



## Frequently asked questions

# *The Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*

[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

## Key changes commence on 1 January 2020

### *Protected Disclosure Act 2012 becomes the Public Interest Disclosures Act 2012*

#### What terminology is changing?

- Under the new legislation, the terms 'protected disclosure' and 'protected disclosure complaint' have been replaced with:
  - public interest disclosure (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 complaint (PIC): a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee (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.

#### Why is the legislation changing?

- The changes are intended to make it easier to make a disclosure. The changes allow a broader range of disclosures to be made, provide for more independent expert bodies to investigate disclosures and introduce a flexible 'no wrong door' approach to ensure disclosures aren't excluded because of non-compliance with complex procedures.
- The changes also introduce new flexibility for IBAC to determine, with the discloser's consent, that a matter would be better dealt with outside of the public interest disclosure system. The new provisions allow disclosers to give details about their disclosure to additional specified bodies (such as health practitioners or WorkCover where necessary for support or a claim) or more broadly where a public interest complaint has not been adequately addressed within a specified amount of time.

### Improper conduct

#### How has the definition of improper conduct changed?

- Disclosures can be made under the public interest disclosure regime where they relate to improper conduct or detrimental action.
- 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*.
- Under the new legislation, the definition of improper conduct has been broadened and simplified to encourage disclosures about certain types of public sector wrongdoing. 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.
- Improper conduct now includes:
  - corrupt conduct and/or
  - any of the following conduct by a public officer or public body in their capacity as a public officer or public body:
    - a criminal offence
    - serious professional misconduct
    - dishonest performance of public functions
    - an intentional breach or reckless breach of public trust
    - an intentional or reckless misuse of information or material acquired in the course of the performance of public functions
    - a substantial mismanagement of public resources
    - a substantial risk to the health or safety of one or more persons
    - a substantial risk to the environment.

- conduct by a third party that adversely affects the honest performance of a public officer or public body or is intended to adversely affect effective performance of a public officer or public body while obtaining an advantage for the third party, and/or
- conduct by a third party that could constitute a conspiracy or attempt to engage in any of the above.
- Less serious or trivial complaints are excluded from the definition of improper conduct.

### What is serious professional misconduct?

- The *Public Interest Disclosures Act 2012* (PID Act) doesn't define serious professional misconduct.
- In accordance with the intention to broaden the types of disclosures that receive protection under the scheme, this may include conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities. 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.
- With the benefit of this new threshold coming into operation in January 2020, IBAC may issue further guidance on its application in future.

### What is an example of conduct that adversely affects the honest performance by a public officer of their functions?

- A common example of this would be attempting to bribe a public officer.

## Bodies that can receive PIDs

### PIDs can be made to public service bodies and local councils

- Public service bodies can receive disclosures where they relate to the conduct of that body or where the disclosure is made by that body's employees, members or officers.
- The term 'public service body' is defined in the *Public Administration Act 2004* to mean departments, administrative offices and the Victorian Public Sector Commission.
- A list of these bodies can be found in the IBAC information sheet *Key Changes - The Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019*, or at [www.ibac.vic.gov.au/reporting-corruption/what-is-a-protected-disclosure/Information-for-Protected-Disclosure-Coordination](http://www.ibac.vic.gov.au/reporting-corruption/what-is-a-protected-disclosure/Information-for-Protected-Disclosure-Coordination).

- The Victorian Public Sector Commission also maintains a list of the departments and administrative offices as currently established at [ypsc.vic.gov.au/about-public-sector/machinery-of-government/](http://ypsc.vic.gov.au/about-public-sector/machinery-of-government/).
- Under the the PID Act, local councils can also receive public interest disclosures that relate to that council, but disclosures relating to particular councillors must be made to IBAC or the Victorian Ombudsman.
- Bodies that receive PIDs will continue to need to refer PIDs to IBAC to determine whether protections under the legislation apply.

### What if a PID is made to a body that cannot receive PIDs?

- Although certain amendments have been made to accept misdirected disclosures (explained further below), where a PID is made to a body that *cannot* receive a PID in any event, it will not fall into that new scheme.
- If a PID is made to a body that cannot receive PIDs, information should be given to the discloser that no protections or confidentiality obligations for that disclosure currently apply and that their disclosure should be redirected to the appropriate entity if they want it to be assessed or protected under the public interest disclosure regime.

### What are the new bodies that can receive PIDs?

- The Integrity and Oversight Committee (IOC) is a new joint committee of the Victorian Parliament established under the *Parliamentary Committees Act 2003*. The IOC can receive PIDs regarding the Victorian Inspectorate.

## Bodies that can investigate PICs

### What are the new bodies that can investigate PICs?

Under the current scheme the following bodies can investigate PICs:

- IBAC
- Victorian Ombudsman
- Victorian Inspectorate
- Chief Commissioner of Police
- Judicial Commission of Victoria.

Under the new scheme, the following bodies have been added:

- Chief Municipal Inspector
- the Information Commissioner
- the Racing Integrity Commissioner.

## Misdirected disclosures

### What is a misdirected disclosure?

- The new 'misdirected disclosure' scheme provides that where a disclosure is made to an entity which ordinarily can receive PIDs and which the discloser believed to be the correct place for the disclosure but it is not the correct place for that particular disclosure, the disclosure can still be notified to IBAC for assessment as a PIC and will receive the protections of the public interest disclosure regime. This is what is being referred to as the 'no wrong door' amendment.
- The misdirected disclosure scheme does not apply to disclosures that relate to members of Parliament. Those disclosures need to be made directly to the Speaker of the Legislative Assembly or the President of the Legislative Council.
- When a body receives a misdirected disclosure it should:
  - consider if the disclosure may be one which shows a public officer or public body has engaged in or proposes to engage in improper conduct or detrimental action
  - notify those disclosures to the appropriate entity within 28 days.
- The appropriate entity to which misdirected disclosures should be notified are:
  - the Integrity and Oversight Committee if the disclosure relates to the Victorian Inspectorate or a Victorian Inspectorate officer
  - the Victorian Inspectorate if the disclosure relates to IBAC, an IBAC officer or a Public Interest Monitor
  - IBAC if the disclosure relates to any other person or body.
- Beyond this notification, the body that receives a misdirected disclosure is prohibited from disclosing the content of that misdirected disclosure and from disclosing information likely to reveal the identity of the person who made it.

### What is an example of a misdirected disclosure?

- A misdirected disclosure can be redirected to the correct entity for assessment. For example, if the Victorian Ombudsman receives a misdirected disclosure about Victoria Police it can redirect the disclosure to IBAC for assessment.
- Another example might be where a department receives a PID about an agency that is not within its portfolio. The department could then redirect the PID to the correct entity for assessment.

## External disclosures

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

- A new mechanism has been introduced to allow relief for people who have made a public interest disclosure and are subject to confidentiality restrictions relating to that disclosure, in situations where the disclosure has not been adequately addressed.
- This mechanism allows for people who have made a public interest disclosure 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.

## Confidentiality obligations

### What information can be provided by an investigating entity to other agencies in relation to a 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 is empowered to disclose certain information where:
  - It is necessary for the purposes of investigating a PIC as part of performing its legislated functions (section 54(2)(b) of the PID Act).
  - It is relevant to certain other bodies' functions and it is appropriate that the information be passed on. The bodies that investigating agencies may pass this information to are IBAC, the Victorian Inspectorate, the Victorian Ombudsman, the Victorian Auditor-General, Victoria Police, the Office of Public Prosecutions, the Commission for Children and Young People, the Australian Federal Police, the police force of another state or territory or a further person or body if so prescribed.
- 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.

## 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.

## Detrimental action

### Is detrimental action the same under the new legislated arrangements?

- From 1 January 2020, there is a lower threshold for proving that detrimental action has taken place. Prior to 1 January 2020, a discloser would have to prove that detrimental action was a 'substantial reason' for their employer (manager) taking action against them following their disclosure, but from 1 January 2020 'substantial' has been removed from section 45.
- 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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# Conflicts of interest – myths, misconceptions and management

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IBAC's report *Managing corruption risks associated with conflicts of interest in the Victorian public sector* highlights organisational functions and activities in the public sector at heightened risk of conflicts of interest.

This resource highlights common myths and misconceptions around conflicts of interest to improve public officers' understanding and management of conflicts, and to strengthen public agencies' controls around conflicts of interest.

Conflicts of interest can be actual, potential or perceived:

- An **actual** conflict of interest occurs when a public officer's duties actually **do** conflict with their private interests.
- A **potential** conflict arises when a public officer's duties **could** conflict with their private interests. A public officer can anticipate potential conflicts by thinking about how their private interests and associations might influence their public duties.
- **Perceived** conflicts stem from the reasonable view of the public or a third party that a public officer's private interests **could** improperly influence their decisions or actions, or the actions or decisions of their organisation. The perception is that a public officer may not be objective in their dealings as a result of the conflict.

Each of these forms of conflict must be properly addressed.

Corruption can be facilitated if public officers and public sector agencies fail to properly identify, declare and manage a conflict in the public interest. This can undermine the community's trust in public sector decisions and actions, increase the cost to the community of goods and services, and can expose agencies to significant corruption risk and reputational damage.

Sometimes public officers wilfully disregard their organisation's requirements around handling conflicts of interest to pursue personal benefits for themselves or associates. However, public officers do not always clearly understand what constitutes a conflict of interest or how to declare and manage conflicts.

Common myths and misconceptions about conflicts of interest include:

1. A public sector officer with a conflict of interest is corrupt.
2. It's more important that I get the job done quickly.
3. Conflicts of interest can always be avoided.
4. There is no conflict because I can act fairly and without bias.
5. I told my manager about the conflict of interest, that's all I need to do.
6. My interests are private and are not relevant to my role.

## Myth 1: A public sector officer with a conflict of interest is corrupt

Conflicts of interest are not inherently corrupt. The risk of corruption stems from the failure of individuals and their organisations to properly and actively identify, declare and manage a conflict in the public interest. Conflicts of interest become problematic when they are concealed, only partially revealed or mismanaged. Appropriate identification, declaration and management of a conflict safeguards the reputation of the public officer and their agency.

### Case study – Operation Charnley

IBAC investigated allegations a councillor was accepting bribes in the form of gifts in exchange for awarding community grants to a local businessman. Although the allegation was not substantiated, IBAC identified the councillor failed to declare the conflict of interest arising from his financial loan to the director of a company that supplied services to the council, and which had strong affiliations with an organisation that received council grants. The councillor also did not declare that he had received a motor vehicle in lieu of financial repayment of the loan.

The councillor's failure to declare the loan and repayment with the motor vehicle created a perceived conflict of interest in relation to the councillor's role in awarding community grants. The councillor should have declared this information via the requisite primary and ordinary returns in accordance with the provisions of the *Local Government Act 1989*.

## Myth 2: It's more important that I get the job done quickly

Public sector agencies are often required to deliver goods and services to the community under considerable time and other pressures. However, getting the job done must not mean 'doing it at any cost'. The Victorian community expects that public officers will act with integrity and impartiality.

It is important that processes to identify and manage risk and prevent corruption are followed to ensure responsible, fair and objective decisions are made, including those involving expenditure of public money. Completing a conflict of interest declaration is essential to explore any risks arising from the public officer's interests that may impact or be seen to impact their ability to be impartial, and to develop an appropriate management plan. Failing to properly consider conflicts or treating declarations and management plans as a compliance exercise only exposes agencies to corruption vulnerabilities.

Public sector agencies should ensure their conflict of interest processes, including those for specific business functions and activities, are clear and easy to follow. The potential consequences of breaching the policies and processes should be clearly communicated. Consequences can include termination of employment, other disciplinary action and/or criminal prosecution.

### Case study – Operation Lansdowne

In Operation Lansdowne, IBAC identified a number of senior V/Line officers who placed undue emphasis on networks and personal friendship, rather than merit-based recruitment and procurement processes. Operation Lansdowne identified a culture of expediency and an environment where conflicts of interest were not appropriately declared or managed.

For example, a former V/Line senior executive put forward a former colleague and friend, Person A, to the then CEO of V/Line for a priority role. Person A was subsequently recruited without a formal interview process, and appointed without providing evidence he held the required qualifications and without probity checks being conducted. The lack of process revealed in various recruitment and procurement processes was justified on the basis there was a scarcity of suitable candidates and decisions needed to be made and acted upon quickly.



### Myth 3: Conflicts of interest can always be avoided

There are some circumstances which are more likely to give rise to conflicts of interest. For example, in rural and regional areas, closer relationships between public officers and the community may heighten the chances of a conflict of interest. Similarly, when skills are scarce, there may be a limited applicant pool for specific positions. In these types of situations conflicts may be unavoidable. Proper identification, declaration and management of the conflict is therefore essential to mitigate risks arising from the conflict.

The Victorian Public Sector Commission (VPSC) provides guidance and tools for effective conflict of interest management. The VPSC highlights a number of ways to manage a conflict of interest in the public interest: **restrict, recruit, remove, relinquish and resign**.<sup>1</sup> Importantly, conflicts must also be **recorded** once they are declared, to transparently document the issue and its management. Records of declarations should be maintained in a central and oversighted **register**.

### Myth 4: There is no conflict because I can act fairly and without bias

Most public officers act with integrity and impartiality, and prioritise the interests of their agency and the broader community. However, despite the best of intentions, if an actual conflict of interest exists, it is extremely difficult for a public officer to separate the knowledge or loyalty associated with their private interest from their public responsibilities. Even unconsciously, a public officer's actions may be affected by their interest.

Further, the *perception* of bias is often sufficient to call into question the public officer's decisions and actions. Such a perception can exist even if the public officer does not receive a personal or financial benefit.

Declaring and managing the conflict should not undermine a public officer's integrity or that of their organisation; however not doing so will.

### Myth 5: I told my manager about the conflict of interest, that's all I need to do

It is the responsibility of both an employee and their manager to ensure conflicts of interest are identified, declared and managed. This includes properly recording the conflict and the management plan, and making a record of this on a central register to enable monitoring and oversight.

Organisations should support employees to disclose and discuss possible conflicts, and support supervisors and managers to understand, assess, record and manage the risks. Open and active communication is essential for corruption-resistant workplaces.

In some matters investigated by IBAC, employees with significant conflicts of interest have partially disclosed the conflict in discussions with their manager. If the manager had more fully explored the issue, the full extent of the conflict may have been identified and action taken to avoid or manage it. It's not enough to advise a manager about a conflict of interest. The conflict must be identified, declared on a register and managed.

#### Good practice examples

Conversations about conflicts of interest, including regular reviews of declarations, can be normalised by making them a standard part of activities which are at heightened risk of conflicts (such as at the start of a recruitment or procurement process), or by including them as part of business-as-usual activities, such as performance review discussions.

The Department of Education and Training and City of Ballarat Council have developed electronic forms and processes for staff to declare a conflict of interest, which is then electronically transmitted to their manager for approval. Finalised declarations are stored in central registers. These approaches provide managers and their staff with an easy-to-follow process to support discussions about interests.

<sup>1</sup> Victorian Public Sector Commission 2018, *Model Conflict of Interest Policy*, pp.4.

## Myth 6: My interests are private and are not relevant to my role

Public officers are entitled to their own private life, like other members of the community. However, the Government and the community rely on public officers to perform their roles in an accountable and unbiased manner, acting in the public interest rather than their own. Protecting the public interest must always be prioritised above a public officer's own interests or associations. As such, private information needs to be disclosed to safeguard the impartiality of the public officer's performance of their duties and the overall integrity of their organisation. This information includes secondary employment and associations that may compromise a public officer's duties (declarable associations).

### Case study – Operation Carson

IBAC investigated allegations a public sector employee was improperly using their position to provide business opportunities for their partner. It was also alleged they had an undeclared financial interest in their partner's private business. The employee resigned while under investigation.

IBAC substantiated the allegation the employee provided preferential treatment to their partner. IBAC also established the employee and their partner were engaged in a private business that had not been declared to the agency. The employee sought to exploit the knowledge and networks they had developed through their public sector employment, to further their business interests. The employee failed to declare their conflicts of interest and did not act in the public interest.

## How to manage conflicts of interest

Effective conflict of interest identification, declaration and management benefits from open communication between public officers and their managers to discuss different situations which could involve conflicts of interest, and determine how any conflicts should be handled in accordance with clear expectations and standards.

Employees are responsible for actively considering their interests and how these could impact their public duties and functions. It is the responsibility of managers to regularly discuss these issues with their staff, and the responsibility of organisations to support managers and employees to be aware of and understand their obligations. This requires clear policies and guidance, mature risk management practices, and training and regular communication about the organisation's expectations for identifying, declaring and managing conflicts of interest.

IBAC's *Managing corruption risks associated with conflicts of interest in the Victorian public sector* provides further information about good conflict of interest practices and useful resources.

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# Reporting corruption and misconduct

[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

Have you witnessed corruption? Suspect something? Your information could help expose how public sector corruption or police misconduct is wasting public money and hurting Victorians. Importantly, your complaint can help everyone learn valuable lessons to prevent future corruption and misconduct.

## What can you report to IBAC?

### 1 Corruption by a public sector body or employee

Corruption can be someone committing fraud, taking or offering bribes, awarding contracts to family or friends, and using or leaking privileged information for personal benefit.

You can make a complaint to IBAC about:



- state government employees (at departments, agencies, public hospitals, public schools, universities and TAFEs)



- Victoria Police officers, recruits, protective services officers (PSOs), police custody officers and employees



- council employees and Councillors



- Members of Parliament and their employees



- judges, magistrates and other judicial members.

You can also choose to report your concerns directly to the agency that is the subject of your complaint, through its Public Interest Disclosure Coordinator. Most public sector agencies have someone equipped to support staff and members of the community in making complaints, and to protect whistleblowers.

You can find a list of agencies that are authorised to receive disclosures at [www.ibac.vic.gov.au/PID](http://www.ibac.vic.gov.au/PID)

### 2 Misconduct in public office

Misconduct in public office is broadly defined. It can be any conduct by a public sector employee which is unlawful or fails to meet the ethical or professional standards required in the performance of duties or the exercise of powers entrusted to them.

### 3 Misconduct by Victoria Police personnel

IBAC also takes complaints about misconduct by all Victoria Police personnel, including sworn officers, recruits, PSOs, police custody officers and staff. This could be circulating offensive material, drink driving, making false entries in log books/registers or using excessive force.

Complaints about police misconduct can also be made to Victoria Police's Professional Standards Command on **1300 363 101**.

#### WHAT IBAC CANNOT INVESTIGATE

- The private sector.
- Issues arising in other states and territories.
- Federal government parliamentarians, departments or agencies.

## You will be protected

IBAC handles your information and personal details carefully and in accordance with relevant legislation. If your complaint is considered a public interest disclosure:

- your name and personal details will not be shared with anyone (except agencies your complaint may be referred to)
- you can't be fired, disciplined or bullied for making the complaint
- you are protected from legal actions such as defamation and civil liability
- your friends, family and colleagues are protected.

If your complaint is not a public interest disclosure, your identity doesn't have to be kept confidential, but:

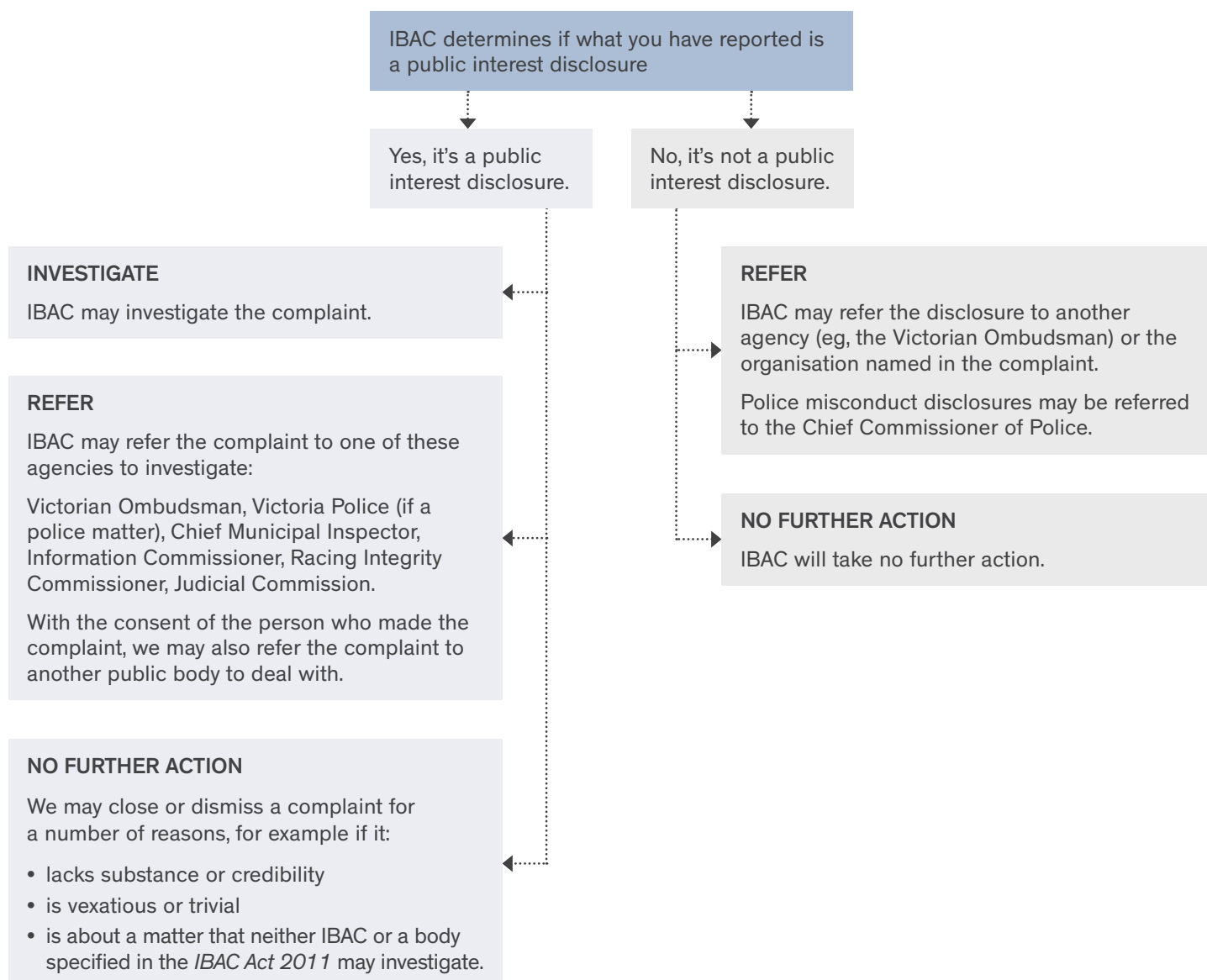
- you can't be fired, disciplined or bullied for making the complaint
- you are protected from legal actions such as defamation and civil liability.

If you are very concerned about your privacy, you can choose to make a complaint anonymously. If you make a complaint anonymously, our investigation will be limited. This is because we cannot contact you for more information, or discuss the complaint if you follow up.

## What is a public interest disclosure?

A disclosure that shows improper conduct by a public officer or body (for example, corruption), or detrimental action (for example, firing someone for making a disclosure).

## What happens when you report corruption and misconduct to IBAC



## How do you report?

Fill out the secure online form at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

If you have difficulty accessing the online form, please call us on **1300 735 135**.

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## Before you contact IBAC

Please be aware of what complaints we can and can't accept. If your complaint isn't about corruption or misconduct, we may refer you to another agency, such as the Victorian Ombudsman.

Please also be clear on who/what you're complaining about, and provide as much detail or evidence as possible.

## What does IBAC do with your information?

By law, IBAC prioritises allegations of serious or systemic corruption and misconduct. After carefully assessing your complaint, IBAC may decide to:

- refer the complaint
- investigate
- take no further action.

To help us prioritise the right matters, IBAC may also conduct a preliminary inquiry to support our decision on what to do with your complaint.

While we cannot use a lot of our broader investigative powers during a preliminary inquiry, we may:

- request further information from anyone
- summons a person to produce documents
- issue confidentiality notices.

## Your information helps

Regardless of the outcome of your complaint, the information you give us helps us identify broader trends and patterns. IBAC uses this analysis to alert the public sector to potential vulnerabilities in their practices and organisations.

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# Building public sector integrity during times of crisis or emergency

This resource aims to help the **public sector** review and strengthen integrity responses and improve capacity to prevent corrupt conduct during times of emergency and crisis.

The current COVID-19 pandemic is having an unprecedented impact on social and work environments. Significant funding and other measures are being progressively announced and implemented by all levels of government in response to the public health, economic and social impacts of the pandemic. This is in addition to the funding committed in response to the state's bushfires emergency last summer.

The need for an immediate response to emergencies, coupled with remote work arrangements and pressing demands on our public sector, presents new opportunities and risks for corruption. Experiences in other jurisdictions and overseas also show that changes to the way government services are delivered during times of crisis can create misconduct and corruption risks.

To support the Victorian public sector, IBAC has identified key corruption risks facing state government agencies during emergencies and crisis situations, associated warning signs or 'red flags', and suggested prevention measures to help minimise risk.

This information sheet highlights corruption risks during times of emergency and alerts public sector agencies to opportunities to strengthen systems, and practices to mitigate them. It is appropriate that agencies review their corruption prevention and detection strategies during times of crises, to ensure strategies are effective in minimising misconduct and corruption risks, but also proportionate to the circumstances.

IBAC will continue to engage with key agencies across the Victorian public sector to help raise awareness of the risks highlighted in this information sheet, and to help them develop appropriate corruption prevention strategies.



## Crisis-related increasing demands and pressure on public sector employees

Crisis-related funding increases can lead to changed conditions that increase existing fraud and corruption risks. Key risks typically stem from the transfer of funds from the public sector to the private sector for service delivery and other support. Employees undertaking activities in areas at higher risk of corruption, such as procurement and tendering, recruitment, grant assessment and acquittal, distribution of public funds, licensing, and resource management need to pay particular attention to the following warning signs and prevention measures.

### Red flags:

- groups or individuals – particularly those that have not been previously registered – attempting to submit fraudulent claims for grants or support
- suppliers submitting suspicious bids for tenders, which may involve incomplete applications or repeated claims using the same or different ABN, or other individual identifiers
- suppliers pressuring government agencies to rush procurement or payments, or to agree to irregular variations of contracts or competitive tendering processes
- unusually excessive claims by suppliers for completed work
- unusual changes to vendor and employee data, such as bank account details
- government employees releasing sensitive information to bidders or not declaring and properly managing conflicts of interest
- processes not being correctly followed or documented
- service delivery and contract management being poorly monitored or supervised.

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### Suggested control measures:

- provide integrity training for staff
- ensure agreed processes are followed and, where exemptions are required, documented
- obtain advice from a procurement adviser before starting procurement processes
- form a diverse team representing different areas of your organisation to assess supplier quotes and submissions
- establish a project management team to regularly monitor contract delivery and timeframes
- mandate reporting of suspected corruption or misconduct, and reinforce ways for employees or suppliers to report suspected fraudulent and corrupt conduct
- ensure activities, particularly those relating to procurement decisions and approvals, are appropriately segregated
- conduct regular and random audit and risk reviews to identify trends and patterns that may indicate the presence of fraud and corruption
- consider internal data collection and analysis to identify changes in behaviour and transaction patterns, particularly as emergency response restrictions lift, to help detect corrupt and fraudulent behaviour
- ensure suppliers to the Victorian State Government understand, agree with and conform to public sector standards and obligations outlined in the Victorian Public Service Supplier Code of Conduct.

Find out more about procurement risks and prevention strategies, view IBAC's resource [The red flags of corruption: procurement](#).



### Risks associated with working remotely

Working from home increases security and privacy risks to public sector employees. Risks may include inadvertently discussing or exposing information to unauthorised individuals, either in person within shared work spaces, via social media or other electronic means.

Cyber threats also pose a risk in remote workforces. Cybercriminals have increased their use and adaptation of malicious online strategies to exploit working from home conditions. Their strategies include phishing emails, malicious websites, and text messages – sometimes disguised as COVID-19-related communication – that seek to obtain private information.<sup>1</sup>

Emergency and crisis situations can also place public sector employees and their families under financial hardship. Remote working can create perceptions of isolation and lack of support from team members. If these issues are not addressed, they have the potential to increase employees' vulnerability to corruption and fraud risks.

### Red flags:

- lack of installed and updated anti-virus and anti-malware software on work devices
- lack of password and multi-factor authentication on work devices
- storage of work material on private devices
- lack of regular communication between team leaders and members.

### Suggested control measures:

- review the principles of the Victorian Protective Data Security Framework to ensure secure information management
- comply with guidelines issued by the Office of the Victorian Information Commissioner (OVIC) and the Australian Cyber Security Centre (ACSC) and incorporate these into agencies' internal policies
- support employees to protect the integrity and security of their work when working from home, including by:
  - using secure communications and conferencing technology
  - arranging for file sharing and electronic signature approval methods for remote working that permit collaboration and shared document authentication using a government-approved, file-sharing service and email system
  - reminding employees to ensure confidential material on screens and printed documents cannot be viewed by others in shared work spaces
  - locking computer screens when leaving work stations, and closing doors when discussing confidential or sensitive information
  - securing hardcopies of confidential material in lockable home safes or mobile secure cases
  - reporting suspected losses of confidential information
- maintain regular communication within your team to discuss work requirements, while ensuring all employees are able to discuss issues and pressures affecting them
- promote employee assistance programs for employees.

<sup>1</sup> Australian Cyber Security Centre, 2020, [Threat update: COVID-19 malicious cyber activity](#), 20 April 2020.



### Risks to governance processes and oversight

It is always important to ensure there are clear and transparent policies and procedures around decision-making. However, during emergency or crisis situations, government agencies face increasing pressure to deliver services, with less opportunities for face-to-face interactions. In this environment, public sector employees may come under pressure to take shortcuts to accelerate delivery, such as bypassing proper processes, and reducing or stopping routine consultations with stakeholders and experts. This can increase or exacerbate risks, including nepotism and cronyism, failure to document decision making, lack of transparency, and overall poorer decisions being made.<sup>2</sup>

Virtual meetings can offer increased opportunities for public engagement while employees work from home. In the interests of transparency, employees should continue to document meetings, and continue to declare and manage conflicts of interest.

#### Red flags:

- failure to comply with policies and procedures
- reduced stakeholder involvement in decision-making
- failure to appropriately document records of meetings
- not declaring or managing conflicts of interest.

#### Suggested control measures:

- regularly review and record any temporary amendments to decision-making procedures in response to emergency situations
- ensure employees complete conflict of interest declarations when necessary, and follow management strategies
- strictly adhere to all employment protocols and provide realistic and adapted training to employees to help them, and managers, identify conflict of interest
- make meeting agendas (including online), minutes and other relevant documentation accessible to stakeholders in a timely way
- ensure each relevant stakeholder provides written support (or otherwise) of decisions made outside of standard conventions.



### Supporting corruption resistant cultures during crisis and emergencies

The need to provide exemplary leadership and corruption awareness training to the workforce remains crucial during emergency or crisis situations. There is a risk that agencies' integrity-related education and training programs may be postponed or cancelled due to increased service delivery demands or logistical issues associated with remote working. It is important that such training continues and that leaders encourage and support their staff to maintain the highest standards of integrity and professionalism.

#### Red flags:

- reduced focus or cessation of corruption awareness and prevention training
- employee uncertainty about proper processes and how they can and cannot be adapted
- employee uncertainty about the processes around reporting corruption and fraud, either internally or to IBAC.

#### Suggested control measures:

- adapt existing training for online and remote delivery to inform good practice, dissuade corrupt behaviour and continue to develop corruption-resistant cultures
- ensure that any critical and specialised training continues to be undertaken
- use case studies relevant to the current crisis situation to help staff recognise and respond effectively to fraud and corruption risks
- communicate with employees to determine areas of uncertainty regarding processes and reporting of suspected fraud or corruption
- clear and consistent communication from senior leaders to reinforce the agency's values, public sector standards and codes of conduct, and to raise awareness of internal reporting channels and IBAC.

<sup>2</sup> Donaldson, David, 2020, '[Record-keeping in a crisis: hasty decisions create accountability problems – and are difficult to implement](#)', The Mandarin, 16 April 2020.





### Increased lobbying-related risks

The COVID-19 crisis has led a wide range of industry lobby groups to seek government support.<sup>3</sup> Agencies are advised to be aware of lobbying efforts to place undue influence on, or accelerate, government decision-making, and to ensure decision-making is always conducted in the public interest. Be alert to attempts to conduct unregistered lobbying, which can compromise probity and due diligence measures and decrease transparency about lobbyist identities, interests and meetings.

#### Red flags

- higher levels of lobbying of state governments, particularly from lobbyists that do not conform to established lobbying guidelines
- lobbying by individuals not listed on the Victorian Public Sector Commission's (VPSC) register of lobbyists
- failure by lobbyists to disclose details of the parties they represent
- failure by public sector employees involved in discussions with lobbyists to declare that they could have a conflict of interest
- attempts to influence government decision-making through payment, gifts, benefits and hospitality.

#### Suggested control measures

- state government agencies ensure that contact with lobbyists remains compliant with the Victorian Professional Lobbyist Code of Conduct (VPLCC) and that lobbyists are registered with the VPSC Register of Lobbyists
- public service employees maintain appropriate recordkeepings of all meetings with industry advocates and lobbyists, for transparency, and to avoid perceptions of undue influence.

## Useful resources

### IBAC resources

IBAC's integrity framework review of state government highlights good practices and opportunities for state government agencies to strengthen their integrity frameworks and improve their capacity to prevent corrupt conduct.

[www.ibac.vic.gov.au/publications-and-resources/article/state-government-integrity-frameworks-review](http://www.ibac.vic.gov.au/publications-and-resources/article/state-government-integrity-frameworks-review)

IBAC's fact sheets address key areas of public sector corruption and fraud risk and provide useful strategies to manage them.

[www.ibac.vic.gov.au/publications-and-resources/article/red-flags-of-corruption-procurement](http://www.ibac.vic.gov.au/publications-and-resources/article/red-flags-of-corruption-procurement)

[www.ibac.vic.gov.au/publications-and-resources/article/information-sheet-conflicts-of-interest-myths-misconceptions-and-management](http://www.ibac.vic.gov.au/publications-and-resources/article/information-sheet-conflicts-of-interest-myths-misconceptions-and-management)

### Victorian Government Supplier Code of Conduct

The Code of Conduct sets out the ethical standards required from suppliers to the Victorian Government.

[www.buyingfor.vic.gov.au/supplier-code-conduct](http://www.buyingfor.vic.gov.au/supplier-code-conduct)

[www.ovic.vic.gov.au/about-us/news-and-media/covid-19/](http://www.ovic.vic.gov.au/about-us/news-and-media/covid-19/)

### Office of the Victorian Information Commissioner (OVIC) – COVID-19 news

OVIC's COVID-19 website lists information and guidance regarding freedom of information, privacy, information security and business continuity under COVID-19.

[www.ovic.vic.gov.au/about-us/news-and-media/covid-19/](http://www.ovic.vic.gov.au/about-us/news-and-media/covid-19/)

<sup>3</sup> Loussikian, Kylar and Hutchison, Samantha, 2020, '*Pandemic a boom time for nation's lobbyists*', Sydney Morning Herald, 29 April 2020; Victorian State Government, 2020, '*New Taskforce to bolster building and development industry*', 24 April 2020; ABC News, 2020, '*Coronavirus prompts Victoria to launch \$2.7b construction blitz to stimulate state's economic recovery*', 2020; Master Builders Australia, 2020, '*Joint Statement – Master Builders Australia and CFMEU National Construction Division*', 23 March 2020; Millar, Royce, 2020, '*Builders call for fast track out of crisis*', The Age, 15 April 2020; Sakkal, Paul, 2020, '*Secret plans to reopen pubs, clubs and Crown Casino*', The Age, 1 May 2020.

## State Government

### Victorian Public Sector Commission

#### *Maintaining Integrity When Working Remotely* guide

The *Maintaining Integrity When Working Remotely* guide provides practical advice that Victorian public sector employees can follow to ensure they continue to comply with the Code of Conduct while they work remotely.

[www.vpsc.vic.gov.au/resources/working-remotely/](http://www.vpsc.vic.gov.au/resources/working-remotely/)

#### *Engaging with Lobbyists in the Victorian Public Sector* guide

As a Victorian public sector employee, lobbyists may contact you to influence Government decisions. This guide helps you understand your obligations and what to do when you're working in the office or remotely.

[www.vpsc.vic.gov.au/html-resources/guide-to-engaging-with-lobbyists-in-the-victorian-public-sector/](http://www.vpsc.vic.gov.au/html-resources/guide-to-engaging-with-lobbyists-in-the-victorian-public-sector/)

### Australian Cyber Security Centre (ACSC) – COVID-19 advice

The ACSC regularly posts cyber threat updates and other forms of guidance to organisations in order to protect systems, data and personal information during the COVID-19 crisis.

[www.cyber.gov.au/COVID-19](http://www.cyber.gov.au/COVID-19)

### Interstate resources

#### NSW Independent Commission Against Corruption

[www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/managing-corrupt-conduct-during-the-covid-19-outbreak](http://www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/managing-corrupt-conduct-during-the-covid-19-outbreak)

[www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/supplier-due-diligence-a-guide-for-nsw-public-sector-agencies](http://www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/supplier-due-diligence-a-guide-for-nsw-public-sector-agencies)

#### NT Office of the Independent Commissioner Against Corruption

[www.icac.nt.gov.au/\\_data/assets/pdf\\_file/0008/816155/Fraud-and-the-COVID-19-Stimulus-Package.pdf](http://www.icac.nt.gov.au/_data/assets/pdf_file/0008/816155/Fraud-and-the-COVID-19-Stimulus-Package.pdf)

[www.icac.nt.gov.au/\\_data/assets/pdf\\_file/0004/816232/COVID-19-fraud-watch-checklist\\_FINAL.pdf](http://www.icac.nt.gov.au/_data/assets/pdf_file/0004/816232/COVID-19-fraud-watch-checklist_FINAL.pdf)

#### SA Independent Commissioner Against Corruption

[www.icac.sa.gov.au/report/public-admin-in-pandemic](http://www.icac.sa.gov.au/report/public-admin-in-pandemic)

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- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

To report corruption now, visit **www.ibac.vic.gov.au** or call **1300 735 135**.

If you need help with translation, call the Translating and Interpreting Service on **13 14 50** or visit **www.ibac.vic.gov.au/general/accessibility/tr**

*This document is for informational purposes only and should not be considered a substitute for legal advice.*

# Public interest disclosure procedures: key issues to consider

This information sheet provides public sector organisations with information to help them with their workplace public interest disclosure policies, practices and procedures. The information is to be used as a reference to the key issues that organisations should consider in meeting their obligations under Victoria's system for receiving public interest disclosures.

## About the *Public Interest Disclosures Act 2012*

Victoria's *Public Interest Disclosures Act 2012* (the PID Act) provides protections for people who make disclosures about improper conduct in the public sector.

Disclosures can be made to nominated agencies and public bodies<sup>1</sup> authorised to receive disclosures. A list of entities that can receive public interest disclosures is listed on the [IBAC website](http://www.ibac.vic.gov.au). On receipt, those agencies and public bodies are required to notify potential public interest disclosures to IBAC for assessment.

Upon notification, IBAC is required to assess the complaint for public interest disclosure status. IBAC may decide to:

- dismiss the matter
- refer the matter to another investigating entity<sup>2</sup>
- investigate the matter.

## The role of public bodies and agencies

Public bodies and agencies play a critical role in implementing the public interest disclosure regime.

Organisations that can receive public interest disclosures should have procedures for:

- receiving, handling and assessing disclosures
- notifying and liaising with IBAC or other investigating entities.

All public sector organisations should have procedures for:

- keeping a discloser's identity and the content of a disclosure confidential
- managing the welfare of disclosers including protecting them from detrimental action
- providing education and training to staff
- evaluation and review of the organisation's public interest disclosure framework.

This information sheet can be used to help your organisation to:

- encourage public officers and members of the public to report improper conduct
- ensure effective action is taken in response to reports of improper conduct.

<sup>1</sup> For more information on these agencies and public bodies go to [www.ibacvic.gov.au/PID](http://www.ibacvic.gov.au/PID)

<sup>2</sup> Investigating entities include the Victorian Ombudsman, Victoria Police, the Victorian Inspectorate or the Chief Municipal Officer. In some circumstances, IBAC can also refer matters to the Office of the Racing Integrity Commissioner and the Office of the Information Commissioner.

## Procedures – receiving, handling and assessing public interest disclosures

Organisations that can receive public interest disclosures should ensure they have clear procedures for people to make a public interest disclosure and that these procedures are well known to staff and available to the public.

The usual way to ensure that an organisation supports its responsibilities under the PID Act is to appoint a person or persons to a clearly identified role of Public Interest Disclosure Coordinator with appropriate resources.

Responsibilities of Public Interest Disclosure Coordinators include:

- receiving all disclosures, including phone calls, emails and letters from members of the public or staff
- assessing disclosures in accordance with the PID Act
- notifying all assessable disclosures to IBAC within 28 days
- establishing and managing a secure filing system and processes to ensure confidentiality
- managing the welfare of a discloser and advising them of protections available under the PID Act
- tracking the actions taken in relation to disclosures
- collating and reporting statistics on disclosures.

## Maintaining confidentiality

The PID Act requires information about the identity of a discloser and the content of a public interest disclosure to be kept confidential.

Organisations may face some practical difficulties in ensuring confidentiality. The identity of a discloser may be revealed inadvertently or information about the contents of the disclosure may already be known by others in the organisation.

To minimise these risks organisations should:

- remind staff that if they make a disclosure they should keep it confidential
- limit the number of people who can be made aware of the discloser's identity, or information that could identify the discloser
- ensure they have a secure electronic or paper filing system for the receipt, storage, assessment and notification of public disclosures
- develop a risk management plan for every disclosure to manage the risk of confidentiality breaches.

## Managing welfare

It takes courage to speak up and make a disclosure about improper conduct by a public official or public body.

For the PID Act to be effective, those who shine a spotlight on wrongdoing in public life need to be confident they will be protected from reprisals.

When someone discloses wrongdoing in the workplace or by a public officer or public body, organisations need to respond quickly and appropriately.

Organisations should consider:

- developing welfare strategies that consider the welfare of disclosers, witnesses/cooperators and people who are the subject of disclosures
- developing a risk management plan to manage the welfare of those involved in every public interest disclosure
- developing processes to protect disclosers from reprisal, including relocation if requested, or agreed to, by the discloser.

## Education and training

All public bodies should create and support a workplace culture where the making of public interest disclosures is valued and taken seriously. Organisations should consider:

- regular training of staff on the reasons for having a public interest disclosure procedure and how to follow it
- reassuring staff that detrimental action will not be tolerated and they will be protected
- being visible, approachable, openly communicating and leading by example.

## Evaluation

Organisations should also consider regularly reviewing the effectiveness of their public interest disclosure procedures and integrity frameworks as a part of a process of continuous improvement.

## Getting ready for PID Act changes

The commencement of changes to the PID Act from 1 January 2020 will require all public bodies and local councils to consider how the changes will affect their operations, policies, procedures and systems. The following checklist may assist.

Has your organisation:

- clarified whether or not it can receive public interest disclosures?
- incorporated new definitions into its systems and procedures for 'improper conduct' and 'detrimental action'?
- ensured a procedure is in place to manage external disclosures?
- ensured a procedure is in place to manage misdirected disclosures?
- ensured that staff are adequately trained in the new confidentiality obligations?
- ensured that your public interest disclosures policy and complaints policy refer to each other?
- ensured that those who report or are witnesses to wrongdoing are supported and protected from reprisal?

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