

Public Interest Disclosures Procedure

Purpose

The Public Interest Disclosure Act 2012 (PID Act) allows individuals to make disclosures about suspected corruption or improper conduct within the public sector. The PID Act creates protections for individuals making disclosures about improper conduct or corruption. This includes protecting the identity of the individual reporting the conduct by keeping their identity confidential and protecting them from reprisal (detrimental action) which includes bullying, harassment or some legal action.

The ARBV takes seriously its responsibilities to those persons who may make a disclosure about improper conduct or detrimental action. It has established these procedures to ensure the confidentiality of the identity of the person making the disclosure and their welfare, are protected.

The ARBV cannot assess a Public Interest disclosure (PID). Any PID complaint or allegation must be made to the Independent Broad-based Anti-corruption Commission (IBAC), which is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector. In some instances you may also make a PID to the Victorian Ombudsman or the Victorian Inspectorate.

Further details on making a public interest disclosure can be found below.

For more information on IBAC and its role in investigating public interest disclosures, please visit their [website](#).

What is a public interest disclosure?

A public interest disclosure (PID) is a complaint or allegation made by any person about corruption, improper conduct or detrimental action by a public officer or a public body. PIDs can be made about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that a person, public officer or public body that is engaging in or proposing to engage in improper contact or detrimental action.

Definitions

Improper conduct

Improper conduct means a substantial mismanagement of public resources, including:

- corrupt conduct
- activities that create substantial risk to public health or safety
- activities that create a risk to the environment
- actions that would constitute a criminal offence
- actions that would be reasonable grounds for the termination of public employment.

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;

Corrupt conduct

(1) For the purposes of this Act, 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
- (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d)—

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence.

Public interest disclosure (PID)

A report made by a person about corrupt conduct or improper conduct of public bodies or public officers. A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a public interest disclosure by any person. The disclosure can relate to corrupt conduct, improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or may be intending to be taken in the future.

Public interest complaint (PIC)

A Public Interest Disclosure (PID) that has been determined by the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC.

Making a Public interest Disclosure

PIDs must be made to the Independent Broad-based Anti-Corruption Commission (IBAC) in most cases, however in some circumstances, they may also be made to the Victorian Ombudsman or other organisations. If you wish to make disclosure directly to IBAC, please follow the link for further information: <https://www.ibac.vic.gov.au/reporting-corruption/how-to-make-a-complaint>

Disclosures about other public bodies or public officers

Disclosures relating to improper conduct or detrimental action involving other public bodies or officers who are not employees, staff or members of the ARBV may be made to the various bodies – see the IBAC website & IBAC Guidelines for details.

Assessment of a disclosure

Disclosures about the ARBV should only be made to the IBAC. The ARBV is a public body that cannot receive disclosures. If the ARBV receives a complaint, report, or allegation of improper conduct or detrimental action, the discloser will not be given the protections under the Act. To be a protected public interest disclosure, it must be made to IBAC. Accordingly, the ARBV will advise the discloser to make their disclosure directly to the IBAC.

Once a disclosure has been notified to the IBAC, the IBAC must determine whether it is a public interest complaint. Such a determination must be made within a reasonable time after the disclosure is notified to the IBAC.

If the IBAC is of the view that the assessable disclosure is not a public interest disclosure, then it is not a 'public interest complaint'. If the IBAC is of the view that the assessable disclosure is a public interest disclosure, then it must determine that the public interest disclosure is a 'public interest complaint'.

If IBAC determines the disclosure is a public interest complaint

If the IBAC determines the disclosure is a public interest complaint, IBAC must advise the discloser in writing that it has determined that the matter is a public interest complaint. The discloser has rights, protections and obligations under the PID Act as contained in ss 72, 74 and Parts 6 and 7 of the PID Act, including an explanation of the effect of those sections and Parts of the Act.

It is an offence under s 74 of the PID Act to disclose that IBAC has determined that the disclosure is a public interest complaint.

If IBAC determines the disclosure is not a public interest complaint

If IBAC determines the disclosure is not a public interest complaint, IBAC must advise the discloser in writing that it has determined that the disclosure is not a public interest complaint; and

- as a consequence of that determination:
 - the disclosure will not be investigated as a public interest complaint; and
 - the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure.

Regardless of whether IBAC has determined that the disclosure is a public interest complaint, the protections under Part 6 apply to a public interest disclosure. In addition, if IBAC is of the view that the disclosure, although not a public interest complaint, may be able to be dealt with by another entity, IBAC may advise the discloser of their options.

Confidentiality

The ARBV had confidentiality obligations under the PID Act. These requirements include protecting the identity of the discloser and the matters disclosed. It is a criminal offence to disclose information connected with a disclosure made in accordance with the ACT, and this includes disclosing the identity of the discloser. The ARBV will only disclose information about you or your disclosure in accordance with the law, including the PID Act.

If you repeat your disclosure to someone other than as provided for in these procedures or permitted by the Act, you may lose the protections provided for in the PID Act. You may also breach your confidentiality obligations.

If you are considering disclosing information about a disclosure made by you under the PID Act, you may wish to speak to the Public Interest Disclosure Coordinator, your welfare manager and/or obtain legal advice first.

The circumstances in which you may disclose information about the public interest disclosure you have made to IBAC include disclosure:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the disclosure including disciplinary process or action;
- where IBAC or the Ombudsman has determined that the disclosure is not a public interest disclosure;
- where necessary for the purpose of exercising functions under the PID Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-corruption Commission Act 2011 (Vic);
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary proceedings or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation;
- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the PID Act; and
- where an investigating body has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the PID Act.

The PID Act also prohibits disclosing information that is likely to lead to your identification except in accordance with the Act. IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information is disclosed is bound by the same confidentiality requirements as the investigating entity.

Welfare manager

The ARBV recognises that protecting the welfare of individuals making public interest disclosures is an important obligation. Accordingly, the ARBV will provide a welfare support to a discloser or a witness in an investigation as the circumstances require. The ARBV will also consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure.

The welfare manager is responsible for:

- examining the discloser and/or witness's immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment;
- providing practical advice and support;
- advising the discloser and/or witness of the protections available under the PID Act;
- receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (e.g. harassment, intimidation or victimisation);
- ensuring that the discloser and/or witness's expectations of the process and outcomes are realistic;
- maintaining confidentiality; and
- operating discreetly to protect the discloser and/or witness from being identified as being involved in a public interest disclosure.

In determining whether to appoint a welfare manager in any particular case, the ARBV will consider:

- whether the disclosure has proceeded, or is likely to proceed, to an investigation;
- whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
- whether the ARBV can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure; and
- whether it is within the ARBV's power to protect the person/s involved from suffering repercussions.

The ARBV may appoint an internal person as welfare manager, as necessary or engage a contractor to provide welfare management services. The ARBV may also consider referring an employee to its Employee Assistance Program.

When a welfare manager is appointed to look after a discloser or witness, the welfare manager will only be required to provide reasonable support and should discuss the reasonable expectations with the person(s) they are supporting.

Public Interest Disclosure Coordinator

The ARBV has appointed a Public Interest Disclosure Coordinator to be a contact point for general advice about the operation of the PD Act for any staff member of the ARBV (including both employees and contractors) thinking about making a disclosure. For ARBV staff, the Coordinator provides a confidential source of advice, with whom staff or employees can raise any conduct related concerns about their line managers, colleagues or supervisors.

The Public Interest Disclosure Coordinator has a central role in the internal reporting system and is responsible for:

- the contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC;
- responsible for ensuring that the ARBV carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
- The ARBV's chief liaison with the IBAC in regard to the Act;
- to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a welfare manager to support a person entitled to be protected and to protect him or her from any reprisals; and
- to collate statistics required to be reported by the ARBV in its annual reports under the Act.

Key Contact

Public Interest Disclosure coordinator –

Manager Governance
Architects Registration Board of Victoria
Level 7, 372 Albert Street
East Melbourne VIC 3002
Phone: (03) 9417 4444

Alternatively, you can email the Manager Governance at registrar@rbv.vic.gov.au.

Management of a Public interest Disclosure

The ARBV will take steps to ensure the prevention of its employees, officers and agents taking detrimental action in reprisal for a public interest disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by the ARBV will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken. Any reports of harassment, discrimination or adverse treatment may amount to detrimental action, and therefore should be made to the Public Interest Disclosure Coordinator. A disclosure of detrimental action is, itself, a public interest disclosure and will be assessed by the Public Interest Disclosure Coordinator. Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the ARBV may consider reporting the matter to the police or IBAC.

If an employee who has made a public interest disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, the employee may request a transfer of employment to another government agency on terms and conditions that are no less favourable overall to you. Note that all requests of this nature will be considered, but a number of conditions must be satisfied before they are granted, including:

- the Chief Executive Officer of the ARBV must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the Chief Executive Officer must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' government agency consents to the transfer.

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

Training for staff

The ARBV will ensure that staff, employees, officers and members have access to a copy of these procedures in hard or soft copy and incorporate into its induction program training about the ARBV's general obligations under the PID Act and the rights and obligations of its employees, staff and members.

The ARBV will periodically provide refresher courses for existing staff, employees and members about their rights and obligations under the PID Act, and will provide additional training assistance to any staff with functions and duties under the *Freedom of Information Act 1982* (Vic) or with responsibilities for

information management, to ensure that no prohibited information is disclosed under the PID Act and to ensure there is appropriate liaising with IBAC staff or other investigative agencies where required in response to a request for access under the FOI Act.

The ARBV will also ensure that all staff and employees dealing with customers have adequate knowledge to ensure that any potential disclosures received from external sources are handled appropriately in accordance with the Act and these procedures.

Alternatives to making a Public Interest Disclosure

These procedures are designed to complement usual methods of submitting complaints to the ARBV regarding members of the public communicating complaints or concerns relating to the services provided by the ARBV.

The ARBV encourages feedback to communicate complaints or concerns with the services provided by the ARBV.

More information is available in the Contact us section of our website (www.arbv.vic.gov.au).

Employees are encouraged to raise matters with their supervisors and managers at any time.

Collating and publishing Annual Report information

The ARBV is required to collect and publish in its annual report, for each financial year, information about the Act in its annual reports. That information relates mainly to how these procedures may be accessed and information about its educative role during the financial year.

The Public Interest Disclosure Coordinator will establish a secure register to record such information.

Review

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