

PARLIAMENT OF VICTORIA



Integrity and Oversight Committee

Public Interest Disclosure Procedures

Endorsed by the Integrity and Oversight Committee
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1 Introduction

The *Public Interest Disclosures Act 2012* (Vic) (PID Act) (formerly known as the *Protected Disclosure Act 2012* (Vic)) provides protections for people who make disclosures about improper conduct in the Victorian public sector.

As of 1 January 2020, the PID Act vests new functions and powers in the Integrity and Oversight Committee (Committee) to:

- receive assessable disclosures that relate to the Victorian Inspectorate or a Victorian Inspectorate officer;
- assess those disclosures;
- determine whether those disclosures are public interest complaints;
- engage an independent investigator to investigate any disclosure determined by the Committee to be a public interest complaint; and
- promote the purposes of the Act.¹

Generally, an entity that may receive disclosures under the PID Act must establish procedures to facilitate the making of those disclosures, the handling of those disclosures and, where appropriate, the notifications of those disclosures to an appropriate authority.

The following procedures² have been developed to promote transparency and to assist the Committee to fulfil its statutory functions under the Act. These procedures are consistent with the PID Act, regulations and the guidelines issued by the Independent Broad-based Anti-corruption Commission (IBAC).

2 Key definitions

2.1 Improper conduct

Improper conduct means—

- (a) corrupt conduct; or
- (b) conduct of a public officer or public body in their capacity as a public officer or public body that constitutes:
 - (i) a criminal offence; or
 - (ii) serious professional misconduct; or
 - (iii) dishonest performance of public functions; or
 - (iv) an intentional or reckless breach of public trust; or

¹ PID Act s 56A.

² Note that these procedures do not deal with internal disclosures about ministerial officers, parliamentary officers, parliamentary advisers and electorate officers. These disclosures must be made directly to the Independent Broad-based Anti-corruption Commission (IBAC)..

- (v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
 - (vi) a substantial mismanagement of public resources; or
 - (vii) a substantial risk to the health or safety of one or more persons; or
 - (viii) a substantial risk to the environment; or
- (c) conduct of any person that—
- (i) adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
 - (ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
 - A. a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - B. an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - C. a financial benefit or real or personal property; or
 - D. any other direct or indirect monetary or proprietary gain—

that the person or associate would not have otherwise obtained; or:

- (d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c).³

Improper conduct *excludes* conduct that is trivial.⁴

2.2 Corrupt conduct

Corrupt conduct means conduct—

- (a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or
- (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- (d) of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or

³ PID Act s 4(1).

⁴ PID Act s 4(2).

- (da) of a person (the **first person**) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—
- (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - (iii) a financial benefit or real or personal property; or
 - (iv) any other direct or indirect monetary or proprietary gain—

that they would not have otherwise obtained; or

- (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da)—

that would constitute a **relevant offence**.⁵

To be a relevant offence, the conduct must constitute an indictable offence against an Act, an attempt to pervert the course of justice, bribery of a public official, perverting the course of justice, or misconduct in public office.⁶

2.3 Detrimental action

Detrimental action includes—

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.⁷

3 Receiving a disclosure

3.1 The Committee's jurisdiction to determine a disclosure

The Committee has jurisdiction to determine whether a public interest disclosure is a public interest complaint if it relates to the Victorian Inspectorate or a Victorian Inspectorate officer.

A Victorian Inspectorate officer includes the Inspector.⁸

⁵ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act) s 4(1).

⁶ IBAC Act s 3(1).

⁷ PID Act s 3.

⁸ *Victorian Inspectorate Act 2011* (Vic) s 3(1).

3.2 To whom can a disclosure be made?

A public interest disclosure about the Victorian Inspectorate or a Victorian Inspectorate officer must be made to the Committee or a Presiding Officer of the Parliament of Victoria.⁹ A Presiding Officer means the Speaker of the Legislative Assembly or the President of the Legislative Council.¹⁰

A public interest disclosure may be made orally or in writing.¹¹ If the disclosure is made in writing, it must be addressed to the relevant entity or a permitted person who can receive a disclosure on behalf of the entity.¹² A written disclosure must be sent by post or electronically, or delivered to, or left at, the office of the relevant entity or permitted person.¹³

3.2.1 The Committee

A public interest disclosure made in writing must be addressed to the Committee, or any member of the Committee, who are permitted persons for the purposes of the PID Act.¹⁴

The Secretariat will, on behalf of the Committee or any member of the Committee, acknowledge receipt of the disclosure in writing (where a postal or email address has been provided) within a reasonable time after the disclosure is received.¹⁵

3.2.2 Presiding Officer

While a Presiding Officer can receive a disclosure about the Victorian Inspectorate or a Victorian Inspectorate officer, they have no discretion to assess or investigate a disclosure.

Upon receipt of a disclosure, a Presiding Officer *may* notify the disclosure to the Committee for assessment.¹⁶ If a Presiding Officer notifies the disclosure to the Committee, he or she may advise the person who made the disclosure that the disclosure has been made to the Committee.¹⁷ If a Presiding Officer does not notify the disclosure to the Committee, the Presiding Officer may advise the person who made the disclosure that the disclosure has not been notified for assessment under the Act.¹⁸

⁹ PID Act s 14(a).

¹⁰ PID Act s 3.

¹¹ PID Act s 12(3).

¹² PID Act s 12(4).

¹³ PID Act s 12(4).

¹⁴ A permitted person means any member of the Committee: PID Act Schedule 2, Item 8.

¹⁵ There is no statutory obligation on the Committee to formally acknowledge receipt of the disclosure. The Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions under the PID Act: PID Act s 56A(3).

¹⁶ PID Act s 21(3). Note also that a public interest disclosure about the Victorian Inspectorate or a Victorian Inspectorate officer received by a Presiding Officer is not a misdirected disclosure: PID Act s 18(2).

¹⁷ PID Act s 25(2).

¹⁸ PID Act s 25(3).

4 Assessing a disclosure

The Committee is to assess every disclosure received as a *potential* public interest disclosure.

4.1 What is a public interest disclosure?

To be a public interest disclosure, the disclosure must:

- (a) be made by a natural person; and
- (b) contain—
 - (i) information that shows or tends to show—
 - (a) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (b) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
 - (ii) information that the person reasonably believes shows or tends to show—
 - (a) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (b) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45.¹⁹

A disclosure is *not* a public interest disclosure if the person making the disclosure expressly states in writing that the disclosure is not a public interest disclosure.²⁰ Consequently, the disclosure is not required to be notified or assessed under the PID Act.²¹

If a disclosure is not a public interest disclosure, it should be dealt with in accordance with the Committee's jurisdiction under the *Parliamentary Committees Act 2003* (Vic)—see 5.4 below.

4.2 Is the disclosure a public interest complaint?

A public interest complaint is a public interest disclosure that has been assessed and determined to be a public interest complaint by IBAC under section 26, the Victorian Inspectorate under section 31 or the Committee under section 31B of the PID Act.

Section 31B(1) provides that if a public interest disclosure that relates to the Victorian Inspectorate or a Victorian Inspectorate Officer is made or notified to the Committee, the Committee must assess the disclosure to determine whether the disclosure is a public interest complaint.²²

¹⁹ PID Act s 9(1). Note that a disclosure cannot be made about the Office of the Special Investigations Monitor, the Special Investigations Monitor, a court, an investigating panel or a member of an investigating panel: PID Act s 9(3).

²⁰ PID Act s 19(1).

²¹ If a statement under s 19(1) is made by the person making a disclosure, the Committee must provide the entity it may have notified with the person's statement no later than 28 days after the disclosure is made: s 19(2).

²² PID Act s 31B(1).

Following an assessment, the Committee must determine that—

- (a) the disclosure is a public interest complaint if it considers that—
 - (i) the disclosure shows or tends to show—
 - A. a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - B. a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
 - (ii) the person who made the disclosure believes on reasonable grounds that the disclosure shows or tends to show—
 - A. a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - B. a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
- (b) the disclosure is not a public interest complaint.²³

A determination must be made within a reasonable time after the disclosure is made or notified to the Committee.²⁴

5 After an assessment

5.1 Advice to notifying entity

If a disclosure has been notified to the Committee, the Committee must advise the entity of the Committee's determination in writing within a reasonable time after the determination is made.²⁵

5.2 Advice to person who made a disclosure determined to be public interest complaint

If the Committee has determined that the disclosure is a public interest complaint, the Committee must advise the person who made the disclosure, in writing and within a reasonable time after the determination is made, that—

- (a) the Committee has determined that the disclosure is a public interest complaint; and
- (b) the protections under Part 6 apply to the disclosure.²⁶

²³ PID Act s 31B(2).

²⁴ PID Act s 31B(3).

²⁵ PID Act ss 27, 31B(5).

²⁶ The protections will not apply if the person making a disclosure has contravened section 72 of the PID Act.

The advice must include a written statement containing the prescribed matters relating to the rights, protections and obligations under the PID Act of a person who has made a public interest disclosure.²⁷

See Part 8 of these procedures for further information on confidentiality obligations.

5.3 Advice to person who made a disclosure determined not to be public interest complaint

If the Committee has determined that the disclosure is not a public interest complaint, the Committee must advise the person who made the disclosure, in writing and within a reasonable time after the determination is made, that—

- (a) the Committee has determined that the disclosure is not a public interest complaint; and
- (b) as a consequence of that determination—
 - (i) the disclosure will not be investigated as a public interest complaint; and
 - (ii) the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; but
- (c) the protections under Part 6 apply to the disclosure.

The advice must state the reasons why the Committee has determined that the disclosure is not a public interest complaint.²⁸

The Committee does not have to provide the above advice to a person who has made a disclosure unless he or she has indicated to the Committee, or it otherwise appears to the Committee, that the person wishes to receive the protections that apply to a public interest disclosure under the PID Act.

5.4 Advice regarding alternative procedures

If the Committee has determined that the disclosure is not a public interest complaint but considers that the matter which is the subject of the disclosure may be dealt with by another entity, the Committee may advise the person who has made the disclosure that—

- (a) the matter may be dealt with by that entity other than as a public interest complaint; and
- (b) if the person wishes to pursue the matter, the person should make a complaint directly to that entity.²⁹

²⁷ PID Act ss 28 and 31B(5). The prescribed matters include a copy of section 72 and Parts 6 and 7 of the Act as well as an explanation of the effect of those provisions: PID Act s 28(3); *Public Interest Disclosures Regulations 2019* (Vic) regulation 6. The protections under Part 6 include: immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure, immunity from committing an offence under the *Constitution Act 1975* (Vic) or any other Act that imposes confidentiality obligations or otherwise restricts the disclosure of information, immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information, protection from an action for defamation, and protections from detrimental action taken in reprisal for making a public interest disclosure.

²⁸ PID Act s 29.

²⁹ PID Act s 30.

5.5 Anonymous disclosures

If a public interest disclosure is made anonymously, the provisions at 5.2 to 5.4 of these procedures do not apply.³⁰

6 Misdirected disclosures

6.1 Public interest disclosures

A public interest disclosure received by the Committee that does not relate to the Victorian Inspectorate or a Victorian Inspectorate officer is a misdirected disclosure.³¹

If the Committee receives a misdirected disclosure, it must, no later than 28 days after the disclosure is made, notify the disclosure to the appropriate entity for assessment.³²

The Committee must advise the person who made the disclosure that the disclosure has been notified to the appropriate entity for assessment.³³

The appropriate entities to which a public interest disclosure must be notified are—

- (a) the Victorian Inspectorate—if the disclosure relates to the IBAC, an IBAC Officer or a Public Interest Monitor; or
- (b) IBAC—if the disclosure relates to any other person or body.³⁴

6.2 Disclosures that are not public interest disclosures

If the disclosure is not a public interest disclosure, the Committee must advise the person who made the disclosure that—

- (a) the Committee considers that the disclosure does not show or does not tend to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; and
- (b) consequently, the disclosure has *not* been notified for assessment under the Act; but
- (c) the protections under Part 6 apply to the disclosure.

The advice must be in writing and be given no later than 28 days after the disclosure is made to the Committee.³⁵

³⁰ PID Act s 12A(2).

³¹ PID Act s 18(1).

³² PID Act s 21(2).

³³ PID Act s 24(2).

³⁴ PID Act s 21(1).

³⁵ PID Act s 24(3)–(5) (emphasis added).

The Committee does not have to provide the above advice to a person who has made a disclosure unless he or she has indicated to the Committee, or it otherwise appears to the Committee, that the person wishes to receive the protections that apply to a public interest disclosure under the PID Act.

Note that a disclosure received by the Committee that relates to a Member of Parliament is not a misdirected disclosure.³⁶ A disclosure about a Member of Parliament must be made to the relevant Presiding Officer.³⁷ If the Committee receives a disclosure about a Member of Parliament, it will advise the person making the disclosure of the Presiding Officer to whom his or her disclosure should be directed.

7 Investigating a public interest complaint

If the Committee determines that a disclosure is a public interest complaint, the Committee must engage an independent person to investigate the disclosure, subject to the exception at 7.3 of these procedures.³⁸

7.1 Appointing the investigator

The different processes for appointing an independent person to investigate a public interest complaint are set out in the table below.

36 PID Act s 18(2).

37 PID Act s 17.

38 PID Act s 33A.

Where a public interest complaint relates to the Victorian Inspectorate or a Victorian Inspectorate officer (excluding the Inspector)	Where a public interest complaint relates to the Inspector
<p>the Committee must—</p> <ul style="list-style-type: none"> engage an independent person to investigate the public interest complaint relating to the Victorian Inspectorate or Victorian Inspectorate Officer under section 30 of the <i>Parliamentary Committees Act 2003</i> (Vic); and notify the Minister of its public interest complaint determination and the Inspector (unless the Committee reasonably believes notifying the Inspector could prejudice the investigation).³⁹ 	<p>the Committee must—</p> <ul style="list-style-type: none"> notify the Minister that the Committee has received a public interest disclosure relating to the Inspector that the Committee has determined to be a public interest complaint; request the Minister to recommend one or more independent persons to investigate the public interest complaint; and provide the Minister with sufficient information about the nature of the disclosure to enable such a recommendation to be made.⁴⁰ <hr/> <p>the Minister must—</p> <ul style="list-style-type: none"> recommend to the Committee one or more independent persons who, in the opinion of the Minister, are suitable to investigate the public interest complaint. <hr/> <p>the Committee must—</p> <ul style="list-style-type: none"> within 30 days after the Minister’s recommendation is received by the Committee: <ul style="list-style-type: none"> engage one of the persons recommended by the Minister to investigate the public interest complaint under section 30 of the <i>Parliamentary Committees Act 2003</i> (Vic); or decide to accept none of the persons recommended by the Minister. if the Committee decides not to accept any of the persons recommended by the Minister, the Committee must request the Minister recommend one or more additional persons to investigate the public interest complaint. <hr/> <p>the Minister must—</p> <ul style="list-style-type: none"> recommend one or more additional persons to investigate the public interest complaint within 30 days of receiving another request from the Committee.⁴¹

The independent person is to investigate whether the Victorian Inspectorate or a Victorian Inspectorate officer has engaged in improper conduct or detrimental action.

The PID Act does not set out how a public interest complaint is to be investigated by the independent person.

Before proceeding with the investigation, the Committee (or the person engaged to investigate the complaint) will seek written consent from the discloser to disclose information likely to lead to the their identification.⁴²

Note that a person’s right to make an external disclosure (e.g. to a journalist) under section 38A of the PID Act will depend on the Committee’s level of communication about the action taken in response to the public interest complaint. See Part 9 of these procedures for further information.

³⁹ PID Act s 33D.

⁴⁰ The information must not identify the person who made the public interest disclosure: PID Act s 33B(2).

⁴¹ The above process applies until a recommendation by the Minister is accepted by the Committee: PID Act ss 33B, 33C.

⁴² PID Act s 53(2)(ab).

Once the investigation is complete, the independent person must report the findings of the investigation to the Committee and the Minister and, where appropriate, the Inspector.⁴³

7.2 Upon completion of investigation

The Committee may cause the report to be transmitted to each House of Parliament.⁴⁴

The Committee must *not* include in a report transmitted to each House of Parliament:

- information that the Committee considers would prejudice any criminal proceeding, criminal investigation or investigation by IBAC, the Victorian Inspectorate or the Victorian Ombudsman;
- a finding or opinion of guilt in relation to the commission of a criminal offence;
- a recommendation or opinion that a person should be prosecuted for a criminal offence; or
- information that is likely to lead to the identification of a person who has made an assessable disclosure.⁴⁵

7.3 Committee's discretion not to investigate

The Committee may decide not to investigate a disclosure if the subject matter of the public interest complaint has already been investigated or the discloser has made the public interest complaint more than 12 months after becoming aware of the disclosed matter and fails to give a satisfactory explanation for the delay.⁴⁶

If the Committee decides not to investigate the matter, it must, within a reasonable time after receiving the public interest complaint, inform the person who made the public interest disclosure of the refusal to investigate the public interest complaint and the reason for that refusal.⁴⁷

8 Confidentiality

8.1 The Committee

The PID Act requires a person or body who receives information in the performance of duties or functions under the Act not to disclose that information except in limited circumstances.

The confidentiality obligations are set out in sections 52–54 of the PID Act. A breach of these provisions constitutes an offence punishable by a maximum fine of 120 penalty units⁴⁸ or 12 months imprisonment or both in the case of a natural person, or 600 penalty units in the case of a body corporate.

⁴³ PID Act ss 71A(2)–(3).

⁴⁴ PID Act s 71A(4).

⁴⁵ PID Act s 71A(5).

⁴⁶ PID Act s 33E(1).

⁴⁷ PID Act s 33E(2).

⁴⁸ *Sentencing Act 1991* (Vic) s 110(1); *Monetary Units Act 2004* (Vic) s 5(3). For the period 1 July 2019 to 30 June 2020, the value of a penalty unit is set at \$165.22.

The prohibition applies to—

- content or information about the content of a disclosure; and
- information likely to lead to the identification of a person who has made a disclosure.

Information received in the course of performing functions under the Act is to be secured and managed in accordance with Parliament's *Information Security Policy* (IT-POL-102).

8.2 Disclosers

A person making a disclosure is allowed to disclose the subject matter of their public interest disclosure as the confidentiality obligations in sections 52–54 of the PID Act do not apply to the discloser. However, the protections under Part 6 will not apply where the person contravenes section 72(1) or (2) of the PID Act in relation to the information disclosed.

IBAC and other investigating entities may issue a confidentiality notice in circumstances where disclosure of certain types of information is likely to prejudice the investigation, safety or reputation of a person or the fair trial of a person. The Committee has no power to issue such a notice.

9 External disclosures

A person⁴⁹ who has been advised by the Committee that their disclosure has been determined to be a public interest complaint may make an external disclosure to a person or body that is not an entity to whom a public interest disclosure may be made under the PID Act (e.g. a journalist) only if:

- the Committee does not notify the person about any action taken in response to the disclosure within six months and has not responded to a request for advice within 30 days;
- the investigation of the disclosure has not been completed within 12 months and the Committee has not responded to a request for advice within 30 days; or the investigation of the disclosure has not been completed within 12 months, the person has received an update within 30 days of requesting it, but has not received any further update advising that the investigation has been completed within a further six months of that response.⁵⁰

10 Managing the welfare of disclosers

The Committee will, in carrying out its functions under the PID Act, consider the welfare of a person making a disclosure, as the circumstances require.

The Committee will consult with the Manager, People Operations, Department of Parliamentary Services to assess and facilitate the welfare and protection needs of a person who has made a disclosure.

⁴⁹ The person must not be anonymous: PID Act s 38A(2)(a).

⁵⁰ Exceptions to external disclosures are set out in PID Act s 38A(5).

11 Annual reporting

The annual reporting requirements in section 70 of the PID Act do not apply to the Committee.

Nevertheless, the Secretariat will maintain a register of information for parliamentary reporting purposes.⁵¹ This will include:

- the number and types of disclosures made to the Committee during the year
- the number of disclosures notified to IBAC or the Victorian Inspectorate under section 21(2) of the PID Act
- the number of disclosures that were investigated, the number substantiated upon investigation, and the action taken on completion of the investigation.

The register is confidential and will not record any information that may identify a discloser.

⁵¹ For example, the Department of the Legislative Council's annual report. The report must not include any information that is likely to lead to the identification of a person who has made a disclosure but may include information to which ss 53(2)(a), (c) or (d) applies: PID Act ss 71(1) and 71(2).

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