

POLICY

Public Interest Disclosures

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Policy Statement

The Victorian Ombudsman is a key part of Victoria's integrity framework. We encourage people to report improper conduct and detrimental action in the public sector, and support and take action to identify, investigate, expose and prevent that conduct.

We also expect the highest standards of integrity on the part of our own officers. We will facilitate reports about improper conduct by our officers and cooperate with lawful investigations. We will also take appropriate steps with people who report improper conduct, their employer's, the Independent Broad-based Anti-corruption Commission (**IBAC**) and with others to protect people from reprisals.

Scope

1. This policy constitutes the Victorian Ombudsman's procedures for the purposes of section 58 of the *Public Interest Disclosures Act 2012* (**PID Act**).
2. It explains the steps we take to:
 - facilitate disclosures about public officers, public bodies and other persons under the PID Act
 - handle disclosures and notify IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee.
3. It also sets out our procedures for dealing with public interest disclosures made about Ombudsman officers and protecting people from 'detrimental action' taken in reprisal for such disclosures.

What is a public interest disclosure?

4. A Public Interest Disclosure is a report about:
 - 'improper conduct' by a public officer or body (or person trying to influence a public officer or body)
 - 'detrimental action' taken, or threatened to be taken, by a public officer or body against a person in reprisal for a public interest disclosure.
5. Conduct that may be improper conduct varies in degree and seriousness:
 - serious corrupt conduct of a public officer or public body that constitutes an indictable offence (punishable by imprisonment for five years or more)
 - dishonest conduct, such as misusing a corporate credit card

- conduct that is careless or indifferent to the public’s trust, such as neglecting a vulnerable person’s welfare or misusing official information
 - a substantial risk to public health or safety, such as ignoring safety problems with public infrastructure (PID Act, section 4).
6. A disclosure can relate to conduct or action that has already taken place, may be occurring now, or is proposed or being planned.
7. Detrimental action is action taken against a person for making a public interest disclosure or cooperating with an investigation into one. It includes intimidation, harassment, and adverse treatment in relation to a person’s employment (PID Act, section 43(1)). Detrimental action is, or threatened to be, taken against a person because that person or another person has made, or intends to make a disclosure or has cooperated, or intends to cooperate, with the investigation of a disclosure.

Which public interest disclosures can the Ombudsman and other organisations receive?

8. We can receive public interest disclosures about most Victorian government organisations and officers (PID Act, section 13). This includes government departments, local councils, public universities, public hospitals and the employees of these organisations.
9. We cannot receive disclosures about Victoria Police, Members of Parliament or Victorian Ombudsman officers. The table below lists who can receive disclosures about specific organisations and officers (PID Act, sections 14, 16-17).
10. If you are a member, officer or employee of a public service body, you may make a public interest disclosure to that public service body, even if the disclosure is otherwise required to be made to another entity under section 14 or section 17 (PID Act, section 15).
11. Table 1 below identifies the government entities that can receive disclosures. If you are unsure about which organisation to make your disclosure to, contact IBAC.

Table 1

If disclosure is about ...	it must be made to ...
The Chief Commissioner of Police The Director of Public Prosecutions The Chief Crown Prosecutor The Solicitor-General The Governor The Lieutenant-Governor or Administrator The Director, Police Integrity The Electoral Commissioner	IBAC

<p>A Commissioner or a member of a Board of Inquiry under the <i>Inquiries Act 2014</i></p> <p>A judicial employee</p> <p>A Ministerial Officer</p> <p>A Parliamentary adviser</p> <p>An electorate officer</p> <p>A Parliamentary officer</p>	
<p>Integrity Oversight Victoria</p> <p>An Integrity Oversight Victoria Officer</p>	<p>The Integrity and Oversight Committee or a Presiding Officer.</p>
<p>The IBAC or an IBAC officer</p> <p>A Public Interest Monitor</p>	<p>Integrity Oversight Victoria</p>
<p>A judicial officer</p> <p>A member of VCAT who is not a judicial officer</p>	<p>IBAC or the Judicial Commission</p>
<p>Member of Victoria Police personnel (other than the Chief Commissioner)</p>	<p>IBAC or a prescribed member of Victoria Police personnel</p>
<p>The Information Commissioner</p> <p>The Health Complaints Commissioner</p> <p>Member of the First Peoples' Assembly</p>	<p>IBAC or the Victorian Ombudsman</p>
<p>A Councillor</p>	<p>IBAC or the Victorian Ombudsman or the Chief Municipality Inspector</p>
<p>The Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i></p> <p>A Victorian Ombudsman officer</p> <p>A Victorian Auditor-General's Office officer</p> <p>A Judicial Commission officer, other than a judicial member of the Board of the Judicial Commission</p> <p>The Parliamentary Workplace Standards and Integrity Commission or a commissioner or Commission officer within the meaning of the <i>Parliamentary Workplace Standards and Integrity Act 2024</i></p>	<p>IBAC or Integrity Oversight Victoria</p>
<p>A Council</p> <p>A member, officer or employee of a Council</p>	<p>The relevant Council or the Chief Municipal Inspector</p>
<p>Member of Parliament (including a Minister) (Legislative Assembly)</p>	<p>Speaker of the Legislative Assembly, the Parliamentary Workplace Standards and Integrity Commission, or IBAC</p>
<p>Member of Parliament (including a Minister) (Legislative Council)</p>	<p>President of the Legislative Council, the Parliamentary Workplace Standards and Integrity Commission, or IBAC</p>
<p>Gellung Warl or Gellung Warl staff member</p> <p>Nyerna Yoorrook Telkuna member</p> <p>Nginma Ngainga Wara member</p>	<p>Gellung Warl</p>
<p>Chief Executive Officer of Gellung Warl</p>	<p>First Peoples' Assembly Chairperson or</p>

	a person identified as a person who may receive disclosures in the procedures established under section 58 of the <i>Statewide Treaty Act 2025</i> for Gellung Warl by the First Peoples' Assembly.
A public officer or public body not listed above	Victorian Ombudsman, IBAC or Integrity Oversight Victoria. (employees or members of a public service body can make a disclosure to that public service body)

Making a Public Interest Disclosure about us

12.If your public interest disclosure is about the Ombudsman or an Ombudsman officer it must be made to IBAC or Integrity Oversight Victoria (PID Act 2012, section 14(f)). Details on how to do this are available on:

- IBAC's website at www.ibac.vic.gov.au or by contacting IBAC on 1300 735 135, or
- Integrity Oversight Victoria's website at www.integrityoversight.vic.gov.au or by contacting Integrity Oversight Victoria on 1800 518 197.

13.If you try to make a disclosure about an Ombudsman officer to us directly, we will inform you that you need to contact IBAC or Integrity Oversight Victoria. This ensures you receive the protections available under the PID Act.

Making a Public Interest Disclosure to the Ombudsman

14.When making a disclosure it is helpful to provide:

- a description of the alleged improper conduct or detrimental action
- who is involved, and where the conduct occurred, is occurring or may occur
- your grounds for believing the conduct occurred, is occurring or may occur
- any supporting documentation.

15.Some key points for making a public interest disclosure are:

- A person or group of people can make a public interest disclosure. A company or business cannot make a public interest disclosure
- If you ask someone else to make a disclosure on your behalf, that person, and not you, will be entitled to the protections in Part 6 of the PID Act for making the disclosure
- You do not need to refer to the PID Act for it to be treated as a public interest disclosure

- You do not need to be able to identify the person or organisation to which the public interest disclosure relates
- You can say you do not want the disclosure to be treated as a public interest disclosure but you must do this in writing within 28 days of the disclosure (PID Act, section 21).
- If you make an anonymous disclosure and provide us with no means of contacting you, then we may find it difficult to determine whether your complaint fits the definition of an assessable disclosure and we will not be required to communicate with you about your disclosure.

16. You can make a public interest disclosure to any Ombudsman officer:

- by telephone (03) 9613 6222 or 1800 806 314
- by writing sent by post addressed to the office of the Ombudsman, Level 2, 570 Bourke Street, Melbourne, Vic, 3000
- by email to complaints@ombudsman.vic.gov.au or directly to one of our officers
- via our online complaint form at www.ombudsman.vic.gov.au
- In person, if you need us to make an adjustment to how we usually take a complaint and need additional assistance (for example, because you have an attribute protected by the Equal Opportunity Act 2010, such as a disability).

17. Disclosures cannot be made by fax.

18. You can make a public interest disclosure anonymously (PID Act, section 12A(1)) by:

- using an unverifiable email address
- making a phone call and telling our officer that you want to be anonymous
- having a face-to-face conversation or meeting in private where you do not identify yourself.

How does the Ombudsman handle a public interest disclosure?

19. We will assess and then notify IBAC of your disclosure within 28 days if it meets the threshold under the PID Act (PID Act, section 21). If it does not meet the threshold, the Ombudsman may consider your disclosure as a 'complaint' under the Ombudsman Act.

20. If you make a 'misdirected' disclosure to the Ombudsman, then it may also be assessed and notified to IBAC. A misdirected disclosure to the Ombudsman is one where you believed the Ombudsman was the appropriate body to receive it, but it

should have been made to another entity (see **Table 1** above). If you honestly believed the Ombudsman was the right body to make your disclosure to, we may still assess it and then notify IBAC.

21. We will notify you if your disclosure is referred to IBAC or not.
22. Information about IBAC's processes for assessing public interest disclosures can be found [here](#). IBAC will notify you about the outcome of its assessment of your disclosure.
23. After IBAC has assessed a disclosure it may refer it to us to deal with. Some disclosures may be referred to other investigating entities to deal with, such as the Chief Municipal Inspector or the Information Commissioner.
24. We will deal with the referral in line with our Referrals and Notifications, Complaints and Approaches, Enquiries and Investigation policies.
25. The Ombudsman must investigate a public interest complaint referred from IBAC, if reasonably satisfied that the public interest complaint 'shows or tends to show' that improper conduct or detrimental action has occurred, is occurring or is going to occur. Further information about how the Ombudsman applies this test is in the [IBAC Guidelines](#).
26. However, the Ombudsman must refuse to investigate a public interest complaint, if:
 - the complaint does not pass this test. But we may still conduct an investigation into the disclosure as a 'referred complaint' (Ombudsman Act, section 16C)
 - investigating the disclosure by the Ombudsman is likely to prejudice a criminal investigation or proceeding.
27. The Ombudsman may also refuse to conduct a public interest complaint investigation if any of the circumstances in section 15E of the Ombudsman Act applies.
28. We will notify you about what we are going to do with your public interest complaint, if it is referred back to the Ombudsman. During our enquiries or investigation we may ask you for additional information. At the conclusion of the Ombudsman's enquiries or investigation, we will inform you of the result of the investigation or other action taken, the recommendations made (if any) and comments on them (in certain specified circumstances). You may be provided with any additional information that the Ombudsman considers it proper to disclose.

What if urgent action is needed?

29. If you make a disclosure about improper conduct or detrimental action that may pose an immediate threat to the health and safety of people, or property, the

Ombudsman may have to notify the relevant government organisation immediately so that action can be taken. In some cases, the Ombudsman is required to make this notification but must not provide any information that would identify you as a discloser (Ombudsman Act, section 26FC(4)(e)).

Ombudsman’s public interest disclosure investigations

30. The Ombudsman conducts investigations into public interest complaints using the powers under the Ombudsman Act. Further information about the Ombudsman’s investigation powers and processes are located on the Ombudsman’s website.
31. Any further information you provide to the Ombudsman may be treated as a public interest complaint and the protections in Part 6 of the PID Act will cover you in relation to the disclosure of this further information.

External disclosures

32. **Table 2** below sets out the circumstances when you may be able to make a disclosure to an organisation that could not normally receive a disclosure.

Table 2

If the Ombudsman has	You can....
<p>Scenario 1</p> <ul style="list-style-type: none"> • Not notified you about any action taken in relation to your disclosure within 6 months of IBAC's notification that it is a public interest complaint <p>AND</p> <ul style="list-style-type: none"> • Not given you advice about the progress of your public interest complaint within 30 days of you requesting it 	<p>Make a disclosure of information that is substantially the same as your original disclosure to a person or body who a disclosure cannot be made under the PID Act. E.g. a journalist.</p>
<p>Scenario 2</p> <ul style="list-style-type: none"> • Not completed its investigation within 12 months of IBAC's notification that your disclosure is a public interest complaint <p>AND ONE THE FOLLOWING APPLIES</p> <ul style="list-style-type: none"> • Not given you advice about the progress of your public interest complaint within 30 days of you requesting it <p>OR</p> <ul style="list-style-type: none"> • Given you advice within 30 days of you requesting it, but you have not been advised within 6 months that investigation has been completed 	

Confidentiality

33. The PID Act protects disclosers and other people involved in associated investigations by ensuring the confidentiality of the information.

34. These provisions, and their exceptions, are complex and we encourage people to read the PID Act and seek legal advice about their obligations.

35. The confidentiality provisions are summarised below in **Table 3**.

Table 3

Type of information	Who does the confidentiality restriction apply to?	Exceptions
Information likely to lead to identification of a person who has made an assessable	Any person or body.	Exceptions apply (see PID Act, sections 53(2) and 54),

<p>disclosure (PID Act, section 53)</p>	<p>This restriction does <u>not</u> apply to the discloser.</p>	<p>including where the information is revealed:</p> <ul style="list-style-type: none"> • to exercise functions under the PID Act • by the investigating body with the written consent of the discloser • to Victoria Police where it relates to criminal conduct and the investigating entity has disclosed information to the Chief Commissioner of Police • to a registered health practitioner, trade union, employee assistance program or the Victorian WorkCover Authority • after IBAC or Integrity Oversight Victoria has determined that the disclosure is not a public interest complaint • to obtain legal advice or representation.
<p>Content, or information about the content, of an assessable disclosure (see PID Act, section 52)</p>	<p>A person or body:</p> <ul style="list-style-type: none"> • to whom the assessable disclosure was made • who receives an assessable disclosure in the performance of duties or functions under the Act • to whom IBAC, Integrity Oversight Victoria or the Integrity and Oversight Committee provides information in the course of assessing the disclosure • to whom information is disclosed, including disclosures made in breach of the Act. <p>This restriction does <u>not</u> apply to the discloser.</p>	<p>Exceptions apply (see PID Act, sections 53(2) and 54), including where the information is revealed:</p> <ul style="list-style-type: none"> • to exercise functions under the PID Act • to Victoria Police where it relates to criminal conduct • to a registered health practitioner, trade union, employee assistance program or the Victorian WorkCover Authority • after IBAC or Integrity Oversight Victoria has determined that the disclosure is not a public interest complaint • in accordance with a direction or authorisation given by the body investigating the disclosure • because it is necessary to take lawful action in relation to the conduct, such as disciplinary action • to obtain legal advice or representation.

36.To ensure confidentiality of disclosures we receive and investigate we have secure document storage for electronic and hardcopy documents.

37. Our officers are bound by the confidentiality provisions in the PID Act and confidentiality provisions in the Ombudsman Act (Ombudsman Act, sections 26A and 26B).
38. However, the Ombudsman may need to make enquiries of the Public Interest Disclosure Coordinator of the body relating to your disclosure. In some instances, Ombudsman officers may need to disclose your identity to the organisation's Public Interest Disclosure Coordinator in order for them to look after your welfare and provide you with protection against possible detrimental action. The organisation's Public Interest Disclosure Coordinator must also keep information about your identity and the subject matter of the disclosure confidential.

Protections

39. The PID Act protects disclosers from legal consequences that might otherwise apply to disclosing information about improper conduct. These include:
- immunity from civil or criminal liability or any administrative liability arising by way of administrative process (including disciplinary action) for making the disclosure (PID Act, section 39)
 - immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, or any other restrictions on information (PID Act, section 40)
 - immunity from breaching any other obligation requiring a person to maintain confidentiality, such as an oath (PID Act, section 40)
 - protection from liability for defamation in relation to the information included in the disclosure (PID Act, section 41).
40. These protections apply from the time you make the disclosure and continue to apply even if IBAC determines it is not a public interest complaint.
41. These protections are limited in some circumstances. They do not apply if:
- you provide information you know is false or misleading in a material particular (PID Act, sections 39(2), 40(2), 41(2) and 43(2))
 - you have engaged in some kind of misconduct, you remain liable for that conduct (PID Act, section 42). People cannot escape liability for their own improper conduct by disclosing it under the Act
 - The PID Act does not prevent the discloser's manager from taking management action, provided that the fact that the person made the disclosure is not a reason for the action (PID Act, section 44).

Welfare of disclosers and others involved in investigations

42. The organisation that is the subject of the investigation is responsible for the welfare of the discloser and other people involved in the investigation, e.g. witnesses and the subject of the investigation.

43. The organisation that is subject of the investigation is also responsible for protecting people against detrimental action.

44. We may refer you to the appropriate Public Interest Disclosure Coordinator for support, or you can approach the Coordinator directly.

Our Public Interest Disclosure Coordinator

45. Our Public Interest Disclosure Coordinator is responsible for the welfare of disclosers in public interest complaints about the Victorian Ombudsman or its staff, once made aware of such a complaint by Integrity Oversight Victoria.

46. The Deputy Ombudsman (Operations) is our Public Interest Disclosure Coordinator. The Head of People and Culture is the secondary Public Interest Disclosure Coordinator.

Reporting obligations

47. Each year in our Annual Report we provide information about (PID Act, section 69):

- how to access these procedures
- the number and types of disclosures we notify to IBAC in that financial year
- the number and types of public interest disclosure complaints referred to us by IBAC
- the number and types of public interest disclosure complaints we investigated or dismissed
- the number of injunctions we sought to prevent detrimental action.

Roles and Responsibilities

Role	Responsibility
Deputy Ombudsman, Operations	<i>Owner</i> – Accountable for maintaining policy drafting, reviews and authorisation from the Executive.
Legal	<i>Legal Compliance</i> – Responsible for ensuring compliance of the policy and standards to the <i>Charter of Human Rights and Responsibilities 2006</i> and other legislation under which VO operates.
Operational Governance Committee	<i>Authorisation</i> – Authorises policies and significant amendments.
All officers, contractors and third parties	<i>Implementation</i> – Responsible for acting in compliance with these procedures and associated documents.

Document Management

Compliance

VO maintains a compliance management system. Compliance to this policy, including use of information and systems, is subject to regular monitoring and reporting to the Operational Governance Committee. For further details on compliance checks please refer to the compliance management system.

Document approval

This document was approved by the Executive Committee on 24 March 2017.

Document review

This document is due for review upon major changes or three years from the date of the last review.

APPENDIX A: Related documents

Title	Location
<i>Ombudsman Act 1973</i>	Available at http://www.legislation.vic.gov.au/
<i>Public Interest Disclosures Act 2012</i>	
<i>Constitution Act 1975</i>	
<i>Charter of Human Rights and Responsibilities Act 2006</i>	