



Victorian Government  
Solicitor's Office

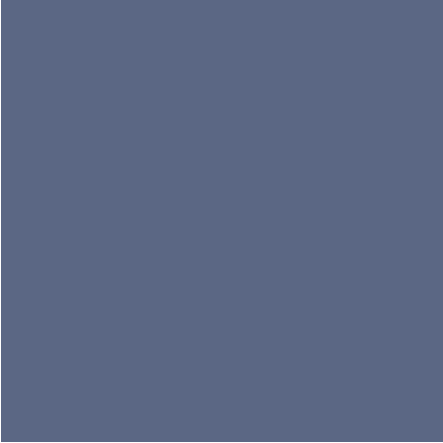
## **Making and Handling Public Interest Disclosures**

Victorian Government Solicitor's Office Procedures

Last updated July 2021

## Quick reference guide to public interest disclosures

<p><b>When can a public interest disclosure be made to VGSO?</b> (see Part 3)</p>	<p>Public interest disclosures can be made to VGSO where the disclosure:</p> <ul style="list-style-type: none"> <li>relates to the conduct of VGSO or its employees; or</li> <li>is made by a VGSO employee.</li> </ul>
<p><b>What can a public interest disclosure be about?</b> (see Part 2)</p>	<p>A public interest disclosure can be about:</p> <ul style="list-style-type: none"> <li><b>improper conduct</b> engaged in by a person, <b>public officer</b> or <b>public body</b>.</li> <li><b>Detrimental action</b> taken by a public officer or public body against a person in reprisal for a public interest disclosure.</li> </ul>
<p><b>How do I make a disclosure?</b> (see Part 4)</p>	<p>Orally or in writing. To get the protections in the Act a disclosure to VGSO must follow these procedures.</p>
<p><b>Who can I make a disclosure to at VGSO?</b></p> <p><i>These are the 'permitted persons'</i></p>	<p>If you are a VGSO employee, you can make a disclosure to your direct or indirect supervisor or manager.</p> <p>Whether you are a VGSO employee or not, disclosures can be made to:</p> <ul style="list-style-type: none"> <li>Matthew Hocking, Victorian Government Solicitor Level 25, 121 Exhibition Street Melbourne Vic 3000 Telephone: 8684 0400 Email: <a href="mailto:matthew.hocking@vgso.vic.gov.au">matthew.hocking@vgso.vic.gov.au</a></li> <li>Penina Berkovic, Public Interest Disclosure Coordinator Level 28, 311 Spencer Street Docklands Vic 3000 Telephone: 03 9063 7703 Email: <a href="mailto:penina.berkovic@vgso.vic.gov.au">penina.berkovic@vgso.vic.gov.au</a></li> <li>Nicole Spicer, Public Interest Disclosure Coordinator Level 39, 80 Collins Street Melbourne Vic 3000 Telephone: 03 8684 0980 Email: <a href="mailto:nicole.spicer@vgso.vic.gov.au">nicole.spicer@vgso.vic.gov.au</a></li> <li>Brendan McIntyre, Public Interest Disclosure Coordinator Level 33, 80 Collins Street Melbourne Vic 3000 Telephone: 03 9947 1435 Email: <a href="mailto:brendan.mcintyre@vgso.vic.gov.au">brendan.mcintyre@vgso.vic.gov.au</a></li> </ul>
<p><b>Disclosures can also be made to:</b></p>	<ul style="list-style-type: none"> <li>Independent Broad-based Anti-corruption Commission</li> </ul>



Level 1, North Tower  
459 Collins Street  
Melbourne Vic 3000  
GPO Box 24234, Melbourne, VIC 3001  
Telephone: 1300 735 135  
Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

- Victorian Ombudsman

Level 2, 570 Bourke Street  
Melbourne Vic 3000  
Telephone: (03) 9613 6222 / 1800 806 314  
Website: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

## 1. Introduction

- 1.1 The *Public Interest Disclosures Act 2012* (**PID Act**) encourages and facilitates people to make disclosures of improper conduct by (and in relation to) public officers and public bodies and detrimental action taken in reprisal for disclosures. It also protects people who make those disclosures.
- 1.2 The Victorian Government Solicitor's Office (**VGSO**) is committed to the aims and objectives of the Act. This reflects its position as solicitor to the State and its value of integrity.
- 1.3 This document gives information about making a disclosure to VGSO and establishes and explains VGSO's procedures in relation to the handling of disclosures under the PID Act. It is aimed at:
- (a) People who are thinking about making, or who have made a disclosure to VGSO, including both VGSO employees and members of the public;
  - (b) VGSO employees who may handle disclosures about improper conduct, including managers and supervisors;
  - (c) people who are affected by disclosures of improper conduct, including employees who cooperate in an investigation and employees who are the subject of disclosures.
- 1.4 These procedures are designed to complement usual methods of submitting complaints to VGSO. Members of the public and clients can access VGSO's complaints process at its website ([www.vgso.vic.gov.au](http://www.vgso.vic.gov.au)). Employees are encouraged to raise matters with their supervisors and managers at any time.
- 1.5 These procedures have been prepared in accordance with PID Act and taking into account guidelines of the Independent Broad-based Anti-corruption Commission (**IBAC**), available on the IBAC website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).
- 1.6 Terms in bold in this document are either definitions or are explained further in the Glossary. As many of the definitions of terms used in the relevant Acts are complex, they are described only in summary form in the body of this document. Look to the Acts for the full definitions or the Glossary for a further explanation.
- 1.7 A number of people at VGSO have roles and responsibilities in relation to disclosures. These are outlined in the Schedule.

## 2. What is a public interest disclosure and what can it be about?

- 2.1 A public interest disclosure is a disclosure by a person of information that shows or tends to show (or that the person reasonably believes shows or tends to show), that:
- (a) a person, **public officer** or **public body**, has engaged, is engaging in, or is proposing to engage in, **improper conduct**; or

- (b) a person, a public officer or public body, has taken, is taking, or is proposing to take, **detrimental action** against a person in reprisal for a public interest disclosure.

## 2.2 Key things to note are:

- (a) 'Reasonable belief' does not have to be based on actual proof; but there must be more than 'mere suspicion' or a conclusion that is unsupported by further information, facts or circumstances;
- (b) VGSO is a public body and its employees are public officers;
- (c) Improper conduct is defined to mean **corrupt conduct** or other conduct that is specified in the definition of improper conduct;
  - (i) 'corrupt conduct' has two elements: it must be both conduct of a kind specified in s 6 of the IBAC Act and also a 'relevant offence'. A relevant offence is either an indictable offence against a Victorian Act or the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office.
  - (ii) Other improper conduct is defined to include specified conduct of a public officer or public body in their capacity as such or specified conduct of any person that adversely affects, or is intended to adversely affect, the performance of the functions or powers of a public officer or body.
- (d) Conduct that is trivial is excluded from the definition of improper conduct, although what that means is not defined.
- (e) Detrimental action against a person in reprisal for a public interest disclosure includes detrimental action against a person because the person has made a disclosure or because the person has cooperated with an investigation of the disclosure:
  - (i) 'detrimental action' includes action causing injury, loss or damage or adverse treatment etc in relation to a person's employment or career;
  - (ii) This does not prevent a manager from taking management action against an employee who has made a public interest disclosure where the fact is employee has made the disclosure is not a reason for the manager taking the action.

## 3. Who can make a public interest disclosure? When can a public interest disclosure be made to VGSO?

- 3.1 The PID Act only permits specific people and entities to receive public interest disclosures. Further, whether a particular entity can receive a disclosure depends on

who it is about or who it is from. Public interest disclosures can be made to VGSO where the disclosure:

- (a) relates to the conduct of the VGSO or its employees; or
- (b) is made by a VGSO employee (when it can relate to the conduct of any person, public officer or public body, other than a member of Parliament).

3.2 However, in most cases, a disclosure made to VGSO as a result of a honest mistake (a 'misdirected disclosure') can also be treated as a public interest disclosure.

3.3 Public interest disclosures can be made to other entities in other circumstances. In most circumstances, they can be made to IBAC or the Victorian Ombudsman (including about the VGSO or its employees).

3.4 Some key points about making a disclosure are:

- (a) Only an individual or a group of individuals can make a disclosure. A company or business cannot (although its employees or officers can).
- (b) A person can ask someone else to make a disclosure on their behalf. However, only the person who make the disclosure themselves will receive the full protection of the PID Act.
- (c) It is not necessary for a person making a disclosure to refer to the PID Act or to say that they want their disclosure to be a public interest disclosure for it to be treated as a disclosure under the Act and have the protections under the Act.
- (d) A person making a disclosure can say they do not want the disclosure to be treated as a public interest disclosure, but they must do so in writing within 28 days of making the disclosure.
- (e) A disclosure may be a public interest disclosure even if it is a complaint, notification or disclosure etc made under another Act.
- (f) A disclosure can be made anonymously, but a person who make an anonymous disclosure will not be notified of the outcome of their disclosure.

#### 4. How must a public interest disclosure be made?

4.1 The PID Act requires that a public interest disclosure be made in particular ways. If a public interest disclosure is made in the wrong way, it will not be given the protections available under the PID Act.

4.2 **In order for a public interest disclosure made to VGSO to get the protections available under the PID Act, it must be made in accordance with these procedures.**

4.3 A disclosure may be made orally or in writing. They must be made to a **'permitted person'**. These people are:

- (a) The Victorian Government Solicitor;
- (b) The Public Interest Disclosure Coordinators; and
- (c) If the discloser is a VGSO employee, that person's direct or indirect manager or supervisor.

Contact details are included in the Quick Reference Guide.

### ***Oral disclosure***

4.4 An **oral** disclosure must be made:

- (a) in person to a permitted person; or
- (b) by telephone or videoconference to a permitted person using the contact details in the Quick Reference Guide (or, if the disclosure is by an employee to their manager or supervisor, to the telephone number of that person or via videoconference);

AND

- (c) with only the discloser, their lawyer (if any) and the permitted person being present or listening to the conversation.

4.5 If a disclosure is made orally, the person receiving the disclosure should make notes. They can also record the conversation, but only if the discloser gives consent.

### ***Written disclosure***

4.6 A **written** disclosure made to VGSO must be addressed to a permitted person and:

- (a) Sent to the postal or email address of a permitted person; or
- (b) Delivered or left at the office of the VGSO when the VGSO is open and during ordinary business hours.

This can only be done using the contact details in the Quick Reference Guide. No other contact method can be used.

4.7 Emails must be marked 'private' and should only be sent to the addressee with no one else copied in.

## **5. What happens after a disclosure is made?**

5.1 The procedures in this part relate to disclosures made to VGSO. Disclosures made to IBAC or the Ombudsman will be handled in accordance with IBAC's guidelines and processes.

### ***Receipt of disclosures***

5.2 VGSO will acknowledge the receipt of a disclosure verbally or in writing (if a postal or email address is known).

- 5.3 Where the recipient of a disclosure is not a Public Interest Disclosure Coordinator, the recipient will forward disclosure and supporting material in a secure and timely way to a Public Interest Disclosure Coordinator.
- 5.4 The relevant Public Interest Disclosure Coordinator will advise the discloser about the key steps involved in the process for handling the disclosure, including the timeframes involved.

### ***Assessing disclosures***

- 5.5 On receipt of a disclosure, the relevant Public Interest Disclosure Coordinator will consider whether the disclosure is a 'public interest disclosure' made in accordance with relevant requirements of the PID Act (or is a misdirected disclosure). This will be done having regard to IBAC's *Guidelines for Handling Public Interest Disclosures* (January 2020). In order to do this assessment, the Coordinator may need to seek further information from the discloser.
- 5.6 At this time, the relevant Public Interest Disclosure Coordinator may also discuss with the discloser the provision of welfare support (such as the appointment of a welfare manager) and the precautions VGSO will take to prevent detrimental action being taken in reprisal for the disclosure. For more information on this, see Parts 7 - 8 below.
- 5.7 In some circumstances, it may be necessary for VGSO to report matters contained in a disclosure to Victoria Police for immediate investigation. It may also be necessary for VGSO to take action to prevent certain future conduct (including taking action against the person a disclosure is about), for example, where a VGSO employee may be concealing evidence of criminal conduct. This action may take place before VGSO has completed its assessment under the PID Act.

### ***Notification to IBAC and/or notification to discloser within 28 days***

- 5.8 If the relevant Public Interest Disclosure Coordinator determines that a disclosure meets the requirements of the PID Act, the Public Interest Disclosure Coordinator must notify the disclosure to IBAC in writing within 28 days of the disclosure being made to VGSO. The disclosure will then be known as an 'assessable disclosure'.
- (a) If this occurs, the Public Interest Disclosure Coordinator will also advise the discloser verbally or in writing (if a postal or email address is known) within 28 days of the disclosure being made to VGSO that it has been notified to IBAC. VGSO may also provide to IBAC information that it has obtained while it was assessing whether the disclosure should be referred to IBAC.
- 5.9 If the relevant Public Interest Disclosure Coordinator determines that a disclosure does not meet the requirements of the PID Act, the Public Interest Disclosure Coordinator will advise the discloser of this within 28 days of the disclosure being made to VGSO.
- 5.10 In some cases, a disclosure which does not meet the requirements of the PID Act, may still meet the requirements for mandatory notification to IBAC under the IBAC Act. Therefore, if a disclosure is not referred under the PID Act, the Public Interest Disclosure Coordinator should consider whether it should be referred to the



Victorian Government Solicitor for consideration as a potential mandatory notification:

- (a) Under the IBAC Act, the Victorian Government Solicitor must notify IBAC of any matter which he suspects on reasonable grounds involves 'corrupt conduct' occurring or having occurred.
- (b) The decision on whether a mandatory notification is required to be made must be made personally by the Victorian Government Solicitor.
- (c) IBAC has issued a Direction about mandatory notifications. It is on IBAC's website.

5.11 If a disclosure is not referred to IBAC either under the PID Act or the IBAC Act, the discloser may wish for it to be dealt with in accordance with VGSO's grievance and misconduct policies.

### ***Assessment by IBAC***

5.12 IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.

5.13 Once VGSO notifies a disclosure to IBAC, IBAC must assess within a reasonable time whether (in its view) the disclosure is a public interest disclosure (in which case, it will generally become a 'public interest complaint'). It may seek additional information from the discloser and/or VGSO to make its decision.

5.14 If IBAC determines that a disclosure is a public interest disclosure, it must decide to either:

- (a) dismiss the disclosure;
- (b) investigate the disclosure; or
- (c) refer the disclosure to the Victorian Ombudsman.

5.15 IBAC must notify VGSO and, generally, the discloser of its determination.

5.16 If IBAC or the Ombudsman investigate a disclosure, they will generally provide VGSO and the discloser further information about their investigation. They may also issue confidentiality notices in relation to their investigations.

## **6. What protections will a person who makes a public interest disclosure receive?**

6.1 The PID Act sets out the protections provided to persons who make a disclosure in accordance with the 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.

- 6.2 These protections apply to a person who makes a public interest disclosure in accordance with the PID Act from the time the person makes the disclosure and continue to apply even if VGSO does not notify IBAC of the disclosure or if IBAC determines that the disclosure is not a public interest complaint. The protections apply in a similar way to a person who makes a misdirected disclosure.
- 6.3 The protections in the Act do not apply if a discloser provides false or misleading information or claim that a matter is the subject of a public interest disclosure knowing that claim to be false.
- 6.4 The protections will apply to further information relating to a public interest disclosure that are provided to VGSO or IBAC.
- 6.5 A discloser will also be protected by the obligations in relation to the confidentiality of a public interest disclosure and the provisions relating to detrimental action discussed in Parts 8 and 10 below.
- 6.6 While a discloser is not subject to any particular confidentiality obligations in relation to a disclosure, the protections only apply to a public interest disclosure made in accordance with the PID Act. As a consequence, a 're-publication' made outside the processes of the Act will not be protected. There is one, limited, exception, described as an 'external disclosure'.
- 6.7 An external disclosure of the same subject matter to parties not ordinarily able to receive a public interest disclosure (e.g. journalists or politicians) will receive the same protection as a public interest disclosure made in accordance with the PID Act if:
- (a) the original disclosure was not made anonymously;
  - (b) the original disclosure was determined to be a public interest complaint and the discloser was notified of this;
  - (c) the subject matter of the external disclosure is substantially the same as the original disclosure;
  - (d) the disclosure does not contain information that may prejudice a criminal investigation or proceeding or is likely to lead to the disclosure of an investigative method used by IBAC or Victoria Police;

AND

- (e) one of the following applies:
  - (i) the discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest complaint and has not received a response 30 days after requesting an update on progress;
  - (ii) an investigation has not been completed 12 months after determination as a public interest complaint and the discloser has not received a response 30 days after requesting an update on progress; or
  - (iii) an investigation has not been completed 12 months after determination as a public interest complaint and, although the discloser received a response within 30 days after requesting an update on progress, the discloser received no further update advising the investigation had been completed six months after that response.

## 7. Welfare Management

- 7.1 VGSO recognises that the welfare and protection from detrimental action of persons who make public interest disclosures is essential for the effective implementation of the PID Act and is relevant to VGSO'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.
- 7.2 VGSO will provide welfare support to a discloser or a witness in an investigation as the circumstances require.
- 7.3 VGSO 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.
- 7.4 A welfare manager is responsible for:
  - (a) examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment;
  - (b) providing practical advice and support;
  - (c) advising the discloser and/or witness of the protections available under the PID Act;
  - (d) receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (eg harassment, intimidation or victimisation);
  - (e) ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic;

- (f) maintaining confidentiality; and
  - (g) operating discreetly to protect the discloser and/or witness from being identified as being involved in a public interest disclosure.
- 7.5 In determining whether to appoint a welfare manager in any particular case, VGSO will consider:
- (a) whether the disclosure has proceeded, or is likely to proceed, to an investigation;
  - (b) whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
  - (c) whether VGSO can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure; and
  - (d) whether it is within VGSO's power to protect the person/s involved from suffering repercussions.
- 7.6 VGSO may appoint an internal person as welfare manager or engage a contractor to provide welfare services. VGSO will also consider referring an employee to its Employee Assistance Program (**EAP**).
- 7.7 If a person seeking welfare has received a confidentiality notice from IBAC or the Ombudsman, they can still access the EAP unless IBAC or the Ombudsman has made a direction that a specific restricted matter specified in the confidentiality notice must not be disclosed to the EAP.
- 7.8 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.

## **8. Protection from detrimental action**

- 8.1 VGSO 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.
- 8.2 The precautions taken by VGSO will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.
- 8.3 A disclosure of detrimental action taken in reprisal for a public interest disclosure is itself a public interest disclosure and will be assessed as a new disclosure in accordance with these procedures.
- 8.4 Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, VGSO may consider reporting the matter to the police.

- 8.5 A VGSO employee who has made a public interest disclosure and who believes on reasonable grounds that detrimental action will be, is being, or has been taken against them contrary to the PID Act may request a transfer of employment within the VGSO or to another government agency on terms and conditions that are no less favourable overall to them.
- 8.6 All requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:
- (a) the Victorian Government Solicitor must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee contrary to the PID Act;
  - (b) the Victorian Government Solicitor must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
  - (c) the head of any 'receiving' government agency must consent to the transfer.
- 8.7 The PID Act creates a number of remedies for people who sustains injury, loss or damage as a result of detrimental action taken against them in reprisal for a public interest disclosure. They include civil proceedings for damages and injunctions. A criminal offence is also created.
- 8.8 Nevertheless, a person who makes a public interest disclosure is still liable for their own conduct, even if conduct is the subject of the public interest disclosure. Making a disclosure does not provide a person with immunity for their own wrongdoing.

## **9. Employees who are subject to public interest disclosures**

- 9.1 Until matters the subject of a public interest disclosure are dismissed or determined, information about a person who is the subject of a disclosure only constitutes an allegation.
- 9.2 Whether a person who is the subject of a disclosure is informed about an allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a public interest disclosure or complaint, or if a decision is made to dismiss the matter.
- 9.3 Nevertheless, there will be circumstances when the subject of a disclosure will be given information about the content of an allegation made against them, particularly where IBAC or another investigating entity investigates a public interest complaint or where VGSO takes action in respect of the conduct. Where this occurs, VGSO will provide welfare support as appropriate, including through a referral to EAP.
- 9.4 VGSO will take reasonable steps to ensure the confidentiality of an employee who is the subject of a disclosure during an assessment of a disclosure and any subsequent investigation. Where a disclosure is dismissed, or investigations do not substantiate the allegations, confidentiality should be maintained in relation to the subject's identity, as well as the fact of the investigation and any results.

- 9.5 If an employee has been the subject of allegations that are wrong or unsubstantiated, then VGSO or IBAC (or other investigating entity) will take steps to ensure there are no adverse consequences for the employee arising out of the disclosure or its investigation. This is particularly crucial where information has been publicly disclosed that has identified the employee, but is also important where such information has become well known across the area where the employee works.

## 10. Confidentiality

- 10.1 There are a number of confidentiality obligations under the PID Act and other laws relating to the receipt and investigation of public interest disclosures.

- 10.2 From when VGSO determines that a public interest disclosure must be notified to IBAC (when it becomes an 'assessable disclosure'):

- (a) Confidentiality obligations are imposed on persons or bodies who receive the disclosure or information about the content of the disclosure; and
- (b) A person or body must not disclose information likely to lead to the identification of the person who made the disclosure.

If IBAC determines that a public interest disclosure is not a public interest complaint, these obligations cease from that determination.

- 10.3 There are exceptions to the confidentiality obligations which include:

- (a) Information about the content of an assessable disclosure may be disclosed to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the assessable disclosure including a disciplinary process or action;
- (b) Information about the content of an assessable disclosure may be disclosed with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- (c) Where disclosure is necessary for the purpose of the exercise of functions under the PID Act;
- (d) For the purpose of obtaining legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under specified Acts (including the IBAC and PID Acts);
- (e) Disclosure to a registered health practitioner, trade union or employee assistance program for the purposes of assisting the person who made the disclosure to receive advice or support in relation to the disclosure;
- (f) Disclosures by an investigating entity where necessary for the purpose of the exercise of functions under the relevant Act relating to the investigation.

The recipient in these circumstances will also be subject to confidentiality obligations.

- 10.4 In addition to the confidentiality obligations under the PID Act, after an investigation is initiated, IBAC and other investigating bodies (e.g. the Ombudsman) may issue a confidentiality notice to a person, including the discloser and other persons involved in the investigation, that specifies certain 'restricted matters' that the person must not disclose.
- 10.5 However, even where a confidentiality notice is in place, exceptions apply to allow restricted matter to be disclosed in specified circumstances, including:
- (a) For the purpose of obtaining legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under specified Acts (including the IBAC, Ombudsman and PID Acts);
  - (b) unless IBAC or the Ombudsman make a direction that a particular restricted matter must not be disclosed to that person— to the spouse, domestic partner, employer or manager of the person who received the notice and other persons for the purpose of assisting the recipient to seek advice and support in respect of the investigation.

The recipient in these circumstances will also be subject to confidentiality obligations and must be given a copy of the confidentiality notice.

## 11. Criminal offences

- 11.1 There are a number of offences set out in the PID Act relating to breaches of the requirements of the Act, including:
- (a) it is an offence to take detrimental action against another person in reprisal for a public interest disclosure;
  - (b) it is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC by VGSO or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the PID Act;
  - (c) it is an offence for any person to:
    - (i) 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;
    - (ii) claim that a matter is the subject of a public interest disclosure knowing the claim to be false; and
    - (iii) falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint.

## 12. Information security, reporting and review

### *Information security*

- 12.1 To ensure the confidentiality of public interest disclosures:
- (a) **Public Interest Disclosure Coordinators** must ensure that all central files relating to a public interest disclosure, whether paper or electronic, are kept in a locked receptacle or appropriately secure system that can only be accessed by Public Interest Disclosure Coordinators.
  - (b) All printed material held in VGSO concerning public interest disclosure matters must be kept in files that are clearly marked as a Public Interest Disclosure Act matter, and warn of the criminal penalties that apply to any unauthorised person disclosing information concerning a public interest disclosure, including the content of a public interest disclosure or the identity of a discloser.
  - (c) Public Interest Disclosure Coordinators must ensure that all electronic public interest disclosure records that are registered in the VGSO's records management systems, have:
    - (i) adequate security restrictions on all files
    - (ii) no ability for high level data administrators to view them.
    - (iii) All electronic files that are stored outside the VGSO's computer network (such as on an approved portable storage device) must be given password protection.
  - (d) **All employees** must take care to preserve the confidentiality of information in relation to public interest disclosures. For example:
    - (i) care must be taken when emailing information relevant to a public interest disclosure. For example, ensure that only the discloser has access to the email account
    - (ii) all phone calls and meetings in relation to a public interest disclosure must be conducted in private
    - (iii) hard copy documents for transmission should 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.

### *Review*

- 12.2 These procedures are reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC's guidelines.
- 12.3 VGSO's related policies referred to in this policy are regularly reviewed.



## Glossary of terms

*This glossary uses simplified definitions from the relevant Acts*

### **Corrupt Conduct (IBAC Act, s 4)**

Corrupt conduct means conduct

- of any person that adversely affects the honest performance by a public officer or public body of their official functions
- of a public officer that:
  - a) constitutes or involves a dishonest performance of their official functions
  - b) constitutes or involves knowingly or recklessly breaching public trust; or
  - c) involves misuse of information or material that was obtained in their official capacity
- intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the Act
- that could constitute a conspiracy or attempt to engage in any of the above conduct

AND WOULD CONSTITUTE

- an indictable offence against an Act (offences punishable by a term of imprisonment of 5 years or more are presumed to be indictable offences); or
- the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office.

### **Detrimental action (PID Act, s 3)**

Detrimental action may include:

- 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.

#### **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 due to the making of the disclosure

A public officer threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure and his or her family or friends.

A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

***Discloser***

a person who makes a disclosure of improper conduct or detrimental action

***IBAC***

the Independent Broad-based Anti-corruption Commission, established under the IBAC Act

***IBAC Act***

The *Independent Broad-based Anti-corruption Commission Act 2011*

***Improper conduct***

is defined to include

- **'corrupt conduct'** (included above in this Glossary)
- any of the following **conduct by a public officer or public body** in their capacity as a public officer or public body
  - a criminal offence
  - serious professional misconduct
  - intentional or reckless breach of public trust
  - intentional or reckless misuse of information acquired in the performance of their official capacity
  - substantial mismanagement of public resources
  - substantial risk to the health or safety of a person or persons
  - substantial risk to the environment; and/or
- **conduct of any person** that
  - adversely affects the honest performance by a public officer of their functions
  - is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the person engaging in the conduct.

BUT conduct that is **trivial conduct** will not be improper conduct.

***Examples of improper conduct***

A public officer takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty

A public officer sells confidential information

A public officer favours unmeritorious applications for jobs by friends and relatives.

***Investigating entity***

IBAC, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a public interest complaint

***PID Act***

the *Public Interest Disclosures Act 2012*

***Public body (PID Act, s 6, IBAC Act, s 6)***

A public body is:

- (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) IBAC
- (g) the Victorian Inspectorate
- (h) any other body or entity prescribed for the purposes of this definition.

***Public officer (PID Act, s 6, IBAC Act, s 6)***

A public officer is:

- (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 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;
- (bb) an IBAC officer (as defined)
- (cc) a Victorian Inspectorate Officer
- (dd) a Public Interest Monitor; or
- (ee) any other person prescribed for the purposes of this definition.

**VGSO**

the Victorian Government Solicitor's Office

## SCHEDULE: ROLES AND RESPONSIBILITIES IN RELATION TO PUBLIC INTEREST DISCLOSURES

Person	Roles and responsibilities
Employees	<p>Become familiar with these procedures</p> <p>Report known or suspected incidents of improper conduct or detrimental action to a Public Interest Disclosure Coordinator, their direct or indirect manager or supervisor, the VGSO or IBAC</p> <p>Maintain the confidentiality of information they receive about a disclosure, unless an exception applies</p>
Managers/supervisors	<p>Become familiar with these procedures</p> <p>Report known or suspected incidents of improper conduct or detrimental action to a Public Interest Disclosure Coordinator</p> <p>Receive disclosures from people who report to them (directly or indirectly)</p> <p>Receive disclosures that a discloser honestly believes can be made to them - 'misdirected disclosures'</p> <p>When receiving disclosures, being responsible for:</p> <ul style="list-style-type: none"> <li>• making sure they are received in private, away from the workplace if necessary</li> <li>• receiving disclosures verbally or in writing, and recording verbal disclosures in writing</li> <li>• providing a copy of any written statement by a discloser that they do not want the disclosure to be treated as a public interest disclosure to a Public Interest Disclosure Coordinator</li> <li>• forwarding disclosures and supporting material in a secure way and in a timely manner to a Public Interest Disclosure Coordinator</li> <li>• assisting a Public Interest Disclosure Coordinator to assess information about a disclosure</li> <li>• taking necessary steps to ensure the identity of a person who has made a disclosure and the content of the disclosure is kept confidential</li> <li>• considering whether any immediate action should be taken with respect to a disclosure. Any potential action should be discussed with a Public Interest Disclosure Coordinator before it is taken</li> <li>• supporting, and maintaining the confidentiality of, people who may have made a public interest disclosure or cooperated with the investigation of a disclosure</li> </ul>

Person	Roles and responsibilities
	<ul style="list-style-type: none"> <li>not disclosing the content of a disclosure, including the identity of the person who the disclosure is about, unless an exception applies</li> <li>not doing anything that is, or may be reasonably perceived to be, victimisation or harassment of a person who has made a public interest disclosure or cooperated in the investigation of a disclosure (this does not include legitimate management action)</li> </ul>
Public Interest Disclosure Coordinator	<p>Give general advice about the making of disclosures</p> <p>Receive disclosures about the VGSO and its employees</p> <p>Receive disclosures which have been made to the VGS and managers or supervisors</p> <p>Receive disclosures that a discloser honestly believes can be made to the VGSO</p> <p>Keep a copy of any written statement by a discloser that they do not want the disclosure to be treated as a public interest disclosure</p> <p>Advise disclosers of the protections available under the PID Act</p> <p>Assess whether a disclosure may be a public interest disclosure</p> <p>Notify IBAC of public interest disclosures and provide relevant information to IBAC</p> <p>Inform disclosers of the result of VGSO's assessment of their disclosure</p> <p>Where a matter is not assessed as a public interest disclosure, consider whether it should be referred to the VGS as a potential mandatory notification to IBAC</p> <p>Consider appropriate welfare support for a discloser and others involved in a public interest disclosure, including the appointment of a welfare manager</p> <p>Liaise with managers and supervisors about the appropriateness of taking immediate action</p> <p>Facilitate the provision of information to IBAC and/or the Victorian Ombudsman in relation to the investigation of public interest complaints</p> <p>Consider creating a risk management plan for disclosures referred to IBAC to manage the risk of confidentiality breaches, the risks to the welfare of persons involved in the disclosure and the risk of detrimental action being taken</p> <p>Maintain systems to keep information confidential, including by maintaining information security systems</p>

Person	Roles and responsibilities
	Ensure procedures are reviewed regularly
Victorian Government Solicitor	<p>Receive disclosures</p> <p>Consider whether to make mandatory notifications to IBAC</p> <p>Consider transfer of employees subject to detrimental action</p> <p>Ensure employees, particularly managers and supervisors, are educated about these procedures</p> <p>Ensure appropriate systems are in place</p> <p>Ensure that these procedures are readily available to the public and VGSO employees</p> <p>Ensure a safe working environment</p>



## Authorisation

<b>Policy title</b>	Making and Handling Public Interest Disclosures
<b>Owning branch</b>	Executive
<b>Policy status</b>	<input type="checkbox"/> New Policy  <input checked="" type="checkbox"/> Existing Policy

<b>Approval</b>	<b>Date approved</b>
Matthew Hocking, Victorian Government Solicitor	24 June 2021
Executive Leadership Team	23 June 2021

## Version history

Version	Date	Author	Brief description of change	Date of authorisation

<b>Date of policy</b>	20 July 2021
<b>Review period</b>	As required