



# Respect Victoria Public Interest 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 policy document is to describe the principles and procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by Respect Victoria and/or its employees. This policy applies to all Respect Victoria directors, employees and contractors.

These procedures have been prepared in accordance with the Public Interest 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](http://www.ibac.vic.gov.au)).

## 2. What are public interest disclosures?

Public interest disclosures are disclosures by a natural person about:

- improper conduct of public bodies or public officers (such as corrupt conduct); and/or
- detrimental action that a public officer or public body has taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

A disclosure can relate to conduct or action that:

- may have already taken place; or
- may be occurring now; or
- may happen in the future.

## 3. Who can make a public interest disclosure?

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

You can make a public interest disclosure if you are a member of the public; an employee, officer or member of Respect Victoria; or an employee, officer or member of a Victorian Government 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 public interest 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 that you 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

'public interest disclosure'. You may also advise that you do not want your disclosure to be treated as a 'public interest disclosure'.

## 4. How do I make a public interest disclosure?

You may make a public interest 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 public interest disclosure by fax.

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

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

## 5. What can I make a public interest disclosure about?

You may make a public interest 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;
- has engaged, is engaging in, or proposing to engage in;
- 'improper conduct' and/or 'detrimental action'.

### 5.1 Public officer and public body

The conduct you are disclosing must be conduct of a public officer or public body which is engaged in by the public officer or public body in those roles. Accordingly, 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.

For the purposes of disclosing improper conduct and/or detrimental action, 'public bodies' includes Respect Victoria and 'public officers' includes its employees.

For a full definition of 'public body' and 'public officer' see Schedule 1 of this policy.

## 5.2 Improper conduct and detrimental action

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

### (a) Improper Conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act, as detailed below. If the conduct is trivial, it will not meet the threshold of improper conduct. When assessing allegations of improper conduct, you need to identify that there is a link between the conduct and the official function of a public officer.

### (b) Corrupt Conduct

Corrupt conduct includes conduct:

- of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or
- of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
- of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- of a person (the **first person**) 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 result in the first person or an associate of the first person obtaining—
  - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - (iii) a financial benefit or real or personal property; or
  - (iv) any other direct or indirect monetary or proprietary gain—that they would not have otherwise obtained; or
- that could constitute a conspiracy or an attempt to engage in any conduct referred to above, being conduct that would constitute a relevant offence.

### (c) Other Improper Conduct

Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes:

- a criminal offence;
- serious professional misconduct;

- dishonest performance of public functions;
- an intentional or reckless breach of public trust;
- an 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 health or safety of one or more persons;
- a substantial risk to the environment.

Conduct of any person that:

- adversely affects the honest performance by a public officer or public body of their public functions;
- 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 of the person, 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 any of the conduct referred to above.

#### **(d) Detrimental Conduct**

“Detrimental conduct” is action taken against a person who has made a public interest 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).

However, “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.

#### **(e) 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.

## **(f) 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.

## **(g) 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.

# **6. To whom do I make my public interest disclosure?**

## **(a) IBAC or Victorian Ombudsman**

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

If your disclosure is made to a person or entity that cannot receive your disclosure, your disclosure will not be a public interest 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 public interest disclosure about Respect Victoria or 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](mailto:submit@ibac.vic.gov.au)  
Telephone: 1300 735 135  
Website: [www.ibac.vic.gov.au](http://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  
2/570 Bourke Street  
MELBOURNE, VIC 3000  
Telephone: (03) 9613 6222 / 1800 806 314 (Regional Only)  
Website: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

## **(b) Misdirected disclosures**

A public interest disclosure made to a wrong receiving entity can be redirected to a correct receiving entity without the discloser losing the protection of the Act. However, the wrong receiving entity must be an entity to which a public interest disclosure may usually be made and the person making the disclosure must honestly believe that the wrong receiving entity was the appropriate entity to receive the disclosure.

A misdirected public interest disclosure is ineffective if it concerns Members of Parliament. Public interest disclosures about Members of Parliament must still be made to the President of the Legislative Council for members of the Legislative Council and to the Speaker of the House for members of the Legislative Assembly.

## **(c) Permitted external disclosure**

A person who has made a public interest disclosure may make further disclosure of that matter to external parties (such as the media and politicians) if:

- the original disclosure was not made anonymously;
- the original disclosure was determined to be a public interest complaint and the discloser was notified of that determination; and
- one of the following applies:
  - the discloser has not been notified of any action in relation to the disclosure within 6 months of the determination and has not received a response 30 days after requesting an update on progress;
  - an investigation has not been completed 12 months after the determination and the discloser has not received a response 30 days after requesting an update on progress;
  - an investigation has not been completed 12 months after determination and although the discloser has received a response within 30 days of a request for an update, the discloser has received no further update advising the investigation has been completed six months after that response.

Any external disclosure in accordance with the above must not contain information that might prejudice a criminal investigation or legal proceeding of which the discloser is aware and must not contain information about the investigative methods of the IBAC or the police. The protections afforded under Part 6 of the Act will apply to this type of external disclosure.

## 7. 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.

### 7.1 Receipt of disclosures

The receipt of your disclosure to Respect Victoria will be acknowledged orally 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.

### 7.2 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 public interest disclosure, it must decide to either:

- dismiss your disclosure;
- investigate your disclosure; or
- 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 public interest 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 public interest 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.

## 8. 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:

- a discloser cannot be dismissed, disciplined or bullied for making a disclosure;
- 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 regarding information included in a public interest disclosure.

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 ' public interest 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 public interest disclosure knowing that claim to be false.

The protections will apply to further information relating to a public interest 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 public interest 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.

## 9. 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 public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest 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 public interest 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.

## 10. Protection from detrimental action

Respect Victoria 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.

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 public interest 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 public interest 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 public interest 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.

## 11. What happens if a public interest 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.

## 12. Confidentiality

You must not tell anyone else about your public interest 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. Confidentiality regarding disclosure of your identity when making a public interest disclosure won't apply if you give written consent to such disclosure.

The circumstances in which a person may disclose information obtained about a public interest 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 or the Integrity & Oversight Committee has determined that the disclosure is not a public interest 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;
- for the purpose of assisting the discloser to seek advice or support from a registered health practitioner or trade union or employee assistance program;
- the disclosure is to WorkCover for a workers compensation claim or to the Fair Work Commission for an application;
- 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.

## 13. 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:

- it is an offence to take detrimental action against another person in reprisal for a public interest disclosure;
- 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;
- it is an offence for any person to:
  - 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;
  - claim that a matter is the subject of a public interest disclosure knowing the claim to be false;
  - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint;
- it is an offence for any person to:
  - disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act;
  - disclose that a disclosure has been determined to be a public interest complaint unless permitted to do so by the Act.

## 14. Alternatives to making a ' public interest 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.

## 15. 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
2.0	13 March 2020	Policy updated to reflect legislative amendments to the Protected Disclosure Act 2012 and renaming to the Public Interest Disclosure Act 2012.

To receive this publication in an accessible format phone (03) 9096 9501, using the National Relay Service

13 36 77 if required, or email [contact@respectvictoria.vic.gov.au](mailto:contact@respectvictoria.vic.gov.au)

## 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 Victoria Police personnel
10. a responsible Minister of the Crown
11. a member of the Legislative Assembly or the Legislative Council
12. a Councillor within the meaning of section 3(1) of the Local Government Act 1989
13. a member of Council staff employed under the Local Government Act 1989
14. a judge, a reserve judge, a magistrate, a reserve 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