

# VCGLR's Public Interest Disclosure Procedures

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Victorian Commission for  
Gambling and Liquor Regulation

FINAL



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# 1 Quick reference guide to public interest disclosures (PID)

<p><b>Who can make a PID?</b></p>	<p>Any person can make a PID about improper conduct engaged in, or detrimental action taken by, VCGLR and/or its officers or employees.</p> <p>(refer to Part 5 of these procedures for more information)</p>
<p><b>How do I make a PID?</b></p>	<p>Orally or in writing and/or anonymously in accordance with specific procedures.</p> <p>(refer to Part 6 of these procedures for more information)</p>
<p><b>What can I make a PID about?</b></p>	<p>Improper conduct engaged in, and/or detrimental action taken by, public bodies or public officers performing public functions.</p> <p>This includes VCGLR staff (employees, Commissioners and Contractors).</p> <p>(refer to Part 7 of these procedures for more information)</p>
<p><b>Who can I make a PID to?</b></p>	<p>If you wish to make a PID about VCGLR and/or its staff member, you may contact:</p> <ul style="list-style-type: none"> <li>• Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 GPO Box 24234, Melbourne, VIC 3001 Telephone: 1300 735 135 Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a></li> </ul> <p>If you do not wish to report VCGLR-related improper conduct directly to IBAC, another option is to report this conduct to the CEO or the VCGLR's General Counsel. You may contact:</p> <ul style="list-style-type: none"> <li>• Scott May, General Counsel Telephone: (03) 9098 5657 Email: <a href="mailto:Scott.May@vcglr.vic.gov.au">Scott.May@vcglr.vic.gov.au</a></li> </ul> <p>Please note that where the VCGLR (including the CEO or General Counsel) receives a PID and the matter on reasonable grounds constitutes corrupt conduct and is not notified to IBAC in accordance with the PID Act, VCGLR must consider whether the CEO may be required to notify the matter to IBAC.</p>

## 2 Background and purpose

The *Public Interest Disclosures Act 2012 (PID Act)* (formerly known as the *Protected Disclosure Act 2012*) provides for a framework within which people can make disclosures about improper conduct, corruption or detrimental action. The PID Act refers to:

- Public interest disclosures (**PID**): disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure); and
- Public interest complaints (**PIC**): a public interest disclosure that has been determined by Independent Broad-based Anti-corruption Commission (**IBAC**), the Victorian Inspectorate (**VI**) or the Integrity and Oversight Committee<sup>1</sup> (**IOC**) to be a public interest complaint (previously a protected disclosure complaint).

Where a matter is determined to be a PIC, additional rules apply as to how it must be handled. These include a restricted list of bodies which can be referred the matter for investigation, what notifications must be given to the discloser and a restriction on withdrawing the complaint.

The VCGLR encourages staff and members of the public to report known or suspected incidences of improper conduct.

The purpose of this document is to establish procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by VCGLR and/or its staff.

The purpose of these procedures is to:

- facilitate members of the public and VCGLR staff making disclosures regarding VCGLR-related improper conduct to IBAC directly;
- protect people against detrimental action taken in reprisal for a PID; and
- provide for the welfare management of:
  - a person who makes a disclosure (the **discloser**);
  - a witness in an investigation;
  - a person who is the subject of a disclosure or an investigation; and
  - a person who co-operates with an investigation.

While the PID Act does not permit the VCGLR to receive protected disclosures, sections 58(5) and 59(4) of the PID Act require the VCGLR to make publicly available its procedures for the protection of persons from detrimental action taken by VCGLR or its staff in reprisal for a PID.

These procedures have been prepared in accordance with the requirements of section 59(2) and (3) of the PID Act, which are that the procedures be consistent with the PID Act, the *Public Interest Disclosures Regulations 2019* and the guidelines issued by IBAC under section 57 of the PID Act.<sup>2</sup>

## 3 Scope

These procedures apply to VCGLR staff which includes employees, Commissioners and contractors.

<sup>1</sup> More information on the IOC is available at: <https://www.parliament.vic.gov.au/ioc/function-iao>

<sup>2</sup> See further the *Guidelines for Handling Public Interest Disclosures* and *Guidelines for Public Interest Disclosure Welfare Management* issued by IBAC in December 2019 and available from its website at <http://www.ibac.vic.gov.au>. See further the information sheets for *Key changes in relation to public interest disclosures*, *Frequently asked questions about the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* and *Public interest disclosure procedures and requirements for implementation* issues by IBAC in October 2019 and available from its website at <http://www.ibac.vic.gov.au>.

## 4 Who can make a PID?

For your disclosure to be a PID it must be made in accordance with particular requirements set out under section 9 of the PID Act.

If you wish to report that the VCGLR (or its staff, including a Commissioner, employee and contractor) has engaged in improper conduct and you also seek legal protections afforded by the PID Act, you must report such conduct to IBAC directly.

Similarly, if you wish to report being subjected to detrimental action by the VCGLR or its staff in reprisal for a PID, you must make that report to IBAC directly in order for the protections in the PID Act to apply. Pursuant to the protections the PID Act:

- a person must not take detrimental action against you or any other person in reprisal for the PID, and may be criminally liable for doing so (see s45);
- you will be afforded immunity from any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure (see s39);<sup>3</sup>
- certain persons and bodies will be prohibited from revealing information likely to lead to your identification, or content or information about the content of an assessable disclosure, except in specified circumstances, and may be criminally liable for doing so (see ss52 and 53); and
- in situations where a PID has not been adequately addressed, a person who has made a PID can disclose the same subject matter to external parties (those not authorised to receive public interest disclosures, such as journalists or politicians) (see s38A). For more information see paragraph 7 below.

## 5 How do I make a PID?

### 5.1 Making a PID to IBAC directly

As described above, for your disclosure to be a PID and the protections of the PID Act to apply, your disclosure must be made in accordance with the requirements set out under section 9 of the PID Act.

As VCGLR cannot receive PIDs, those requirements include reporting improper conduct or detrimental action to IBAC directly:

Street address	Level 1 North Tower 459 Collins Street MELBOURNE VIC 3000
Postal address	GPO Box 24234 MELBOURNE VIC 3001
Phone	1300 735 135
Website	<a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a>
Email	<a href="mailto:info@ibac.vic.gov.au">info@ibac.vic.gov.au</a>

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.

### 5.2 Alternatives to making a PID

These procedures are designed to complement usual methods of submitting complaints to the VCGLR.

<sup>3</sup> Please be mindful that a person who makes a disclosure pursuant to the PID Act is not protected against management action taken in accordance with the PID Act and may still be liable for their own conduct the subject of the disclosure (see ss42 and 44 of the PID Act). Management action that may be taken includes any action that may or is required to be taken: in respect of performance development (including training), conditions of employment or discipline; or to ensure the safety of the workplace (see s44(3) of the PID Act).

## 5.2.1 General complaints or concerns by members of the public

Members of the public are encouraged to use the VCGLR's feedback process to communicate complaints or concerns with the services provided by the VCGLR. You can do this by contacting the VCGLR directly at:

Street address	Level 3, 12 Shelley Street RICHMOND VIC 3121
Postal address	GPO Box 1988 MELBOURNE VIC 300
Phone	1300 182 457 Hours (both in person and phone enquiries): 9.00 am – 5:00pm weekdays
Website	<a href="http://www.vcglr.vic.gov.au">www.vcglr.vic.gov.au</a>
Email	<a href="mailto:contact@vcglr.vic.gov.au">contact@vcglr.vic.gov.au</a>

## 5.2.2 Reporting improper conduct outside the PID framework

As a VCGLR staff member or a member of the public, there may be situations where you do not seek the legal protections afforded by the PID Act.

You should also note that in making a PID, the PID Act includes statutory offences that apply to the discloser, such as the offence of providing false or misleading information in relation to the PID, and the offence of claiming a matter is the subject of a PID, knowing that claim is false (see ss72 and 73).

If you don't wish to report VCGLR-related improper conduct directly to IBAC, another option is to report this conduct to the CEO or the VCGLR's General Counsel.

If you wish to speak to the CEO or General Counsel in person, please contact the General Counsel in the first instance on (03) 9098 5657, or email [Scott.May@vcglr.vic.gov.au](mailto:Scott.May@vcglr.vic.gov.au).

The General Counsel can arrange a meeting date and time, and if preferred, a meeting in a discreet location away from the workplace.

However, you should note that where the VCGLR (including the CEO or General Counsel) receives a PID and the matter on reasonable grounds constitutes corrupt conduct and is not notified to IBAC in accordance with the PID Act, VCGLR must consider whether the CEO may be required to notify the matter to IBAC under section 57 of the IBAC Act.<sup>4</sup>

## 6 What can I make a PID about?

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

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

<sup>4</sup> Please note that section 57(1) of the IBAC Act requires the relevant principal officer (VCGLR CEO) to notify IBAC of corrupt conduct. For more information see: <https://www.ibac.vic.gov.au/reporting-corruption/notifications>

## 7 Definitions

### 7.1 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.

The VCGLR is a 'public body'. Its employees (including Commissioners) are public officers.

### 7.2 Improper conduct

#### 7.2.1 Definition of 'improper conduct'

The definition of improper conduct has been broadened and simplified to encourage disclosures about certain types of public sector wrongdoing<sup>5</sup>.

A new category of 'serious professional misconduct' has also been introduced to allow for a broader range of disclosures about wrongdoing in an official capacity.

It is noted that conduct must be serious to fall within the new definition of improper conduct. For example, conduct that is persistent, repeated, premeditated or poses a significant risk to others or involves significant public resources.

#### 7.2.2 What is 'serious professional misconduct'?

The PID Act does not define 'serious professional misconduct'.

In accordance with the intention to broaden the types of disclosures that receive protection under the scheme, this may include a serious failure to exhibit the skills and experience required to perform the functions of the office, as well as non-compliance with professional codes of conduct or the policies, procedures and laws that govern behaviour in the public sector and the workplace.

### 7.3 Detrimental action

#### 7.3.1 Definition of 'detrimental action'

There is a lower threshold for proving that detrimental action has taken place<sup>6</sup>.

In practical terms this means that if the fact an employee has made a disclosure forms any part of the reason for which management action is taken against that employee, it will constitute detrimental action and be reportable as a public interest disclosure under the scheme as well as being a criminal offence.

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<sup>5</sup> Previously, improper conduct consisted of corrupt conduct and certain types of specified conduct where they constituted a criminal offence or reasonable grounds for dismissal or termination.

<sup>6</sup> Previously, a discloser would have to prove that detrimental action was a 'substantial reason' for their employer (manager) taking action against them following their disclosure.



## 7.4 Diagram of 'improper conduct' and 'detrimental action'

An understanding of the terms 'improper conduct' and 'detrimental action' as defined in the PID Act will assist you in better understanding these procedures. These terms are defined below:

### 'Improper conduct' means:

- corrupt conduct; or
- conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes:
  - a criminal offence; or
  - **serious professional misconduct**; or
  - dishonest performance of public functions; or
  - an intentional or reckless breach of public trust; or
  - an intentional or reckless misuse of information; or
  - a substantial mismanagement of public resources; or
  - a substantial risk to health or safety of a person; or
  - a substantial risk to the environment; or
  - conduct of any person that:
    - adversely affects the honest performance of a public officer or public body; or
    - 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 and associate of the person, obtaining:
      - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
      - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
      - a financial benefit or real or personal property; or
      - any other direct or indirect monetary or proprietary gain,
      - that the person or associate would not have otherwise obtained; or
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.
- less serious or trivial conduct is excluded from the definition of improper conduct.

### 'Detrimental action' means:

- action causing 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 must not be taken in reprisal for a PID.

This means that if the fact that an employee has made a disclosure forms *any part* of the reason for which action is taken against that employee, it will constitute detrimental action and be reportable as a PID under the scheme as well as being a criminal offence.

## 7.5 Examples of 'improper conduct' and 'detrimental action'

While specific allegations of **improper conduct** are assessed by IBAC on its merits, examples of improper conduct might include:

1. A VCGLR staff member taking a bribe or receiving a payment other than his or her wages in exchange for the discharge of a public duty. For instance, an inspector advises a licensee that she will receive a favourable inspection report in exchange for free alcohol and/or free lucky envelopes.
2. A VCGLR staff member selling confidential information.
3. A VCGLR staff member repeatedly using government fleet vehicles or VCGLR Cabcharge eTICKETS for private purposes only.
4. A VCGLR licensing officer granting unmeritorious liquor licence applications to friends and relatives.

Similarly, examples of **detrimental action** might include:

1. The VCGLR demoting, transferring, isolating in the workplace or changing the duties of a discloser employed at the VCGLR.
2. A person threatening, abusing or carrying out other forms of harassment directly or indirectly against a discloser or the latter's family or friends.
3. The VCGLR discriminating against a discloser or his or her family in subsequent applications for jobs, licences, or tenders, because of the fact that the PID was made.

For further information about these definitions, you are encouraged to refer to the IBAC website at <<http://www.ibac.vic.gov.au>>.

## 8 Protection from detrimental action

The VCGLR will take precautions to prevent its staff from taking detrimental action in reprisal for a PID. This includes the VCGLR's General Counsel identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers, witnesses and persons the subject of a PID, to the extent that the investigating entity makes VCGLR aware of their identities.

The precautions taken by the VCGLR will depend on individual circumstances and the person at risk of reprisal will, where possible, be consulted about any action that is taken.

A disclosure of detrimental action taken in reprisal for a PID may itself be a PID. As the VCGLR cannot receive PIDs, such a disclosure must be reported to IBAC directly for the protections under the PID Act to apply. If the matter is reported to VCGLR but not to IBAC, VCGLR will:

- record details of the detrimental action;
- advise the person of their rights under the PID Act; and
- consider whether the CEO may need to make a mandatory notification to IBAC under section 57 of the IBAC Act.

Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, VCGLR may consider reporting the matter to Victoria Police.

If you are a VCGLR staff member who makes a disclosure and you believe on reasonable grounds that you have been or will be subjected to detrimental action, you may request a transfer of employment to a public service body or a different area of the VCGLR. Your request should be made to CEO, who in turn will then inform the IBAC of your request. The transfer will only take place if:

- it is on terms and conditions of employment that are no less favourable overall;
- the CEO has reasonable grounds to suspect detrimental action will be, is being or has been taken against the employee;
- the CEO considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the public service body or public entity to which it is proposed to transfer the employee consents to the transfer.

The transfer can be temporary or permanent, and the staff member's post-transfer service is regarded as continuous with their pre-transfer service.

If you have sustained injury, loss or damage as a result of detrimental action taken against you in reprisal for making a disclosure, the PID Act sets out remedies that are available to you. It is noted that a disclosure is also protected against the cost of legal action they take for losses suffered from the detrimental action against them<sup>7</sup>. You may wish to obtain legal advice about this.

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<sup>7</sup> Section 47(7) of the PID Act.

## 9 External disclosures

### 9.1 If a person who has made a PID is not satisfied with the way it is being handled, can they contact a journalist or politician?

There is a mechanism to allow relief for people who have made PID and are subject to confidentiality restrictions relating to that disclosure, in situations where the disclosure has not been adequately addressed (see s38A of the PID Act).

This mechanism allows for people who have made a PID to make a further disclosure of substantially the same subject matter to external parties (i.e. those not authorised to receive public interest disclosures, such as journalists or 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 situations applies:
  - the discloser has not been notified of any action taken in relation to the disclosure within six months of determination as a public interest complaint and has not received a response 30 days after requesting an update on progress
  - an investigation has not been completed 12 months after determination as a public interest complaint 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 as a public interest complaint and, although the discloser received a response within 30 days after requesting an update on progress, the discloser received no further update advising the investigation had been completed six months after that response.

The protections provided to public interest disclosures under the Part 6 of the PID Act will also apply to these external disclosures.

Any external disclosure must not contain information that may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the external disclosure is aware and must not contain information that is likely to disclose investigative methods used by IBAC or Victoria Police.

## 10 Confidentiality obligations

### 10.1 What information can be provided by an investigating entity to other agencies in relation to PID/PIC?

In general, until a matter has been determined not to be a PIC, confidentiality obligations apply that preclude a body that has received information about a disclosure from revealing the content of that disclosure or the identity of the discloser.

However, an investigating entity<sup>8</sup> is empowered to disclose certain information where it is necessary for the purposes of investigating a PIC as part of performing its legislated functions (see s54(2)(b)).

This permission to pass on information, however, does not allow the investigating entities to disclose information that would likely identify the discloser where that information would be given to a body that is the subject of a disclosure unless:

- the discloser has given their written consent;
- IBAC or the VI has determined the matter is not a PIC;
- an investigating entity has published a report or already made public that information in a manner consistent with its confidentiality obligations.

<sup>8</sup> Section 3 of the PID Act defines 'investigating entity' to mean the IBAC; Victoria Police; the Ombudsman; the Victorian Inspectorate; the Juridical Commission; the Chief Municipal Inspector; the Racing Integrity Commissioner; and the Information Commissioner.

## 10.2 Who can a discloser share information about their PID/PIC with?

A discloser is restricted from sharing information they receive from IBAC about whether their PID has been dismissed, referred or investigated and from disclosing any information they receive about the results of any investigation.

After an investigation is initiated, IBAC and some other investigating bodies may determine that disclosure of further types of information (such as any evidence or information given to IBAC or the fact that a disclosure has been notified for assessment under the PID Act) is likely to prejudice the inquiry or investigation, the safety or reputation of a person or the fair trial of a person. In those circumstances, an investigating body is empowered to issue a confidentiality notice on a person which will further restrict what information that person can share.

However, even where a confidentiality notice is in place, exceptions apply to allow information to be shared where necessary to, among other things, seek legal advice, get the support of a health practitioner or trade union or make a compensation claim to WorkCover, unless there is a direction that those standard exceptions do not apply.

A discloser is not restricted from disclosing the subject matter of a PID to another person if they are not under a confidentiality notice, however the protections will not apply to protect the discloser if that additional disclosure results in retribution or detrimental action.

## 11 Welfare management

### 11.1 When will the VCGLR provide welfare management?

The VCGLR recognises that protecting the welfare of persons making genuine PIDs is essential for the effective implementation of the PID Act and is relevant to its duties 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 common law.

However, in many instances the VCGLR will not be aware of either the fact that a person has made a disclosure under the PID Act, or that that disclosure is being investigated by IBAC or an investigating entity. This means that unless the investigating entity specifically advises the VCGLR (usually the VCGLR's CEO or General Counsel) of the identity of a particular discloser, a witness, or any person the subject of an investigation, the ability of the VCGLR to provide welfare management to those persons is limited.

Where the investigating entity does advise the VCGLR of a specific person's involvement in a PID investigation, the VCGLR's management of the welfare of that person will depend on the nature of the relationship that the VCGLR has with the person.

Therefore, the VCGLR will provide welfare support to a person as set out in the **Schedule 1** to these procedures as the circumstances require. The VCGLR's CEO or General Counsel will also consider appointing a welfare manager for a discloser, a person who is cooperating, or intending to cooperate, with an investigation of a PID, or a person the subject of a PID.

The VCGLR may appoint an internal person as the welfare manager (for example, the VCGLR's Manager, People and Culture) or engage a contractor to provide welfare services. The VCGLR will also consider referring a staff member to its Employee Assistance Program.

### 11.2 Role of welfare manager

The welfare manager is responsible for:

- examining the person's immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment;
- providing practical advice and support;
- advising a discloser and/or witness of the protections available under the PID Act;
- responding in accordance with the law to any disclosures of detrimental action in reprisal for making a PID (for example, harassment, intimidation or victimisation);
- ensuring that the discloser and/or witness's expectations of the process and outcomes are realistic and reasonable;
- maintaining confidentiality in accordance with the law; and

- operating discreetly to protect the person from being identified as being involved in a protected disclosure.

In determining whether to appoint a welfare manager in any particular case, the VCGLR's CEO and/or General Counsel will consider:

- whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
- whether the VCGLR can take the person seriously and treat them with respect;
- whether the VCGLR can provide effective support to the person involved, particularly where that person is not a member of staff; and
- whether it is within the VCGLR's power to protect the person involved from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the person has in fact suffered retribution; and
- any concerns raised by IBAC about the person's welfare.

If the answer to the first question is 'yes' then IBAC recommends the appointment of a dedicated welfare manager. If the answer to the first question is 'no' and the VCGLR can meet the needs set out in the remainder of the questions, IBAC suggests there may be no need for a dedicated welfare manager to be appointed for that particular case.

### 11.2.1 Limits of the welfare manager's role

In most circumstances, a welfare manager will only be required where a PIC proceeds to investigation, but each PID received by the VCGLR will be assessed on its own merits.

If a welfare manager is appointed, the welfare manager cannot be expected to go beyond what is reasonable for a public body in the support that they provide. The welfare manager should discuss the issue of reasonable expectations with the person they are supporting.

A welfare manager must not divulge any details relating to the disclosed matter to any person other than the VCGLR's CEO or General Counsel. All meetings between the welfare manager and the person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

## 11.3 Protecting against detrimental action

If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the welfare manager and/or the VCGLR's CEO or General Counsel must record details of the incident and advise the person of their rights under the PID Act to make a disclosure to the IBAC.

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

- the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
  - the other person or anyone else has made, or intends to make, the disclosure; or
  - the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.<sup>9</sup>

It is a criminal offence to take detrimental action against another person in reprisal for a PID under the PID Act.

In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation should be made to the IBAC as a new disclosure under Part 2 of the PID Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, the VCGLR will also consider reporting the matter to Victoria Police or the IBAC.

A discloser of a PID may also:

<sup>9</sup> Section 43 of the PID Act.

- take civil action against the person who took detrimental action against the discloser and seek damages;
- take civil action against the VCGLR jointly and severally to seek damages or reinstatement if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of the VCGLR; and
- apply for an order or an injunction from the Supreme Court.<sup>10</sup>

### 11.3.1 Transfer of employees

An employee of a public service body or public entity who has made a PID and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them may request a transfer of employment.

After making a disclosure an employee can be transferred internally to another part of a public service body, or to another public service body or public entity on similar terms and conditions of employment.<sup>11</sup> This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- the head of the public body has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee;
- the head of the public body considers that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- if transfer to another public body is proposed, the head of that public body consents to the transfer.<sup>12</sup>

The transfer can be temporary or permanent, and if the employee is moved to another public body, the employee's service in the new body is regarded as continuous with their pre-transfer service.<sup>13</sup>

### 11.3.2 If the person making the disclosure is implicated in the improper conduct or detrimental action

A discloser who is involved in the improper conduct and/or detrimental action will still receive the protections provided by the PID Act and, to the extent that the VCGLR is aware of the PID, welfare support as the circumstances require. However, the discloser's liability for his or her conduct is not affected by making a PID and not protected from the consequences that flow from his or her involvement in any improper conduct and/or detrimental action.<sup>14</sup> Those consequences may include management action taken in accordance with the PID Act.

The VCGLR will take care to thoroughly record the process of any action taken against the discloser, including the reasons why disciplinary or other action is being taken and the reasons why the action is not in reprisal for making the PID.

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

## 11.4 Welfare management of persons who are the subject of PID

The VCGLR recognises that employees against whom disclosures are made must also be supported during the investigation of PID and, to the extent that the VCGLR is aware of the disclosure, will provide welfare support to such persons as the circumstances require. The VCGLR will only disclose information about the subject of a disclosure in accordance with the law, including the PID Act, and otherwise keep that information confidential.

Not all persons who are the subject of a disclosure will be informed about the disclosure. For example, the subject of a disclosure may not be informed of the disclosure if it is not determined to be a PIC by IBAC and dismissed without investigation. Also, the VCGLR may not be authorised to inform a person who is the subject of a disclosure as the PID Act limits the disclosure the content of a disclosure to certain circumstances.

<sup>10</sup> Section 46 of the PID Act.

<sup>11</sup> Section 51(1)-(2) of the PID Act.

<sup>12</sup> Section 51(4) of the PID Act.

<sup>13</sup> Section 51(6) of the PID Act.

<sup>14</sup> Section 42 of the PID Act.



The PID Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The VCGLR may give information to the person who is the subject of the disclosure if:

- it is directed or authorised to do so by the investigating entity; or
- to the extent necessary for the purpose of taking lawful action with respect to the conduct alleged, including disciplinary action, but not to the extent the information would be likely to identify the discloser.

Investigative entities may also inform the subject of the disclosure for the purposes of conducting their investigation or taking action as a result of the investigation.

#### 11.4.1 Natural Justice

The VCGLR will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to that person. The IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:

- be informed about the substance of the allegations against them;
- be given the opportunity to answer the allegations before a final decision is made;
- be informed about the substance of any adverse comment that may be included in any report arising from an investigation; and
- have his or her defence set out fairly in any report.

#### 11.4.2 If allegations are wrong or unsubstantiated

The VCGLR and the investigating entity will take steps to ensure that there are no adverse consequences for persons who are the subject of protected disclosures that are ultimately unsubstantiated.

## 12 Keeping PID information confidential and secure

### 12.1.1 Obligation of confidentiality on the VCGLR and all individuals

The VCGLR will take all reasonable steps to protect the identity of the discloser and the matters disclosed by a discloser. Maintaining confidentiality in relation to PID matters is crucial, among other things, in ensuring detrimental actions are not taken in reprisal against a discloser.

The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with officers of the IBAC, another investigative entity, or other persons authorised by law.

### 12.1.2 Steps taken by the VCGLR to ensure confidentiality

The VCGLR will keep all central files relating to a protected disclosure, whether paper or electronic, in a secure manner that can only be accessed by the Chair, CEO, General Counsel or staff authorised by them.

A welfare manager must not divulge any details relating to the disclosed matter to any person other than the VCGLR's CEO or General Counsel. Care will be taken with information relevant to a protected disclosure matter to ensure the identity of the discloser and the content of their disclosure remains confidential. All phone calls and meetings will be conducted in private.

### 12.1.3 Exemption from the FOI Act

*The Freedom of Information Act 1982 (FOI Act)* provides a general right of access for any person to seek documents in the possession of the VCGLR.

However, the PID Act provides that certain information related to PIDs as contained in documents in the possession of the VCGLR will be exempt from the application of the FOI Act.<sup>15</sup>

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<sup>15</sup> Section 78 of the PID Act.

Such information excluded from the operation of the FOI Act includes:

- any information relating to a disclosure made in accordance with the PID Act; and
- any information that is likely to lead to the identification of a discloser.

The VCGLR is required to contact the IBAC prior to providing any document originating from the IBAC or relating to a PID, if that document is sought under the FOI Act.

## **13 Review**

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



## Document information

### Document details

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### Version control

Version	Date	Description	Author	Approved
V1.0	8/08/2013	Approved by the VCGLR's Executive Team on 8 August 2013.	Steven Loh	
V1.1	1/7/2014	Amended to reflect realignment of integrity function to General Counsel	Alan Stone	
V1.2	15/03/2017	Amended to reflect new IBAC guidelines under PD Act and mandatory notification requirements under IBAC Act	Naomi Martin Edwards	22/03/2017
V1.3	26/08/2019	Minor amendments to the document in relation to scope and contact details.	Karpaagam Shanmugam	30/08/2019
V1.4	XX/12/2019	Amended to reflect new legislative changes concerning the <i>Public Interest Disclosures Act 2012</i> (previously the PD Act)	Karpaagam Shanmugam	Drafted but not approved
V1.5	10/02/2021	Amended to reflect IBAC guidelines in relation to "Welfare Management" and other updates	Manuel Insa	10/02/2021

### Document approval

This document requires the following approval:

Name	Title	Organisation
Scott May	General Counsel and Executive Director, Regulatory Policy & Legal Services	VCGLR

### Attribution

The diagram at pages 3 and 9 of these procedures was adapted from *Making and Handling Protected Disclosures – Procedures* (4 January 2016), Department of Justice and Regulation, Victoria and *Making and Handling Protected Disclosures – Victorian Government Solicitor's Office Procedures* (July 2015), Victorian Government Solicitor's Office.

The content of the Schedule at pages 18–19 of these procedures was adapted from Table 1 of IBAC's *Guidelines for Public Interest Disclosure Welfare Management*<sup>16</sup>.

<sup>16</sup> Issued in December 2019 and available from IBAC's website at <<http://www.ibac.vic.gov.au>>.



## Schedule 1 – Welfare Services that may be provided by the VCGLR

<p><b>Inform</b></p>	<p>At a minimum, the VCGLR will:</p> <ul style="list-style-type: none"> <li>• confirm that the investigating entity has advised the VCGLR of the disclosure</li> <li>• outline the legislative or administrative protections available to the person</li> <li>• describe the welfare management proposed to be taken</li> <li>• if action has been taken, provide details about the results.</li> </ul>
<p><b>Provide active support<sup>17</sup></b></p>	<p>The VCGLR will:</p> <ul style="list-style-type: none"> <li>• acknowledge the discloser for having come forward</li> <li>• provide the person with assurance that they have done the right thing and the VCGLR appreciates it</li> <li>• make a clear offer of support</li> <li>• assure the discloser that all reasonable steps will be taken to protect them</li> <li>• undertake to keep them informed to the extent authorised by the investigating entity.</li> </ul>
<p><b>Manage expectations</b></p>	<p>The VCGLR will have an early discussion with the person about:</p> <ul style="list-style-type: none"> <li>• what welfare management they want</li> <li>• whether their expectations are realistic</li> <li>• what the VCGLR is able to deliver.</li> </ul>
<p><b>Maintain confidentiality</b></p>	<p>The VCGLR will only disclose the identity of the discloser and the subject matter of their disclosure (if known) in accordance with the law, including the PID Act, and otherwise keep that information confidential.</p> <p>The VCGLR will:</p> <ul style="list-style-type: none"> <li>• make sure that other staff cannot infer the identity of the discloser, the subject of the disclosure or a person cooperating with the investigation from any information they receive from VCGLR</li> <li>• remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser</li> </ul>

<sup>17</sup> The VCGLR will provide welfare support to the discloser on an ongoing basis even if a welfare manager has not been appointed.

	<ul style="list-style-type: none"> <li>• make sure that hardcopy and electronic files relating to the disclosure and associated welfare management are kept in accordance with these procedures as well as any legal requirements.</li> </ul>
<b>Assess the risks of detrimental action being taken in reprisal</b>	<p>The VCGLR will:</p> <ul style="list-style-type: none"> <li>• be proactive and do not wait for a complaint of detrimental action</li> <li>• actively monitor the workplace, anticipate problems and deal with them before they develop.</li> </ul>
<b>Protect the discloser/witness/subject of a disclosure</b>	<p>The VCGLR will, to the extent that it is aware of the disclosure:</p> <ul style="list-style-type: none"> <li>• examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment</li> <li>• listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for the disclosure</li> <li>• assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to the disclosure.</li> </ul>
<b>Manage the impact of any investigation</b>	<p>The VCGLR will prevent the spread of gossip and rumours about an investigation into the disclosure.</p>
<b>Keep records</b>	<p>The VCGLR will:</p> <ul style="list-style-type: none"> <li>• keep contemporaneous records of all aspects of the welfare management of the person, including all contact and follow-up action</li> <li>• keep the records in accordance with these procedures as well as any legal requirements.</li> </ul>