



Protected Disclosure Policy

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1. Background and purpose

Respect Victoria encourages employees and members of the public to report known or suspected incidences of corrupt or improper conduct.

The purpose of this document is to describe the procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by Respect Victoria and/or its employees.

These procedures have been prepared in accordance with the Protected Disclosure Act 2012 (the Act) and the guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) which are available on the IBAC website (www.ibac.vic.gov.au).

Protected Disclosure Policy
Version 1.0
RV/D18/6
Last Updated: 4 October 2018

2. Who can make a protected disclosure?

Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by, Respect Victoria or one of its employees.

You can make a protected disclosure if you are a member of the public, an employee, officer or member of Respect Victoria or one of its portfolio agencies, or an employee, officer or member of another department or public body.

You can make a disclosure as an individual or together with a group of individuals.

A company or business cannot make a protected disclosure.

You can ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made. In such circumstances it is recommended to make the disclosure jointly.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'protected disclosure'. You may also advise that you do not want your disclosure to be treated as a 'protected disclosure'.

3. How do I make a protected disclosure?

You may make a protected disclosure:

- in person;
- by phone;
- by leaving a voicemail message;
- in writing by post, personal delivery or email;
- by any other form of electronic communication (but not fax); and/or
- anonymously.

You may not make a protected disclosure by fax.

A protected disclosure must be made in private so it is important that only the person to whom you are making the disclosure to can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent to the email address of the person to whom you are making the disclosure to, rather than a group email. You are not precluded from making a joint disclosure with a group of individuals at the same time.

If you are making your disclosure verbally, the person receiving your disclosure may take notes of your discussion. The person receiving your disclosure may also want to record the conversation, but will only do so with your permission.

You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated and you will not be notified of the outcome of any investigation. This will also affect Respect Victoria's ability to protect the discloser from adverse measures if the discloser's identity becomes known.

If you cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

4. What can I make a protected disclosure about?

You may make a protected disclosure about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that:

- a person, public officer or public body;
- is engaging in, or proposing to engage in;
- 'improper conduct' and/or 'detrimental action'.

4.1 Public officer and public body

The conduct you are disclosing must be in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

Public bodies or public officers include Respect Victoria.

For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

4.2 Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action.

The definitions of improper conduct and detrimental action are explained in the diagram on the next page.

**'Improper conduct' is defined as:
'CORRUPT CONDUCT' or 'SPECIFIED
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; or
- involves a conspiracy or an attempt to engage in any of the above conduct.

AND

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

Specified conduct is:

Corrupt conduct that would not constitute an indictable offence, but would constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct

OR

Conduct that:

- involves a substantial mismanagement of public resources;
- involves a substantial risk to public health and safety; or
- involves a substantial risk to the environment.

AND

- would constitute a criminal offence, or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

'Detrimental conduct' is defined as:

Action taken against a person who has made a protected disclosure which:

- Causes injury, loss or damage;
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including 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.

Examples of improper conduct

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

A Respect Victoria employee sells confidential information.

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

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 a disclosure.

A person 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.

Reasonable grounds

Your 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 you believe (as opposed to know) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have reasonable grounds for your belief.

A mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be protected by the Act. For example, it is not enough to say 'I know X is corrupt'. You must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

5. To whom do I make my protected disclosure?

Who you can make your protected disclosure to depends on the person or body your disclosure is about as only certain persons and entities can receive protected disclosures.

If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will not be a protected disclosure and you will not be protected under the Act. It is therefore important that you check that you are providing your disclosure to the right person or body. If in doubt, disclosures should be made directly to IBAC, unless the disclosure is about IBAC or one of its officers.

If you wish to make a protected disclosure about Respect Victoria any of its employees and/or officers, you may make your disclosure to:

- a) IBAC (Independent Broad-based Anti-Corruption Commission)
Assessment and Review Unit
GPO Box 24234
MELBOURNE, VIC 3001
Email: submit@ibac.vic.gov.au
Telephone: 1300 735 135
Website: www.ibac.vic.gov.au

b) Victorian Ombudsman

In some circumstances you may make your disclosure to the Ombudsman. Details about how to make a disclosure to the Ombudsman can be made by contacting the Victorian Ombudsman at:

Level 9, North Tower
459 Collins Street
MELBOURNE, VIC 3001
Telephone: (03) 9613 6222 / 1800 806 314
Website: www.ombudsman.vic.gov.au

6. What will happen after I make a disclosure?

The procedures in this part relate to disclosures made to Respect Victoria. Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes.

6.1 Receipt of disclosures

The receipt of your disclosure to Respect Victoria will be acknowledged verbally, or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure, including the timeframes involved.

6.2 Assessment by IBAC

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

If IBAC determines that your disclosure is a protected disclosure, it must decide to either:

- dismiss your disclosure,
- investigate your disclosure
- refer your disclosure to another body for investigation, either the Victorian Ombudsman or the Victoria Police.

Regardless of whether IBAC determines your disclosure is a protected disclosure or not, you will still receive the protections under the Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

However, if IBAC determines that your disclosure is not a protected disclosure, the confidentiality requirements set out in these procedures no longer apply in relation to your disclosure.

You will be advised the outcome of the IBAC determination.

7. What protections will I receive?

The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These 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; and

- protection from an action for defamation.

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if IBAC determines the disclosure does not comply with the requirements of the Act or IBAC determines that the disclosure is not a 'protected disclosure'.

The protections in the Act do not apply if you knowingly provide false or misleading information or claim that a matter is the subject of a protected disclosure knowing that claim to be false.

The protections will apply to further information relating to a protected disclosure that you provide to:

- IBAC; and/or
- an investigating entity.

In addition to these protections, Respect Victoria recognises that the welfare and protection from detrimental action of persons making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to Respect Victoria'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 (Vic)* and the common law.

8. Welfare management

Respect Victoria will provide welfare support to a discloser or a witness in an investigation as the circumstances require.

Respect Victoria will also consider appointing a welfare manager when a person has made a protected disclosure or is cooperating, or intending to cooperate, with an investigation of a protected disclosure.

A welfare manager is responsible for:

- examining the discloser and/or witness' immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment;
- providing practical advice and support;
- advising the discloser and/or witness of the protections available under the Act;
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (eg harassment, intimidation or victimisation);
- ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic;
- maintaining confidentiality;
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

In determining whether to appoint a welfare manager in any particular case, Respect Victoria will consider:

- whether the disclosure has proceeded, or is likely to proceed, to an investigation;
- whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
- whether Respect Victoria can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure; and
- whether it is within Respect Victoria's power to protect the person/s involved from suffering repercussions.

Respect Victoria may appoint an internal person as welfare manager or engage a contractor to provide welfare

services. Respect Victoria will also consider referring an employee to its Employee Assistance Program.

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.

9. Protection from detrimental action

Respect Victoria will take precautions to prevent its employees and agents from taking detrimental action in reprisal for a protected disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by Respect Victoria will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the person receiving the report (irrespective of their role) will record details of the incident and advise the person of the protections they will receive under the Act.

A disclosure of detrimental action can itself be a protected disclosure and in those circumstances may be reported to IBAC or the Ombudsman in line with this policy.

If you are an employee who has made a protected disclosure and you believe on reasonable grounds that detrimental action will be, is being, or has been taken against you, you may request a transfer of employment to another government agency on terms and conditions that are no less favourable overall to you. Note that all requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:

- the Chairperson of the Board must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the Chairperson of the Board must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' government agency consents to the transfer.

If you have sustained injury, loss or damage as a result of detrimental action taken against you in reprisal for making a disclosure, the Act sets out remedies that are available to you. You may wish to obtain legal advice about this.

Whilst there are these protections, there are also responsibilities. You must not take detrimental action against another person in reprisal for a protected disclosure and, if you have been involved in the improper conduct or detrimental action which is the subject of your disclosure, you will still be held liable for your own involvement. Making a disclosure does not provide you with immunity for your own wrongdoing.

You must not disclose the content, or information about the content, of a disclosure that has been notified to IBAC which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act.

10. What happens if a protected disclosure is made against me?

Respect Victoria recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide welfare support to you during the handling and investigation of a disclosure as the circumstances require.

Respect Victoria will only disclose information about the subject of a disclosure in accordance with the law, including this Act.

Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the disclosure will remain confidential.

11. Confidentiality

You must not tell anyone else about your protected disclosure except in the circumstances set out in these procedures or as permitted by the Act.

If you repeat your disclosure to someone other than as provided by these procedures or permitted by the Act, you may lose the protections provided for in the Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. If you are considering disclosing information about your disclosure, you may wish to obtain legal advice first.

Respect Victoria will only disclose information about you or your disclosure in accordance with the law, including the Act. The Act prohibits the disclosure of information received in relation to a disclosure that has been notified to IBAC by Respect Victoria except in certain limited circumstances.

The circumstances in which a person may disclose information obtained about a protected disclosure that has been notified to IBAC by Respect Victoria or information which is likely to lead to the identification of the person who made that disclosure include:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the disclosure including disciplinary process or action;
- the IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure;
- where necessary for the purpose of the exercise of functions under the Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the *Independent Broad-based Anti-corruption Commission Act 2011*;
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary process or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation;
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act; or
- an investigating body has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the Act.

The Act also prohibits disclosing information that is likely to lead to your identification unless permitted to do so in accordance with the Act.

IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information has been disclosed is bound by the same confidentiality requirements.

12. Criminal offences

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

- (a) it is an offence to take detrimental action against another person in reprisal for a protected 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 Respect Victoria or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act;
- (c) it is an offence for any person to:
 - i. provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure;
 - ii. claim that a matter is the subject of a protected disclosure knowing the claim to be false;
 - iii. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint;
- (d) it is an offence for any person to:
 - i. disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act;
 - ii. disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

13. Alternatives to making a 'protected disclosure'

These procedures are designed to complement usual methods of submitting complaints to Respect Victoria. Members of the public are encouraged to use Respect Victoria's feedback process to communicate complaints or concerns with the services provided by Respect Victoria.

Employees are encouraged to raise matters with their supervisors and managers at any time.

14. Review

These procedures are reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC's guidelines.

Version Control

Version	Date	Changes
1.0	4 October 2018	Approved by Board

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Schedule 1 - What is a public body and what is a public officer?

A public body is:

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.

A public officer is:

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 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 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.