



JUDICIAL  
COMMISSION  
OF VICTORIA

# **Procedures for handling public interest disclosures**

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# 1. Introduction

## 1.1 Purpose

These procedures have been prepared by the Judicial Commission of Victoria (the **Commission**) to facilitate the reporting of corruption and other misconduct under Victoria's Public Interest Disclosures Scheme.

Reporting such conduct, referred to as making a public interest disclosure (a **PID**), is essential in preventing corruption and other misconduct and preserving the integrity and the proper operation of the Victorian Public Sector (**VPS**).

These procedures have been developed to help you make a PID to the Commission. They set out important information, such as how the Commission will receive and handle your PID and the support and protections you will receive once you have made a disclosure.

They also constitute the Commission's procedures under section 58 of the *Public Interest Disclosures Act 2012* (the **PID Act**).

## 1.2 Our commitment

The Commission encourages and supports the reporting and prevention of corruption and other misconduct within the VPS.

Following our obligations under the PID Act, we will take all appropriate steps to:

- help facilitate the making, handling, notification and investigation of PIDs, and
- protect people from reprisals for making those disclosures.

## 1.3 About the PID Act

The PID Act provides a legal framework for making a public interest disclosure.

The purpose of the PID Act is to promote the integrity and accountability of the VPS by:

- encouraging and facilitating the making of disclosures about the wrongdoing of Victorian public bodies, their officers and people who have or intend to adversely affect the honest or effective performance of a Victorian public body or officer,
- protecting persons who make disclosures and persons who may suffer detrimental action in reprisal for those disclosures,
- ensuring those disclosures are properly assessed and, where necessary, investigated, and
- providing for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

## 1.4 Disclaimer

These procedures have been prepared in accordance with the PID Act, the *Public Interest Disclosures Regulations 2019* (the **Regulations**) and should be read in conjunction with IBAC's '*Guidelines for handling public interest disclosures (January 2020)*', available on IBAC's website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)).

This document has been prepared in accordance with the above IBAC guidelines and should be used as a resource and for guidance purposes only. It does not constitute *legal advice* and should not be relied upon for that purpose.

It is recommended that persons seek their own legal advice to understand how the PID Act might apply to or affect them in specific circumstances.

## 2. What is a PID?

### 2.1 What can I make a PID about?

A public interest disclosure is a disclosure by a natural person about:

- **improper conduct** (such as corrupt conduct) by a person, a public officer or public body
- **detrimental action** that a public officer or public body has taken against a person in reprisal for them (or another person) having made a PID or cooperated with the investigation of a PID.

A PID can be about something that has *already happened*, is *happening now*, *might happen* in the future.

### 2.2 What is the Commission's role and what type of PIDs can it receive?

The Commission can receive disclosures about judicial officers and non-judicial VCAT members. A judicial officer includes a judge, magistrate, coroner, associate judge or judicial registrar (in Victorian jurisdictions).

The Director of the Commission is the person authorised to receive PIDs made to the Commission.

### 2.3 What is 'improper conduct'?

'*Improper conduct*' may include criminal offences, breaches of public trust or behaviour that puts people's safety at risk. Improper conduct is:

- corrupt conduct
- conduct engaged in by a public officer or public body, in their capacity as a public officer or public body, that constitutes:
  - a criminal offence
  - serious professional misconduct
  - dishonest performance of public functions
  - intentional or reckless breach of public trust

- intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body
- 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.

*Improper conduct* is also:

- conduct of any person that:
  - adversely affects the honest performance of a public officer or public body of their functions as a public officer or public body
  - is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate obtaining:
  - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
    - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
    - a financial benefit or real or personal property
    - any other direct or indirect monetary or proprietary gain that the person or associate would not have otherwise obtained,
- conduct of any person that could constitute a conspiracy or attempt to engage in improper conduct.

## 2.4 What is ‘detrimental action’?

‘*Detrimental action*’ may include intimidation, discrimination or harassment in retaliation for making a PID. It includes:

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

Detrimental action includes threats to take such action or inciting or permitting someone else to take detrimental action.

To make a PID about detrimental action:

- (a) the detrimental action must be taken or proposed to be taken by a public body or public officer, and
- (b) the detrimental action must have been taken or proposed to be taken against another person in reprisal for the making of a PID because or in the belief that:
  - the other person, or anyone else, has made or intends to make a PID, or
  - the other person, or anyone else has cooperated or intends to cooperate with the investigation of the PID.

**Note:** A manager taking management action against a person who has made a PID, will not be taking detrimental action in reprisal for the making of a PID, unless the making of the PID was a reason for the management action being taken.

### 3. Who can make a PID to the Commission?

Anyone can make a disclosure about improper conduct or detrimental action to the Commission – both members of the public and employees of a public body.

Disclosures can be made by individuals or a group of people. A company or business cannot make a disclosure – but its officers or employees can.

You can ask someone else to make a disclosure on your behalf. However, if someone makes a disclosure on your behalf, they will receive limited protections under the PID Act. You will still receive the full protections under the PID Act. Further information about the protections you will receive can be found in Section 6 of these Procedures.

### 4. How to make a PID to the Commission

#### 4.1 Initial steps

If you are considering making a PID to the Commission, you are welcome to contact us by telephone or in writing (via email, letter or our online complaint portal) in the first instance. Disclosures cannot be made by fax.

The Director of the Commission will then be able to receive your disclosure, and:

- if required, arrange to meet with you at an appropriate time and location to receive your PID, or
- arrange for an appropriate alternative method of disclosure.

We note that Commission officers who receive PIDs incorrectly are trained to escalate such disclosures to the Director of the Commission.

If you need help or special assistance to make your PID, you can contact the Commission via telephone on (03) 9084 9600 for further information.

If you have difficulty speaking English, you may also seek help from the *Translating and Interpreting Service* (TIS) on 131 450 or at the TIS National [website](#).

#### 4.2 Making a PID over the phone or in person

If you wish to make your PID over the phone or in person, the first step is to contact the Commission via telephone on (03) 9084 9600. A Commission officer will then be able to guide you through how to make your PID.

You should make your PID in private, regardless of whether it is made over the phone or in person. However, you are welcome to have a legal representative present during this time.

### 4.3 Making a PID in writing

You can make a PID to the Commission in writing:

- by email to [enquiries@judicialcommission.vic.gov.au](mailto:enquiries@judicialcommission.vic.gov.au)
- by post addressed to the Director of the Judicial Commission at GPO Box 4305, Melbourne VIC 3001
- hand-delivered to the William Cooper Justice Centre, 210 William Street, Melbourne, marked to the attention of the Director of the Judicial Commission
- submitted via our online complaint portal at <https://www.judicialcommission.vic.gov.au/>.

### 4.4 Anonymous disclosures

You can make a disclosure anonymously by using an anonymous and unverifiable email address, through anonymous phone calls, or in a face-to-face conversation or meeting.

### 4.5 Misdirected and external disclosures

A '*misdirected disclosure*' to the Commission is one where a person thought the Commission was the appropriate body to make the disclosure to, but it should have been made to another entity. If a person makes a misdirected disclosure to the Commission, we will notify the disclosure to the appropriate entity for assessment within 28 days of receipt.

In some circumstances under the PID Act, a PID can also be made to a person or organisation who is not able to receive disclosures, like a journalist. This is an '*external disclosure*'.

Where a PID was not made anonymously and has been determined to be a public interest complaint (PIC), a discloser may make an external disclosure if:

- the relevant assessing entity does not notify the discloser about any action taken in response to the original disclosure within six months and has not responded to a request for advice within 30 days; or
- the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to a request for advice within 30 days; or
- where the investigation of the original disclosure was not completed within 12 months, the discloser has received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further six months of that response.

Some exemptions apply, for example, in relation to any information that may prejudice a criminal investigation or proceeding, or other legal proceeding, or information that is likely to lead to the disclosure of an investigative method.

**Note:** confidentiality protections under the PID Act do not apply to external disclosures.



## 4.6 What should I include in my PID?

It would be helpful if you could provide us with the following information:

- an indication as to whether you intend to make a PID and wish to receive the protections under the PID Act;
- a description of the alleged improper conduct or detrimental action, including details of the person or body you are complaining about (and if there are any witnesses to the conduct);
- your reasons for believing the conduct occurred;
- your contact details (unless you wish to make a PID anonymously);
- any concerns you have about reprisals for making your disclosure; and
- any supporting documents.

## 4.7 Can I opt out or discontinue my PID?

If you do not want your disclosure to be treated as a PID under the PID Act, you can email or write to the Commission and advise us no later than **28 days** after the date you first made your PID.

# 5. What happens after we receive your PID?

## 5.1 Assessment

After we receive your disclosure, we will:

- a) acknowledge receipt of the disclosure; and
- b) review whether we are the appropriate body to receive your disclosure.
  - If we are not the appropriate body, we will advise you of the appropriate body to make the disclosure to, or
  - If appropriate, treat your disclosure as a misdirected disclosure and notify it to IBAC.

## 5.2 Notification

### If the disclosure is a PID

If we decide that your disclosure meets the requirements under the PID Act, we will notify IBAC within 28 days after you make your PID that:

- the disclosure *may* be a PID,
  - we are sending the PID to IBAC for their assessment.

We will also notify you within 28 days after you make your PID that it has been sent to IBAC for assessment.

If your PID is sent to IBAC, they will notify you directly about the outcome of its assessment. For more information about IBAC's processes once it receives your PID, see the [IBAC website](#).

### **If the disclosure is NOT a PID**

If we decide that your disclosure does not meet the requirements under the PID Act, we will notify you of this decision within 28 days. This means we will not send your PID to IBAC or another appropriate agency for assessment.

## **5.3 Investigation**

### **We can still investigate your disclosure even if it is not a PID**

We can still treat your disclosure as a 'complaint' under the *Judicial Commission of Victoria Act 2016* (the **JCV Act**). For more information, please visit our [website](#) and read the Commission's [Guideline on Making a Complaint](#).

### **We must investigate your complaint if IBAC refers it back to us as a 'public interest complaint.'**

Where IBAC has determined that your disclosure is a PIC and refers the disclosure back to us, we will investigate your disclosure as a complaint.

For further information on our investigation process, please see our [Complaint information sheet](#).

## **5.4 What happens if urgent action is needed?**

In some circumstances, a PID may be about conduct that may pose an immediate threat to someone's health and safety or the preservation of property or may consist of serious criminal conduct.

While the PID Act limits the release of information about public interest disclosures, it allows the Commission to disclose the content of a PID 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of the public interest disclosure, including any disciplinary process or action. However, the Commission must not reveal your identity in taking urgent action.

In these cases, it may be necessary for the Commission to report the disclosure to Victoria Police for immediate investigation. The Commission may also need to take action to prevent certain future conduct (including taking action against the person whom the disclosure is about). For example, a judicial officer may be concealing evidence of criminal conduct or accepting a bribe in an ongoing jury trial.

This action may occur before the Commission has decided whether the disclosure meets all of the requirements in the PID Act or while the Commission is awaiting IBAC's decision on a notified matter.

## **6. You will be protected and supported if you make a PID**

### **6.1 Protections**

When you make a PID, you will receive the following legal protections:

- protection from detrimental action taken or proposed to be taken against you or another person in reprisal for making a PID, including:
  - protection from being fired, disciplined or bullied for making a PID;
  - (where possible) the opportunity to request a transfer of employment to avoid potential reprisals;
- protection from civil or criminal liability or an action of defamation for making a PID,
- protection from committing an offence or breaching any confidentiality obligations with respect to the information provided within the PID.

To receive these protections, you must make your disclosure in accordance with the requirements of the PID Act.

You will still be liable for your own conduct if you were involved in the improper conduct or detrimental action the subject of your PID. Making a PID does not provide you with immunity from your own wrongdoing.

The above protections will not apply if you knowingly provide false or misleading information of a material particular, intending that information to be acted on as a PID.

In addition, a person who makes a PID is not protected against legitimate management action by their employer. Management action will not be legitimate if it is taken or proposed to be taken in reprisal for the making of a PID.

### **6.2 Welfare support**

We recognise that it takes courage to speak up and disclose improper conduct.

If you make a PID, we can appoint a welfare manager if it is appropriate and necessary in your circumstances.

In determining whether to appoint a welfare manager, we consider whether:

- the PID has, or is likely to, proceed to an investigation,
- there are any real risks of detrimental action against you or others involved,
- we can provide effective support to you or others involved, and
- it is within our power to protect you and others involved from repercussions.

A welfare manager is responsible for:

- considering your immediate welfare and protection needs (or those of a witness),
- providing practical advice and support, including helping you (or a witness) seek support from a support service (e.g. a registered medical practitioner, an employee assistance program, a trade union or the Victorian WorkCover Authority),

- explaining the protections available under the PID Act,
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (e.g., harassment, intimidation or victimisation),
- maintaining confidentiality, and
- operating discreetly to protect you or a witness from being identified as involved in a PID.

If you need support, our [website](#) contains a list of agencies that may be able to support you.

## 7. Confidentiality

### 7.1 Is my PID confidential?

Confidentiality is another way that you and other people involved in making a PID are protected. Several confidentiality obligations arise under the PID Act and other laws relating to the receipt and investigation of PIDs.

There are two main restrictions on disclosing information:

- The content of a PID must be confidential.
- The identity of a person making a PID must be confidential.

The Commission will only disclose information about you or your PID in accordance with the law.

A breach of either of these restrictions is a criminal offence (for further information, see Section 8 of these Procedures). There are several exceptions that allows someone to disclose this type of information in certain circumstances. There are also some general exceptions that enable someone to disclose this type of information.

These restrictions and their exceptions are set out in sections 52, 53 and 54 of the PID Act. We note that the confidentiality protections do not apply to external disclosures.

### 7.2 The content of a PID must not be disclosed

The PID Act prohibits the disclosure of the content, or information about the content, of any disclosure assessed as a PID.

This restriction applies to a person or organisation that receives a PID, or is provided with information about the disclosure by an investigating entity who is assessing or investigating it.

This restriction does *not* apply to the person who made the public interest disclosure.

### 7.3 The identity of a person making a PID must not be disclosed

The PID Act prohibits a person or organisation from disclosing information that would likely lead to identifying a person who has made a PID.

This restriction applies to any person or organisation *other than* the person who made the PID.

## 7.4 How we protect your confidentiality

We will take all reasonable steps to protect your confidentiality, including protecting your identity.

These steps include:

- Securely storing all hard and electronic files relating to a PID.
- Taking care when emailing information relevant to a PID and privately conducting all phone calls and meetings.
- Having clear internal policies and procedures for receiving, assessing, notifying and investigating disclosures, to ensure that the confidentiality of PIDs can be maintained.
- Providing regular training to Commission staff that receive disclosures to ensure that they are aware of, and comply with, the confidentiality requirements under the PID Act.

Also, Commission documents are exempt from freedom of information laws when they contain information that relates to a PID or is likely to lead to the identification of a person who has made a PID (section 78 of the PID Act).

## 7.5 Exceptions to confidentiality requirements

There are certain circumstances where the confidentiality requirements listed above do not apply.

These include:

- where a person or body discloses confidential information to exercise its functions under the PID Act (e.g., the Commission referring the PID to IBAC)
- where IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee determines that the PID is not a public interest complaint (which means that the information is no longer required to be kept confidential under the PID Act).

For a complete list of the exceptions, please see the [IBAC Guidelines for handling public interest disclosures](#).

## 8. Offences under the PID Act

A person commits an offence if they:

- take detrimental action against someone as retaliation for them making a PID,
- release the content or information about the content of a PID that will lead to the identification the person that made it, unless permitted by law,
- give false or misleading information in a PID,
- give further information about a PID that a person knows is false or misleading,
- make false claims about a disclosure or public interest complaint, or the status of either of these,
- tell anyone that IBAC has been notified to assess a PID, unless permitted by law.

For more information, see the [IBAC Guidelines for handling public interest disclosures](#).

## 9. How you can make a PID about the Commission or its officers

### 9.1 Making a complaint about us or one of our officers

You can make a PID about the Commission or a Commission officer. These must be made to IBAC, the Integrity Oversight Victoria, or the Victorian Ombudsman:

#### IBAC

Phone: 1300 735 135

Post: GPO Box 24234 Melbourne Vic 3001

Online complaint form: <https://www.ibac.vic.gov.au/report>

#### Integrity Oversight Victoria

Phone: 1800 518 197

Post: PO Box 617 Collins Street West 8007 Email:

[info@integrityoversight.vic.gov.au](mailto:info@integrityoversight.vic.gov.au)

#### Victorian Ombudsman

Phone: (03)9613 6222 or 1800 806 314 (regional areas only)

Post: Level 2, 570 Bourke Street, Melbourne Vic 3000

Email: [complaints@ombudsman.vic.gov.au](mailto:complaints@ombudsman.vic.gov.au)

If you try to make a disclosure about the Commission or a Commission officer to us directly, we will inform you that you need to make it to one of the above organisations. This ensures that you will receive the protections under the PID Act.

## 9.2 Which organisation should I make my PID to?

The below table sets out who you should make your PID about the Commission to, depending on who the subject of the PID is:

**Table 1: Disclosures about the Commission or its officers**

If the disclosure is about...	Report to...
The Judicial Commission	IBAC or Integrity Oversight Victoria, or the Ombudsman
A judicial member of the Board of the Judicial Commission	The Judicial Commission or IBAC
A non-judicial member of the Board of the Judicial Commission	IBAC or Integrity Oversight Victoria
The Director or Acting Director of the Judicial Commission	
Employees who assist the Judicial Commission referred to in section 36 of the <i>Court Services Victoria Act 2014</i> .	
Consultants engaged under section 133 of the Judicial Commission Act.	

Further information about how to make your disclosure to IBAC, Integrity Oversight Victoria and the Victorian Ombudsman can be found at:

- **IBAC:**

[IBAC: Guidelines for handling public interest disclosures](#)

- **Integrity Oversight Victoria:**

[Integrity Oversight Victoria: Public interest disclosure guidelines](#)

- **Victorian Ombudsman:**

[Victorian Ombudsman: Public interest disclosure policy](#)