potential discloser to consult IBAC.

## Alternatives to making a public interest disclosure

- Members of the public are encouraged to use the State Revenue Office's existing feedback process to communicate general complaints or concerns about services provided by the State Revenue Office. More information is available at [sro.vic.gov.au/complaints](https://sro.vic.gov.au/complaints).
- Similarly, State Revenue Office employees and contractors are encouraged to raise matters with their supervisors and managers at any time.

## Reviewing these procedures

- These procedures will be reviewed regularly to ensure they meet the objectives of the PID Act.

# Appendix A: Definitions of public body and public officer

For the purposes of the *Public Interest Disclosures Act 2012*

**Public body means:**

1. A public body within the meaning of section 6 of the Independent Broad-based Anti-Corruption Commission Act 2011.
2. The IBAC.
3. The Victorian Inspectorate.
4. Any other body or entity prescribed for the purposes of this definition.

**Public officer means:**

1. A public officer within the meaning of section 6 of the *Independent Broad-based Anti-Corruption Commission Act 2011*.
2. An IBAC Officer.
3. The Victorian Inspectorate Officer.
4. A Public Interest Monitor.
5. 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:**

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.

**Public officer means:**

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 magistrate, a coroner or a member of the Victorian Civil and Administrative Tribunal (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.