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| Guide to Making and Handling Public Interest Disclosures  Procedures for the Office of the Chief Parliamentary Counsel  *These are based on DPC's procedures at Oct 2021* |

Contents

[**Quick Reference Guide** 3](#_Toc90392819)

[**Making a public interest disclosure to OCPC** 3](#_Toc90392820)

[**OCPC handling of public interest disclosures** 5](#_Toc90392821)

[**1. Background and Purpose** 6](#_Toc90392822)

[1.1 Background 6](#_Toc90392823)

[1.2 Purpose of this Guide 6](#_Toc90392824)

[**2 Making a Public Interest Disclosure** 7](#_Toc90392825)

[2.1 Who can make a public interest disclosure? 7](#_Toc90392826)

[2.2 What can I make a public interest disclosure about? 7](#_Toc90392827)

[2.3 How do I make a public interest disclosure? 9](#_Toc90392828)

[2.4 Who do I make a public interest disclosure to? 10](#_Toc90392829)

[2.5 What are alternatives to making a public interest disclosure? 11](#_Toc90392830)

[**3 What Happens After I Make a Disclosure** 11](#_Toc90392831)

[3.1 Receipt of disclosures 11](#_Toc90392832)

[3.2 Assessing disclosures 11](#_Toc90392833)

[3.3 Notification to IBAC 12](#_Toc90392834)

[3.4 Assessment by IBAC 13](#_Toc90392835)

[**4 Protections Applying to Disclosures** 15](#_Toc90392836)

[4.1 Protections under the PID Act 15](#_Toc90392837)

[4.2 Confidentiality 16](#_Toc90392838)

[4.3 Criminal offences 17](#_Toc90392839)

[**5 Handling of Public Interest Disclosures** 18](#_Toc90392840)

[5.1 Roles and responsibilities of OCPC staff 18](#_Toc90392841)

[5.2 Managing disclosures where the discloser is implicated 19](#_Toc90392842)

[5.3 Managing information 19](#_Toc90392843)

[5.4 Welfare management 20](#_Toc90392844)

[5.5 Dealing with detrimental action 20](#_Toc90392845)

[5.6 Dealing with persons who are the subject of a disclosure 21](#_Toc90392846)

[Schedule 1 – Definitions of Public Body and Public Officer 23](#_Toc90392847)

## Quick Reference Guide

## Making a public interest disclosure to OCPC

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| **What is a public interest disclosure?** | A public interest disclosure is a complaint or allegation made about improper conduct or detrimental action involving a public officer or public body. |
| **Who can make a public interest disclosure?** | Any individual. A business or company cannot make a public interest disclosure however its officers and employees can. |
| **How do I make a public interest disclosure to OCPC?** | Verbally or in writing. |
| **What types of conduct can I make a public interest disclosure about?** | * + Improper conduct, including corrupt conduct of public bodies (which includes government departments and agencies) or public officers (which includes public servants, Members of Parliament and judicial officers).   + Conduct, even if not from a public body or officer, that adversely affects, or is intended to adversely affect, the honest performance of a public body or officer’s functions.   + 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 such a disclosure. |
| **Who can I make a public interest disclosure to OCPC about?** | OCPC staff and OCPC itself.  Disclosures about other bodies or persons should be made through other channels. The list of entities that can receive public interest disclosures can be found in IBAC’s *Guidelines for Handling Public Interest Disclosures*, which is available at:  [www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures) |
| **Who should I contact if I wish to make a public interest disclosure about the conduct of OCPC or OCPC staff?** | You can contact any one of the following persons or bodies:   * + OCPC’s Public Interest Disclosure Coordinators;   + If you are an OCPC staff member – your manager or supervisor;   + The Chief Parliamentary Counsel;   + DPC;   + The Independent Broad-based Anti-corruption Commission (IBAC);   + The Victorian Ombudsman;   + The Victorian Inspectorate.   The contact details for each of the above can be found on p.10 of this Guide. |
| **Who should I contact if I wish to make a public interest disclosure about a public body other than OCPC, or a public officer who doesn’t work at OCPC?** | IBAC’s *Guidelines for Handling Public Interest Disclosures* (referenced above) provide details of who you should contact to make such a public interest disclosure. In most cases, IBAC will be able to receive your disclosure – however, important exceptions apply. |
| **What determines whether or not a disclosure is a public interest disclosure for the purposes of the *Public Interest Disclosures Act 2012* (PID Act)*?*** | Upon receipt of your disclosure, the Public Interest Disclosure Coordinator at OCPC will assess whether it is a public interest disclosure for the purposes of the PID Act.  A public interest disclosure must tend to show ‘improper conduct’ or ‘detrimental action’ involving a public officer. There needs to be a link between the conduct and the official function of a public officer or body.  When assessing the disclosure, the Public Interest Disclosure Coordinator considers two standards: The reliability of the information and whether the belief of the person making the disclosure is reasonable. That is, whether a reasonable person with the same information would believe that the improper conduct occurred.  Further details of what sorts of things the Public Interest Disclosure Coordinator thinks about is set out in IBAC’s *Guidelines for Handling Public Interest Disclosures* (p.12):  [www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures) |
| **What is the difference between a public interest disclosure and a public interest complaint?** | A ‘public interest disclosure’ is a disclosure by a person of information that shows, tends to show, or that the person reasonably believes shows, or tends to show, improper conduct or detrimental action.  A ‘public interest complaint’ is a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee to be a public interest complaint. |

## OCPC handling of public interest disclosures

*Guidance for OCPC staff to whom a public interest disclosure is made – either by another staff member or a member of the public*

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| **How should I respond to a person making a public interest disclosure?** | * + Ensure the disclosure can be made in private and is confidential.   + Acknowledge the discloser for having come forward.   + Ensure the discloser is aware of this Guide. |
| **What should I do if I have received a public interest disclosure?** | * + If the disclosure is made verbally, record it in writing.   + Forward the disclosure and any supporting evidence to an OCPC Public Interest Disclosure Coordinator for advice as soon as possible.   + Do not disclose any information about the discloser or the disclosure, except in accordance with the *Public Interest Disclosure Act 2012* (see p.15-16 below for further details). |
| **How should I send information about a disclosure to a Public Interest Disclosure Coordinator?** | You should personally deliver the documents to a Public Interest Disclosure Coordinator.  Hard copy documents should be placed in a sealed, windowless envelope and marked ‘private and confidential’ and ‘to be opened by addressee only’. Until this can occur:   * ensure the documents are stored securely; * do not store files in Content Manager or on OCPC’s computer network where they can be accessed by other people; and * avoid giving electronic documents titles which may reveal the identity of the person making the disclosure or its content.   If it is not possible to personally deliver documents, you may make a disclosure by email, over the phone or in person. All phone calls and meetings must be conducted in private. |
| **What will a Public Interest Disclosure Coordinator do with the information I disclose to them?** | A Public Interest Disclosure Coordinator will consider whether the information should be considered a public interest disclosure. If so, your disclosure will be forwarded to IBAC for further assessment.  Where permissible, you will be advised by the Public Interest Disclosure Coordinator whether the disclosure has been reported to IBAC. |
| **What if I am not sure if something is a public interest disclosure?** | Consult a Public Interest Disclosure Coordinator as soon as possible.  Remember:   * the discloser does not have to state specifically that they are making a public interest disclosure; and * a complaint about detrimental action in reprisal for making a public interest disclosure must also be treated as a public interest disclosure. |

## Background and Purpose

## Background

The PID Act establishes a legal framework to:

* encourage and assist people to report:
  + - improper conduct by public officers, public bodies and other persons; and
    - detrimental action taken in reprisal for those making public interest disclosures;
  + provide protections and confidentiality for persons who make public interest disclosures or who suffer detrimental action in reprisal for disclosures;
* allow entities, including OCPC, to receive public interest disclosures about improper conduct and detrimental action; and
  + require entities to either report public interest disclosures to IBAC or advise the discloser where it has not reported the matter to IBAC.

## 1.2 Purpose of this Guide

This document has been prepared for members of the public and OCPC staff, although parts of the Guide are only relevant to OCPC staff, such as section 5 (‘Handling of Public Interest Disclosures’). The Guide establishes procedures:

* + to assist members of the public and OCPC staff in the making of public interest disclosures to OCPC;
  + for OCPC’s handling of public interest disclosures and, where appropriate, the notification of those disclosures to the appropriate entity for further assessment; and
  + for the protection of persons from detrimental action taken in reprisal for public interest disclosures.

This Guide constitutes OCPC’s procedures under sections 58(1) and (5) of the PID Act and it has been prepared in accordance with the PID Act. It should be read in conjunction with IBAC’s:

* + IBAC’s *Guidelines for Handling Public Interest Disclosures* (referenced above); and
  + IBAC’s *Guidelines for Public Interest Disclosure Welfare Management*, which are available at [www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management](https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management).

If you are considering making a public interest disclosure, you are encouraged to also seek your own advice to understand how the PID Act might apply to or affect you in your specific circumstances.

## 2 Making a Public Interest Disclosure

## 2.1 Who can make a public interest disclosure?

Any person can make a public interest disclosure. This includes all OCPC staff members. A company or business cannot make a public interest disclosure, but its officers or employees can.

You can ask someone else to make a disclosure on your behalf, although only that person will receive the full protection of the PID Act and only in relation to that disclosure.

You do not have to specifically refer to a public interest disclosure, the PID Act or the protections in the PID Act for your disclosure to be a 'public interest disclosure'. You may also advise that you do not want it treated as a 'public interest disclosure' when making your disclosure or within 28 days of making the disclosure.

## 2.2 What can I make a public interest disclosure about?

You can make a public interest disclosure about information that shows or tends to show, or that you reasonably believe shows or tends to show, that:

* a person, **public officer** or **public body**;
* has engaged, is engaging, or proposes to engage in;
* **improper conduct** and/or **detrimental action** against another person in reprisal for a public interest disclosure.

### **Public officer and public body**

The conduct you are disclosing about a public officer or public body must relate to the performance of that person or body's functions as a public officer or public body. This means there must be a link between the alleged improper conduct and/or detrimental action and the person or body's official functions as a public officer or public body.

‘Public bodies’ include DPC, its affiliated Administrative Offices (such as the Office of the Chief Parliamentary Counsel or the Public Record Office Victoria) and other portfolio agencies. ‘Public officers’ include any of the employees of a public body or a person under contract.

See the full definitions of 'public body' and 'public officer' at **Schedule 1**.

### **Improper conduct and detrimental action**

The conduct you are disclosing must be ‘improper conduct’ and/or ‘detrimental action’ against another person in reprisal for a public interest disclosure. These terms are defined in the PID Act.

‘Improper conduct’ means:

* + corrupt conduct (as defined by section 4 of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act)). This includes things like bribery and perverting the course of justice;
  + a criminal offence;
  + serious professional misconduct;
  + dishonest performance of public functions;
  + intentional or reckless breach of public trust;
  + intentional or reckless misuse of information;
  + substantial mismanagement of public resources;
  + substantial risk to health or safety of a person;
  + substantial risk to the environment;
  + conduct of any person that adversely affects the honest performance by a public officer of their functions;
  + conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

However, conduct that is trivial is not ‘improper conduct’.

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| **Examples of ‘improper conduct’**   * A department employee takes a bribe or receives a payment other than their wages in exchange for the discharge of a public duty. * A department employee discloses confidential information to assist a former colleague to win a government contract.   + A public officer favours unmeritorious applications for jobs or permits by friends and relatives. |

‘Detrimental action’ 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.

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| **Examples of ‘detrimental action’**   * A public body demotes, transfers, isolates in the workplace or changes the duties of a person in reprisal for that person having made a public interest disclosure. * A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person, or their family or friends, in reprisal for that person having made a public interest disclosure. * A public body discriminates against the person who makes a public interest disclosure, or their family and associates, in subsequent applications for jobs, permits or tenders in reprisal for that person having made a public interest disclosure. |

### **Reasonable belief**

A person making a disclosure must reasonably believe that improper conduct or detrimental action has occurred or is going to occur. This does not require actual proof. It is enough if you believe that improper conduct or detrimental action has occurred or will occur. However, you must have reasonable grounds for your belief.

A mere suspicion, allegation or conclusion that is unsupported by facts or circumstances will not be protected by the PID 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 improper conduct or detrimental action had occurred.

## 2.3 How do I make a public interest disclosure?

You can 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; and/or
* anonymously.

You **cannot** make a public interest disclosure by fax.

A verbal disclosure must be made in private. This means that when making your public interest disclosure, you should ensure that only the person to whom you are making it can hear or receive your disclosure. This does not prevent you from having a lawyer representing you present as part of that conversation.

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 can only do so with your permission).

You do not have to identify yourself when making a disclosure. However, it may be necessary to investigate an anonymous disclosure in a different manner than if the person making that disclosure revealed their identity, and it may not be possible to communicate with you or notify you of the outcome of any investigation. If you cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

## 2.4 Who do I make a public interest disclosure to?

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

You should **only** make a public interest disclosure about OCPC or its officers to one of the following persons or bodies:

* + OCPC’s Public Interest Disclosure Coordinators:

Innes Dobell - Law Publisher & Project Manager

Office of the Chief Parliamentary Counsel

Level 2, 1 Macarthur Street MELBOURNE VIC 3002

Telephone: (03) 9651 2142

Email: [innes.dobell@dpc.vic.gov.au](mailto:innes.dobell@dpc.vic.gov.au)

or

Jim Soundias - Deputy Chief Parliamentary Counsel

Office of the Chief Parliamentary Counsel

Level 2, 1 Macarthur Street MELBOURNE VIC 3002

Telephone (03) 9651 2103

Email: [jim.soundias@dpc.vic.gov.au](mailto:jim.soundias@dpc.vic.gov.au)

* + the Chief Parliamentary Counsel;
  + if you are an OCPC staff member – to your manager or supervisor;
  + the Department of Premier and Cabinet (DPC), whose contact details are:

Lewis Whittington

Co-Manager, Public Law Team, Office of the General Counsel

Department of Premier and Cabinet

GPO Box 4912

Melbourne Victoria 3001

Email: lewis.whittington@dpc.vic.gov.au

* + IBAC, whose contact details are:

Level 1, North Tower, 459 Collins Street, Melbourne VIC 3000  
Postal address: GPO Box 24234, Melbourne VIC 3001

Telephone: 1300 735 135  
[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

* + the Victorian Ombudsman:

Level 2, 570 Bourke Street, Melbourne VIC 3000  
Telephone: 03 9613 6222; 1800 806 314 (Regional Only)  
[www.ombudsman.vic.gov.au](file:///C:\Users\vicj4h5\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\FOKMF72H\www.ombudsman.vic.gov.au\)

* + the Victorian Inspectorate:

PO Box 617 Collins Street West, Melbourne VIC 8007  
Telephone: [1800 518 197](tel:1800518197)  
email: info@vicinspectorate.vic.gov.au  
<https://www.vicinspectorate.vic.gov.au>

You should check that you are providing your disclosure to the right person or body. As a general rule, if your disclosure is made to a person or entity that cannot receive a disclosure, your disclosure will **not** be a public interest disclosure and you will **not** be protected under the PID Act.

There are circumstances where your public interest disclosure will still be assessed even if you make it to the wrong person or entity. The incorrect entity must be able to receive public interest disclosures. You must also honestly believe that you were making the disclosure to the right person or entity.

A list of entities who can receive public interest disclosures is set out in IBAC’s Guidelines for Handling Public Interest Disclosures (referenced above).

## 2.5 What are alternatives to making a public interest disclosure?

The procedures in this Guide are designed to complement usual methods of submitting complaints to OCPC.

Members of the public may choose to use DPC’s feedback process to communicate complaints or concerns with the services it provides. More information is available in the ‘Contact us’ page of the Victorian Government’s website ([www.vic.gov.au/contact-us](http://www.vic.gov.au/contact-us)).

OCPC’s officers may also raise matters with their managers and supervisors at any time.

## 3 What Happens After I Make a Disclosure

This section is written with the perspective of those who have made, or are considering making, a disclosure to OCPC in mind. However, it is also relevant to OCPC staff members who may be responsible for the handling and notification of public interest disclosures.

## 3.1 Receipt of disclosures

Unless your disclosure is made anonymously, the receipt of your disclosure to OCPC 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.

## 3.2 Assessing disclosures

Upon receipt of your disclosure, the Public Interest Disclosure Coordinator will consider whether that disclosure may be a public interest disclosure for the purposes of the PID Act. As set out in the Quick Reference Guide above, a public interest disclosure must clearly show or suggest improper conduct or detrimental action by a public officer.

In assessing the disclosure, the Public Interest Disclosure Coordinator will also consider the reliability of the information as well as whether the person making the disclosure believes on reasonable grounds that improper conduct or detrimental action has occurred.

OCPC may determine that a disclosure is not a public interest disclosure if conduct in question is trivial, there is no supporting or insufficient evidence or the information is found to be unreliable or to not be based on a reasonable belief.

Further details of what sorts of things the Public Interest Disclosure Coordinator thinks about is set out in IBAC’s *Guidelines for Handling Public Interest Disclosures* (p.12):

[www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures)

At this time, the Public Interest Disclosure Coordinator may also discuss with you the welfare support OCPC may provide (for example, the appointment of a welfare manager) and the precautions OCPC will take to prevent detrimental action being taken against you in reprisal for having made the disclosure. In most cases, and while each situation will be assessed on its own merits, a welfare manager will only be required where a public interest complaint proceeds to investigation.

The person to whom you make your public interest disclosure, as well as OCPC, must not disclose the content, or information about the content of your disclosure except in accordance with the PID Act.

## 3.3 Notification to IBAC

If OCPC determines that your disclosure may be a public interest disclosure for the purposes of the PID Act (that is, that it shows or tends to show suggests improper conduct or detrimental action involving a public officer) it must notify your disclosure to IBAC, in writing, within 28 days of you making the disclosure. It is then a matter for IBAC to assess the disclosure and determine whether it is a ‘public interest complaint’. (The difference between a ‘public interest disclosure’ and a ‘public interest complaint’ is set out in the Quick Reference Guide above).

IBAC is Victoria’s anti-corruption agency, charged with strengthening the integrity of the Victorian public sector. As set out below, IBAC plays an important role in the assessment of public interest disclosures.

OCPC will advise you in writing within 28 days of you making the disclosure that your disclosure has been notified to IBAC for assessment. OCPC may also provide to IBAC information it has obtained while it assessed whether your disclosure should be notified to IBAC.

If OCPC determines that your disclosure is not a public interest disclosure for the purposes of the PID Act, it will advise you of this within 28 days of you making the disclosure.

The Victorian Inspectorate and the Integrity and Oversight Committee can also determine whether public interest disclosures are public disclosure complaints if the complaint relates to particular bodies. These bodies are IBAC, the Public Interest Monitor and the Victorian Inspectorate. If the disclosure relates to one of these bodies, and OCPC assesses that the disclosure is a public interest disclosure, it will notify the disclosure to either the Victorian Inspectorate or the Integrity and Oversight Committee. The Victorian Inspectorate or Integrity and Oversight Committee will then determine whether the disclosure is a ‘public interest complaint’.

You may wish to consider having your disclosure dealt with in accordance with DPC’s complaints handling process. (Please refer to the ‘Contact us’ page of the Victorian Government’s website ([www.vic.gov.au/contact-us](https://www.vic.gov.au/contact-us)). You may also wish to contact IBAC, the Victorian Inspectorate or the Ombudsman directly regarding your disclosure.

## 3.4 Assessment by IBAC

Once OCPC notifies IBAC of your public interest disclosure, IBAC must assess within a reasonable time whether (in its view) your disclosure is a ‘public interest complaint’.

IBAC will assess the complaint and determine that it is a ‘public disclosure complaint’ if IBAC considers that:

* it shows or tends to show a person, public officer of public body engaging in or proposing to engage in improper conduct or detrimental action; or
* the person who made the disclosure believes on reasonable grounds that the disclosure shows or tends to show the above.

It may seek additional information from you and/or OCPC to make its decision.

With your consent and in consultation with OCPC, IBAC can determine that your disclosure is not a public interest complaint but instead, is more appropriate to be dealt with by OCPC or another body.

If IBAC determines that your disclosure is a ‘public interest complaint’, it must decide to do one of the following actions:

* investigate the complaint;
* refer the complaint to another investigating entity specified in the PID Act (such as Victoria Police, the Ombudsman or the Victorian Inspectorate); or
* dismiss the complaint (provided there are grounds for doing so).

A helpful flowchart explaining what happens when IBAC is sent a disclosure is set out on in IBAC’s *Guidelines for Handling Public Interest Disclosures* (p.15):

<https://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures>

If your disclosure is made in accordance with the PID Act, regardless of whether IBAC determines that your disclosure is a public interest complaint or not, the PID Act’s protections will still apply (see section 5 below). 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 complaint, the confidentiality requirements set out in these procedures will no longer apply in relation to your disclosure.

The protections of the PID Act (see section 4 below) will continue to apply even if IBAC determines that your disclosure is not a public interest complaint.

## 4 Protections Applying to Disclosures

## 4.1 Protections under the PID Act

Individuals who make a disclosure in accordance with the PID Act requirements outlined above will receive the following protections:

* protection from detrimental action in reprisal for making a public interest disclosure, meaning you cannot be fired or disciplined 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.

As long as your disclosure is made in accordance with the requirements of the PID Act outlined in the previous sections above, you will obtain the benefit of all of the above protections from the moment that you first make that disclosure.

The protections will apply to any further information relating to a public interest disclosure that you provide to:

* OCPC;
* DPC;
* IBAC; or
* an investigating entity.

In addition to these protections, OCPC recognises that the welfare and protection from detrimental action of persons making public interest disclosures is essential for the effective implementation of the PID Act and is relevant to its obligation to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004* and the common law.

### **When protections do not apply**

You will not receive the protections outlined above if:

* you provide information you know is false or misleading, intending that the information be acted on as a public interest complaint; or
* you claim that a matter is the subject of a public interest disclosure knowing the claim to be false.

In addition, you are not protected against any legitimate management action taken in relation to your conduct. The PID Act makes clear that a person is still liable for their own conduct even if they disclose that conduct under the PID Act.

## 4.2 Confidentiality

There are a number of confidentiality obligations under the PID Act relating to the receipt and investigation of public interest disclosures. These requirements are set out in sections 52, 53 and 54 of the PID Act.

If a public interest disclosure is made to you, or if you receive information about a public interest disclosure, then you must keep it confidential. There is a penalty in the PID Act of almost $20,000, or 12 months’ imprisonment or both.

If IBAC assesses the disclosure and determines that it is not a public interest complaint, then the confidentiality obligations will no longer apply to the disclosure.

Where an OCPC Public Interest Disclosure Coordinator considers that your disclosure should be referred to IBAC for further assessment, that disclosure will attract the confidentiality provisions of the PID Act (in addition to the protections referred to in the previous section). These provisions restrict certain persons or bodies from disclosing information about:

* the content of a public interest disclosure; and
* the identity of the person who made the disclosure.

The confidentiality obligations do not apply to the person who is making the protected disclosure, however if you are considering disclosing information about your disclosure, before doing so, you may wish to speak to a Public interest Disclosure Coordinator or obtain other legal advice.

### **Exceptions to confidentiality requirements**

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

A key exception is that the confidentiality protections under the PID Act do not apply to a disclosure which IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee determines is not a ‘public interest complaint’.

Other important exceptions include where the disclosure of information:

* is by an investigating entity for the purpose of exercising its functions under the PID Act that authorises that investigating entity to investigate a public interest complaint;
* is made to Victoria Police in circumstances where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to actual or potential criminal conduct and the information is relevant to an investigation by Victoria Police of the criminal conduct;
* is for the purpose of assisting a discloser to seek advice or support from a trade union, employee assistance program or a registered health practitioner;
* is to the Victorian WorkCover Authority for a workers’ compensation claim or for an application to the Fair Work Commission.

For example, IBAC or the relevant investigating entity may disclose the identity of a person who has made a public interest disclosure, and the content of that disclosure, if it is necessary for the purposes of their investigative function. The person to whom the information has been disclosed will be bound by the same confidentiality requirements.

OCPC will only disclose information about a discloser or their disclosure in accordance with the law, including the PID Act.

If you are considering disclosing information that is likely to lead to the identification of a person who has made a public interest disclosure or information about the contents of such a disclosure, you may wish to obtain legal advice.

## 4.3 Criminal offences

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

* it is an offence to take or threaten detrimental action against another person in reprisal for a public interest disclosure;
* it is an offence to disclose the content of a disclosure or information about its content;
* it is an offence to disclose information which is likely to lead to the identification of a person who has made a public interest disclosure;
  + it is an offence for any person to:
    - provide false or misleading information, intending it be acted on as a public interest disclosure, that the person knows to be false or misleading;
    - claim that a matter is the subject of a public interest disclosure when knowing the claim to be false; and
    - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint knowing the claim to be false.

## 5 Handling of Public Interest Disclosures

## 5.1 Roles and responsibilities of OCPC staff

All OCPC staff have an important role to play in assisting those who have made a public interest disclosure. OCPC staff must refrain from doing anything that is, or could be perceived to be, victimisation or harassment of a person who makes a public interest disclosure. Staff must also protect and maintain the confidentiality of a person they know or suspect has made a public interest disclosure. This is because disclosing the content of a disclosure or the identity of a discloser is an offence, unless an exception applies. Taking detrimental action against a person in reprisal for making the disclosure is also an offence and may itself be grounds for disciplinary action.

### **Managers and supervisors**

Managers and supervisors of OCPC staff need to be aware of their obligations under the PID Act. This is because direct and indirect managers and supervisors at OCPC can receive disclosures from OCPC employees they manage or supervise. OCPC Managers and supervisors can also receive disclosures about the OCPC employee the subject of the disclosure. However, managers and supervisors at OCPC cannot receive disclosures from members of the public.

When a manager or a supervisor receives a disclosure from a staff member, they are responsible for:

* if the disclosure is made verbally, making notes and recording it in writing;
* forwarding disclosures and any supporting evidence to a Public Interest Disclosure Coordinator for legal advice and assessment of the disclosure; and taking necessary steps to ensure the identity of the person who made the disclosure, as well as the content of that disclosure, is kept confidential.

A manager or supervisor must not disclose any information about the content of a disclosure they receive except in accordance with the PID Act. For further details, see section 4.2 (Confidentiality) above. When receiving complaints from their staff, managers and supervisors should keep in mind that a disclosure does not have to be expressly named as such to be a public interest disclosure. If a manager or supervisor is unsure whether the complaint or report may be a public interest disclosure, they should consult the Public Interest Disclosure Coordinator for advice.

### **Public Interest Disclosure Coordinators**

Public Interest Disclosure Coordinators have a central ‘clearing house’ role in the internal reporting system and are responsible for:

* receiving public interest disclosures about any OCPC staff and any misdirected disclosures;
* giving general advice about the making of disclosures under the PID Act;
* advising and assisting in relation to public interest disclosures received by other OCPC staff who are authorised to receive disclosures;
* assessing whether a disclosure may be a public interest disclosure for the purposes of the PID Act and contacting the discloser with the outcome of that assessment;
* assessing and monitoring the welfare of a person who makes a disclosure and others involved with the disclosure;
* considering the appointment of a welfare manager;
* subject to the PID Act’s confidentiality requirements, liaising with managers or supervisors in situations where a disclosure concerns improper conduct that may constitute criminal conduct or poses an immediate threat to the health and safety of individuals or preservation of property; and
  + establishing and maintaining a confidential filing system for disclosures.

Public Interest Disclosure Coordinators also have responsibility for reporting disclosures assessed to be public interest disclosures to IBAC. This includes:

* reporting to IBAC within 28 days and, if required, providing IBAC with information obtained while assessing the disclosure;
* within 28 days of receiving the disclosure, advising the person who made the disclosure whether their disclosure has been notified to IBAC; and
* if a disclosure is not notified to IBAC, if necessary, dealing with the disclosure in accordance with DPC's usual complaints handling process.

## 5.2 Managing disclosures where the discloser is implicated

A person making a disclosure who is involved in the improper conduct and/or detrimental action disclosed will still receive the protections provided by the PID Act. However, the discloser is still liable for their own conduct. So, while the discloser will receive the protections outlined above when making the public interest disclosure itself, action may still be taken against the discloser for the underlying conduct disclosed.

Care should be taken to thoroughly document the process of any action taken against a discloser, including the reasons why disciplinary or other action is being taken and the reasons why the action taken is not retribution for making the disclosure.

The discloser should also be clearly advised of the proposed action to be taken and any mitigating factors that have been taken into account.

## 5.3 Managing information

### Information management obligations

Public Interest Disclosure Coordinators should keep all files relating to public interest disclosures in a locked cupboard or cabinet that can only be accessed by themselves.

All printed material held by OCPC concerning public interest disclosure matters should be kept in files that are clearly marked as a PID Act matter and warn of the criminal penalties that apply to any unauthorised person disclosing information concerning a public interest disclosure, including the content of a public interest disclosure or the identity of a discloser.

All electronic files should be stored outside OCPC’s normal computer network (such as on an approved portable storage device) and be given password protection. These records should not be registered on Content Manager because, while it is possible to specify access rights, this does not remove the ability of high level Content Manager administrators to view them. Further, such records should not be given titles which in any way discloses the identity of the person making that disclosure or its content.

Care must be taken when emailing information relevant to a public interest disclosure matter and all phone calls and meetings must be conducted in private. Additionally, hard copy documents for transmission should be placed in two successive windowless envelopes which are sealed and marked ‘private and confidential’ and ‘to be opened by addressee only’, and personally delivered wherever possible.

### **Collating and publishing statistics**

DPC is required to collect and publish in its annual report, for each financial year, information about:

* how to access the procedures it has established under the PID Act; and
* the number of disclosures reported to IBAC for determination.

OCPC is required to provide DPC with the number of disclosures reported to IBAC each financial year for inclusion in DPC's annual report. Public Interest Disclosure Coordinators are responsible for collecting this information.

## 5.4 Welfare management

OCPC recognises that protecting the welfare of persons making public interest disclosures, including protecting against detrimental action, is essential for the effective implementation of the PID Act. In addition, OCPC has obligations in respect of its employees to create a safe working environment, including under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006* and the *Public Administration Act 2004*.

If an OCPC staff member makes a public interest disclosure, OCPC will provide welfare support to that officer and any witness involved in an investigation relating to that disclosure, as the circumstances may require.

If necessary, OCPC will appoint a welfare manager when an OCPC staff member has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure. In most circumstances, this will be when a public interest complaint proceeds to investigation. However, every matter will be assessed on its merits.

The role of the welfare manager’s role is to monitor the discloser or co-operator’s needs and provide them with support and advice.

In providing welfare support and appointing welfare managers, OCPC will apply IBAC’s *Guidelines for Public Interest Disclosure Welfare Management* (reference above).

## 5.5 Dealing with detrimental action

OCPC will take precautions to prevent its officers 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 OCPC takes will depend on the individual circumstances of the case. OCPC will, where possible, consult with the person making the disclosure and any applicable witnesses about any action that it proposes to take.

A report of detrimental action in reprisal for making a public interest disclosure is, in itself, a disclosure which must be handled in accordance with the PID Act. A person reporting an incident of harassment, discrimination or adverse treatment that may amount to detrimental action should therefore make that disclosure to the relevant person, if they wish for the PID Act’s protections to apply. OCPC will assess any such disclosure as a new disclosure in accordance with these procedures.

### **Transfer of employees**

If an OCPC staff member who has made a public interest disclosure reasonably believes that detrimental action will be, is being, or has been taken against them, that employee may request a transfer of employment to another area within OCPC or to another Victorian Government body on terms and conditions of employment that are no less favourable overall.

An employee may request or consent to the transfer. However, the following conditions must also be satisfied:

* the Chief Parliamentary Counsel has reasonable grounds to suspect detrimental action will be, is being, or has been taken against that employee;
* the Chief Parliamentary Counsel considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
  + if the transfer is to another public body, the Head of the ‘receiving’ department or agency consents to the transfer.

The transfer can be temporary or permanent. If the employee is moved to another public body, the employee's service in the new public body is regarded as continuous with their pre-transfer service.

### **Taking legal action**

An OCPC staff member who believes that a person has taken, or intends to take detrimental action against them in reprisal for making a public interest disclosure can also apply to the Supreme Court seeking an injunction.

If the Court finds that detrimental action has been taken or is intended to be taken against an OCPC staff member, then a court may order that OCPC remedy the detrimental action or grant an injunction in any terms the Court considers appropriate. The person who takes detrimental action against another person in reprisal for making a public interest disclosure is also liable for damages for any injury, loss or damage suffered by the discloser.

## 5.6 Dealing with persons who are the subject of a disclosure

OCPC will protect the confidentiality of persons who are the subject of public interest disclosures at the assessment stage and during any ensuing investigation.

IBAC or the investigating body may give information about the disclosure to the person who is the subject of a disclosure in the course of its investigation or any actions it proposes to take as a result of its investigation.

OCPC will also take steps to ensure that there are no adverse consequences for persons who are the subject of public interest disclosures which are ultimately not notified to IBAC.

OCPC recognises that its employees against whom public interest disclosures are made must also be supported during the handling and investigation of disclosures and, as such, OCPC will provide welfare support to them during the handling and investigation of a disclosure as the circumstances require.

## Schedule 1 – Definitions of Public Body and Public Officer

A **public body** is:[[1]](#footnote-1)

* a public sector body within the meaning of s 4(1) of the *Public Administration Act 2004*;
* a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;
* the Electoral Boundaries Commission constituted under the *Electoral Boundaries Commission Act 1982*;
* a Council;
* 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);
* IBAC;
* the Victorian Inspectorate; and
  + any other body or entity prescribed for the purposes of this definition.

A **public officer** is:[[2]](#footnote-2)

* 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*;
* 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;
* an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*;
* a judicial employee employed under Division 3 of Part 6 of the *Public Administration Act 2004*;
* a Ministerial officer employed under Division 1 of Part 6 of the *Public Administration Act 2004*;
* an electorate officer within the meaning of the *Parliamentary Administration Act 2005*;
* a Parliamentary adviser employed under Division 2 of Part 6 of the *Public Administration Act 2004*;
* a Parliamentary officer within the meaning of the *Parliamentary Administration Act 2005*;
* a member of Victoria Police personnel;
* a responsible Minister of the Crown;
* a member of the Legislative Assembly or the Legislative Council;
* a Councillor within the meaning of section 3(1) of the *Local Government Act 1989*;
* a member of Council staff employed under the *Local Government Act 1989*;
* a judge, a magistrate, a coroner or a member of VCAT;
* an associate judge or a judicial registrar;
* a Crown Prosecutor;
* the Chief Crown Prosecutor;
* the Director of Public Prosecutions;
* the Governor, the Lieutenant-Governor or the Administrator of the State;
* the Auditor-General;
* the Ombudsman;
* the Electoral Commissioner;
* the Parliamentary Budget Officer;
* the holder of any other statutory office or any other prerogative office;
* any other person in the service of the Crown or a public body;
* 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);
* 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;
  + 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;
  + an IBAC Officer;
  + a Victorian Inspectorate Officer;
  + a Public interest Monitor; and

any other person prescribed for the purposes of this definition.

1. See PID Act, section 6; IBAC Act, section 6. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)