

What is a Public Interest Disclosure?

Commonly known as whistleblowing and known as a protected disclosure until 1 January 2020, a public interest disclosure (PID) is a report of either:

- improper conduct by a public officer, a public body or by a person seeking to adversely affect the honest performance, functions or responsibilities of a public officer or public body, or
- detrimental action taken by a public officer or a public body.

When made in accordance with the requirements of the *Public Interest Disclosures Act 2012* (Vic) (PID Act), a person who makes a disclosure will receive specific protections, including protection from reprisal and/or detrimental action in relation to the disclosure.

A PID can be made by an individual or a group of individuals but cannot be made by a company or a business.

Improper conduct

Improper conduct includes:

- corrupt conduct
- 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
 - 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 by a third party that adversely affects the honest performance of a public officer or public body or 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 an attempt to engage in any of the above.

Less serious or trivial complaints are excluded from the definition of improper conduct.

Detrimental action

Detrimental Action is action taken against a person in reprisal for 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 the taking of disciplinary action.

A person takes detrimental action against another person in reprisal for a public interest disclosure if the person:

- takes or threatens to take detrimental action against the other person because or they believe that:
 - the other person or anyone else has made or intends to make the disclosure or
 - the other person or anyone else has cooperated or intends to cooperate with the investigation of the disclosure.
- incites or permits someone else to take or threaten to take detrimental action against the other person because or they believe that:
 - the other person or anyone else has made or intends to make the disclosure, or
 - the other person or anyone else has cooperated or intends to cooperate with the investigation of the disclosure.

NOTE: Not all action will be a breach of the PID Act

A manager may take management action that may be classified as detrimental action in relation to an employee who has made a public interest disclosure only if the fact that the person has made the disclosure is not a reason for the manager taking the action. This includes action in respect of performance development (including training), conditions of employment or discipline as well as action to ensure the safety of the workplace.

How do I make a Public Interest Disclosure?

A public interest disclosure can be made in writing or verbally and must be made in private. A disclosure cannot be made by fax. A disclosure can be anonymous, but this will affect the protections that you can receive. Making a disclosure can often involve sensitive issues. Talk to the Public Interest Disclosure Coordinator about how we can help you throughout the process. Family Safety Victoria can assist with an interpreter or a support person or any other help to enable you to make a disclosure.

A disclosure in relation to Family Safety Victoria can be made to:

- The Chief Executive Officer of Family Safety Victoria (as the head of Family Safety Victoria);
- Family Safety Victoria's Public Interest Disclosure Coordinators
Primary contact: Jennifer Jones, phone: (03) 9194 3447
Secondary contact: Sophie Robinson, phone: (03) 9085 0966
Email: F.S.V.Protected.Disclosures@familysafety.vic.gov.au
- If you are a Family Safety Victoria employee, your manager or supervisor or your line executive
- A person formally acting in any of the above roles.

OR

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

If your disclosure does not relate to Family Safety Victoria, you can contact IBAC for advice on where to make your disclosure.

Protections

Protections for a discloser include:

- no civil or criminal liability or administrative action (including disciplinary action) for making the disclosure
- not committing an offence against the *Constitution Act 1975* or any other Act that imposes confidentiality obligations or other disclosure restrictions
- no breach of other confidentiality obligations

- not liable for defamation in relation to information included in a public interest disclosure.

Limitations on protections

The protections do not apply if a discloser:

- provides information intending that it be acted on as a public interest disclosure, or provides further information that relates to a public interest disclosure, knowing that the information is false or misleading
- claims that a matter is the subject of a public interest disclosure knowing the claim to be false
- falsely claims that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure.

The PID Act specifically provides that a person remains liable for their own conduct even though that person has made a disclosure of that conduct under the PID Act. Making a disclosure does not provide you with protections or immunity for your own wrongdoing.

Confidentiality

Disclosers are also protected by prohibitions on the disclosure of the content or information about the content of a PID and on the disclosure of the identity of the discloser. There are exceptions such as disclosure by the receiving entity in order to exercise functions under the PID legislation or disclosure for the purpose of obtaining legal advice or representation.

Support

Family Safety Victoria will provide reasonable welfare support to a discloser or a witness in an investigation as the circumstances require. Family Safety Victoria will consider if it is appropriate to appoint a support person, for a person who has made a disclosure or is cooperating, or intending to cooperate, with the investigation of a disclosure.

What happens next?

Family Safety Victoria's Public Interest Disclosure Coordinator will review your disclosure and may seek further information. The Public Interest Disclosure Coordinator will advise you within 28 days of making the disclosure, if your disclosure will be notified to IBAC for assessment. A disclosure will be notified to IBAC if the Public Interest Disclosure Coordinator considers that the disclosure meets the criteria below.

Is it a Public Interest Disclosure?

A disclosure meets the requirements of the PID Act if it has been made in accordance with Family Safety Victoria's procedures and:

- the disclosure shows or tends to show
 - a person, public officer or public body has engaged, is engaging or proposed 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 contravention of section 45 of the PID Act.

Or

- the person who made the disclosure believes on reasonable grounds that the disclosure shows or tends to show
 - a person, public officer or public body has engaged, is engaging or proposed 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 contravention of section 45 of the PID Act.

If required, IBAC must be notified within 28 days of the disclosure being made.

IBAC will review the disclosure and determine whether the disclosure is a public interest complaint. To determine this IBAC assesses whether the disclosure has been made in accordance with the PID Act and meets the criteria above.

Alternatively, IBAC may determine that the disclosure does not meet the requirements above and is therefore not a public interest complaint. IBAC will notify the discloser of the outcome of this assessment.

If the disclosure is considered a public interest complaint, IBAC will either:

- refer the matter to another investigating entity, such as the Victorian Ombudsman or the Victorian Information Commissioner
- investigate the matter if it meets the criteria for investigation by IBAC, or
- dismiss the matter if it determines that:
 - it does not warrant investigation, or
 - it is a matter that neither the IBAC or another investigation entity can investigate, or
 - referring the matter would prejudice criminal proceedings, a criminal investigation or an investigation by the IBAC or the Victorian Inspectorate.

IBAC is required to make this determination and advise the discloser within a reasonable time of IBAC receiving the disclosure.

For more information please refer to the Family Safety Victoria Public Interest Disclosure Procedure.