Making, handling and managing public interest disclosures

Procedures for the Department of Education and Training – schools and corporate

June 2021

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| As of 1 January 2020, the *Protected Disclosure Act 2012* is renamed the *Public Interest Disclosures Act 2012*. If you wish to make a public interest disclosure, contact any of the Department’s Public Interest Disclosure Officers whose contact details are found on page 7 of this document. |

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# INTRODUCTION

The *Public Interest Disclosures Act 2012* (**the Act**) encourages and facilitates people to make disclosures of improper conduct by public officers and public bodies, and detrimental action taken in reprisal for a person making a disclosure under the Act, and protects persons who make those disclosures. The Act also seeks to ensure that those disclosures are properly assessed, and where necessary, investigated.

The Department of Education and Training (**the Department**) is committed to the aims and objectives of the Act. The Department actively promotes its values which include integrity and accountability in its administrative and management practices, and supports the making of disclosures that reveal improper conduct, including corrupt conduct, conduct involving substantial mismanagement of public resources, conduct involving a substantial risk to the health or safety of a person, or a substantial risk to the environment (amongst other types of conduct — see further below).

This document explains the Department's procedures in relation to making, handling and managing public interest disclosures under the Act. It is aimed at:

* people who are thinking about making, or who have made, a disclosure of improper conduct to the Department, including both employees of the Department and members of the public
* departmental employees who may handle disclosures about improper conduct, including managers and supervisors. A manager or supervisor includes principals and other school leaders whose role includes supervising staff
* people who are affected by disclosures of improper conduct, including employees who cooperate in an investigation and employees who are the subject of disclosures.

The procedures have been prepared in accordance with the Act and taking into account guidelines issued by the Independent Broad-based Anti-corruption Commission (**IBAC**) which are available at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

The procedures are designed to complement the usual ways complaints can be made to the Department and other public bodies within its portfolio.

* Members of the public can find information to make a complaint about government schools, childcare or children’s services, curriculum and examinations, regulation of schools, Victorian Registered Training Organisations and Department employees in the Complaints section on the Department’s website: <https://www.education.vic.gov.au/about/contact/Pages/complaintslanding.aspx>
* Employees are encouraged to raise matters with their managers at any time
* Employees and members of the public can report suspected fraud, corruption and serious conflicts of interest to the Department’s Fraud and Corruption Control Unit on (03) 7022 0121 or by email to [fraud.control@education.vic.gov.au](mailto:fraud.control@education.vic.gov.au)
* Employees can also report suspected fraud, corruption and serious conflicts of interest to the Department’s Speak Up service on 1800 633 462 or by email to [educationspeakup@pkf.com.au](mailto:educationspeakup@pkf.com.au)

# WHAT IS A DISCLOSURE? WHAT CAN IT BE ABOUT?

A **disclosure** is a report about:

* **Improper conduct** by a person, public officer or public body, or
* **Detrimental action** that a public officer or public body has taken against a person in reprisal for them having made a public interest disclosure or cooperated with the investigation of a public interest complaint.

A disclosure can be made where a person has information that shows or tends to show, or that they reasonably believe shows or tends to show, that such conduct or action has occurred, may be occurring now or may happen in the future.

'Reasonable belief' does not have to be based on actual proof; however, there must be more than ‘mere suspicion’ or a conclusion that is unsupported by further information, facts or circumstances.

A **public interest disclosure** is a disclosure which meets requirements specified in the Act.

A **public body** includes the Department, a statutory authority and a government school council.

A **public officer** includes an employee in the Department, a statutory authority, or a school council employee.

An employee includes (and is not limited to) a person who is employed in any capacity or holding any office in the public sector, within the meaning of section 4(1) of the *Public Administration Act 2004*, and an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*.

A public officer also includes ‘a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)’. Therefore, contractors and consultants that are engaged to perform public functions on behalf of the Department are included where the term **employee** is referred to throughout this document.

**Improper conduct** is defined to include ‘corrupt conduct’ (explained below) 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
* intentional or reckless beach of public trust
* intentional or reckless misuse of information acquired in the performance of their official capacity
* substantial mismanagement of public resources
* substantial risk to the health or safety of a person or persons
* substantial risk to the environment

It also includes conduct of any person that:

* adversely affects the honest performance by a public officer of their functions
* is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

Less serious or trivial conduct is excluded from the definition of improper conduct, although what that means is not defined.

**Corrupt conduct** is conduct:

* of any person that adversely affects the honest performance by a public officer or public body of their official functions
* of a public officer or public body that:
  + - 1. constitutes or involves a dishonest performance of their official functions
      2. constitutes or involves knowingly or recklessly breaching public trust
      3. involves misuse of information or material that was obtained in their official capacity
* intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the Act
* that could constitute a conspiracy or attempt to engage in any of the above conduct

AND WOULD CONSTITUTE:

* an indictable offence against an Act (offences punishable for 5 years or more are presumed to be indictable offences), or
* the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office.

**Detrimental action** is action (including threatened action) taken against a person in reprisal for making a public interest disclosure where that action includes:

* action causing injury, loss or damage
* intimidation or harassment
* discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

Detrimental action occurs if the fact an employee has made a disclosure forms *any part* of the reason for which action is taken against that employee. Detrimental action does not include legitimate management action taken in relation to an employee who has made a public interest disclosure; for example, management action where there are good and sufficient grounds that would justify the action against any other employee in the same circumstances.

**Serious professional misconduct** is not defined in the Act. However, it 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 schools and corporate workplaces.

# HOW IS A PUBLIC INTEREST DISCLOSURE MADE? WHO SHOULD IT BE MADE TO?

The Act specifies certain people and entities who can receive disclosures and their ability to receive disclosures depends on whom the disclosure is about.

The Department can receive disclosures where they relate to the conduct of the Department or its employees, or where the disclosure is made by the Department’s employees, members or officers.

The Act also has a ‘no wrong door’ provision that allows a disclosure to be made to the wrong receiving entity (such as the Department) if the person making the disclosure honestly believes they have made the disclosure to the right place (referred to as a '**misdirected disclosure**'). The Act allows the Department to redirect a disclosure to another entity (such as IBAC) without the discloser losing the protections of the public interest disclosure scheme.

The Act also requires disclosures to be made in particular ways. If a disclosure is made in the wrong way, it will not be given the protections available under the Act.

Disclosures about the Department and its employees and officers can also be made directly to IBAC, who can receive disclosures about any public officer or public body (except IBAC or an IBAC officer).

If in doubt about who to make a disclosure to, unless it is about IBAC, make it to IBAC (this can be done on its website [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) or via telephone 1300 735 135).

Some key points about making a disclosure are:

* only an individual or group of individuals can make a disclosure. A company or business cannot make one itself (although its officers or employees can)
* it is not necessary for a person making a disclosure to refer to the Act or to say that they want their disclosure to be a public interest disclosure for it to be treated as a disclosure under the Act and have the protections under the Act
* a person making a disclosure can say they do not want the disclosure to be treated as a public interest disclosure, but they must do so in writing within 28 days of making the disclosure
* a disclosure may be a public interest disclosure even if it is a complaint, notification or disclosure (however described) made under another Act
* a person may make a disclosure anonymously.

## What process needs to be followed in making a disclosure?

A disclosure may be made **orally** or **in writing**.

An **oral** (or verbal) disclosure must be made:

* + - 1. in person to a person listed below, or
      2. by telephone.

When a person makes an oral disclosure, only that person, people who are authorised to receive the disclosure (as outlined below) and a lawyer (if any) representing the discloser are able to be present or listen to the conversation.

If a disclosure is made orally, the person receiving the disclosure should make notes. They can also record the conversation, but only if the discloser gives permission.

A **written** disclosure must be addressed to the Department or a person listed below and either:

* + - 1. delivered personally or left at the office of the Department or the person, or
      2. sent by post to the office of the Department or the person, or
      3. sent electronically to the office of the Department or the person,

but this can only be done using the contact details specified below. No other contact method, e.g. by fax, can be used.

If a written disclosure is made by email, it should only be sent to the email address of the person to whom the disclosure is being made, rather than a group email, or copying others to the email.

## Contact details

Disclosures can only be made to the Department's Public Interest Disclosure Coordinator or Officers, the Department, the Secretary, or (if the discloser is an employee of the Department) the discloser's direct or indirect manager or supervisor.

The contact details for the Department’s Public Interest Disclosure Coordinator and Officers are:

* Fraud and Corruption Control Unit, by phone on (03) 7022 0121 or email at [fraud.control@education.vic.gov.au](mailto:fraud.control@education.vic.gov.au) (only Public Interest Disclosure Officers can access this email)
* Executive Director, Integrity, Assurance and Executive Services Division (the Public Interest Disclosure Coordinator) by phone on (03) 7022 0120 or email at [Bella.Stagoll@education.vic.gov.au](mailto:Bella.Stagoll@education.vic.gov.au)

The contact details of the Department, including the Secretary are:

* office address at 2 Treasury Place, East Melbourne VIC 3002
* postal address at GPO Box 4367, Melbourne VIC 3001
* email to [secretary@education.vic.gov.au](mailto:secretary@education.vic.gov.au)

Where a Departmental employee makes a disclosure to their manager or supervisor, or the manager or supervisor of the person subject to the disclosure in writing that must be to the address or location of their office or to their official email address.

# What happens after a disclosure is made?

A disclosure made to the Department, if not made to a Public Interest Disclosure Officer, must be referred to a Public Interest Disclosure Officer as soon as possible. Managers and supervisors who receive public interest disclosures must notify a Public Interest Disclosure Officer by telephone or email at the details provided above. They must also follow the information security procedures outlined in page 14 of this document.

Public Interest Disclosure Officers will then assess whether the disclosure meets the requirements of the Act.

* This must be done within 28 days of receiving the disclosure.
* In order to do this assessment, a Public Interest Disclosure Officer may need to seek further information from the discloser.

A Public Interest Disclosure Officer will also consider what welfare support the Department should provide to the discloser and any precautions that should be taken to prevent detrimental action being taken in reprisal for the disclosure having been made. This is discussed further in pages 12 to 13 below.

Sometimes, a disclosure may be about conduct that may pose an immediate threat to the health and safety of people, or the preservation of property, or may constitute serious criminal conduct. In those circumstances, the Department may take action, including referring a matter to Victoria Police, before it has completed its assessment.

When the Public Interest Disclosure Coordinator has made an assessment:

* if they consider that the public interest disclosure (including a misdirected disclosure) ***meets*** the requirements of the Act: they will notify IBAC (and may provide IBAC with information obtained as a result of the disclosure) and the discloser will be informed that IBAC has been notified
* if they consider that the public interest disclosure (including a misdirected disclosure) ***does not meet*** the requirements of the Act: the discloser is not required to be notified unless they have requested to be notified or it appears that they would wish to be notified.

If the Public Interest Disclosure Coordinator determines that a disclosure does not meet the requirements of the Act, it may still (if appropriate) be dealt with under the relevant Department complaint handling processes.

Where the Department has notified a matter to IBAC, IBAC must then, within a reasonable time, notify the discloser whether it has determined that the disclosure is a 'public interest complaint' or not. In making its assessment, IBAC may seek additional information from the notifying entity or discloser. If IBAC determines that a disclosure is a public interest complaint, IBAC can investigate, refer a disclosure to another investigating entity (usually the Victorian Ombudsman), or take no further action.

A diagram containing more detail of the Department’s and IBAC’s processes is at **Figure 1**.

A number of people in the Department have roles and responsibilities in relation to public interest disclosures. These are summarised in the table at **Schedule 1**.

# Protections, obligations and offences

In order to facilitate the making of disclosures, and the proper assessment and investigation of disclosures, the Act contains a number of protections, obligations and offences. These apply to:

* persons who make disclosures, and
* public officers and others with knowledge of the disclosure.

## Protections, obligations and offences applicable to disclosers

### Protections to disclosers

The Act contains a number of protections for a discloser, including:

* 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* or any other Act that imposes obligations of confidentiality 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 the making of a public interest disclosure.

These protections apply to a public interest disclosure from the time a disclosure is made, even if the Department does not notify the disclosure to IBAC.

However, these protections will not apply if a discloser provides information intending that it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading.

Further, these protections will not:

* affect any liability of a discloser for their own conduct if they have disclosed that conduct under the Act
* protect the discloser from legitimate management action being taken in relation to them
* apply to any disclosures made to other individuals or agencies outside the process of the Act. For example, they would not apply if a public interest disclosure is repeated in public (unless the criteria outlined below for external disclosures is met).

### Protection for external disclosures in limited circumstances

The Act provides that a person can make an 'external disclosure' to a person or body who is not an entity to whom a public interest disclosure can be made and still retain the protections of the Act in limited circumstances. That is, disclosers can make a further disclosure of the same subject matter to external parties (e.g. 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 this
* the subject matter of the external disclosure is substantially the same as the original disclosure
* the disclosure does not contain information that may prejudice a criminal investigation or proceeding or is likely to lead to the disclosure of an investigative method used by IBAC or Victoria Police,

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.

### Obligations and offences

Confidentiality obligations are imposed on disclosers. In particular, it is an offence for a discloser to disclose:

* information they receive from IBAC about whether their disclosure is being investigated by IBAC or has been referred to another body, and
* any information the discloser receives about the results of any investigation.

After an investigation is initiated, IBAC and other investigating bodies (e.g. Victorian Ombudsman) may issue a confidentiality notice to a person, including the discloser and other persons involved in the investigation, that specifies certain 'restricted matters' that the person must not disclose.

However, even where a confidentiality notice is in place, exceptions apply to allow information to be shared with specified categories of people in particular circumstances, including to:

* a legal practitioner, or
* unless IBAC or the Ombudsman make a direction that a particular restricted matter must not be disclosed, the discloser's spouse or manager, the Victorian WorkCover Authority, the Fair Work Commission or specified categories of persons for the purpose of assisting the discloser to obtain advice and support, including a health practitioner, trade union or employee assistance program.

A discloser is not restricted from disclosing the subject matter of a public interest disclosure to another person if they are not subject to a confidentiality notice. However, such a disclosure will not have the protections given to a public interest disclosure (unless it is an external disclosure of the kind described above).

It is also an offence for a discloser to:

* provide information intending that it be acted on as a public interest disclosure, or further information that relates to a public interest disclosure, knowing it to be false or misleading; and
* falsely claim that a matter is a public interest disclosure or a public interest complaint.

## Protections, obligations and offences applicable to others

### Protections

The Act provides protections to an employee of the Department who discloses, in good faith and in accordance with the scheme of the Act, information to another officer of the Department or to IBAC in dealing with a disclosure. They include:

* immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality 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
* immunity from civil or criminal liability as well as administrative action (including disciplinary action) for disclosing the information.

### Obligations and offences

The Act imposes confidentiality obligations in relation to disclosures that may be public interest disclosures.

It is an offence for a person or body who received such a disclosure, or who receives information about a disclosure from IBAC, to disclose information about the content of such a disclosure. A number of exceptions apply to this offence provision, including where the disclosure is:

* + - 1. necessary for the purpose of exercising functions under the Act
      2. for the purpose of obtaining legal advice or representation
      3. after IBAC has determined that such a disclosure is not a public interest complaint
      4. in accordance with a direction or authorisation from IBAC (or, in some cases, the Victorian Ombudsman)
      5. necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the disclosure, including a disciplinary process or action.

It is also an offence for any person or body to disclose information likely to lead to the identification of a person who has made such a disclosure. Some exceptions apply to this offence provision, including where the disclosure is:

* + - 1. necessary for the purpose of exercising functions under the Act
      2. for the purpose of obtaining legal advice or representation
      3. after IBAC has determined that such a disclosure is not a public interest complaint
      4. by IBAC after and in accordance with the consent of the discloser.

Disclosure may also be permitted where it is: to the Victorian WorkCover Authority for the purposes of a workers' compensation claim; for the purposes of an application to the Fair Work Commission; or where the disclosure is for the purposes of assisting the discloser to seek advice or support in relation to the disclosure and is to a health practitioner, trade union or employee assistance program.

A person who receives information under the exceptions to the confidentiality obligations will also be subject to the obligations themselves.

Further, as discussed above, persons involved in the investigation (other than the discloser) may also receive a confidentiality notice and, if so, will be subject to the restrictions within it.

The Act also creates a number of offences and protections in relation to detrimental action:

* It is an offence to take, or threaten to take, detrimental action against another person because the other person has made, or intends to make a disclosure, or has cooperated with, or intends to cooperate with, an investigation of a disclosure.
* Civil liabilities can also be imposed against a person who takes detrimental action against another person in reprisal for a public interest disclosure.
* An employee of the Department who has made a public interest disclosure and reasonably believes that detrimental action will be, has been or may be taken against them, may request a transfer of employment.

A disclosure of detrimental action may itself be a public interest disclosure which must also be dealt with in accordance with these procedures.

## Welfare management

The Department recognises that the welfare and protection from detrimental action of people who make public interest disclosures, and people who cooperate with the investigation of public interest complaints, is essential for the effective implementation of the Act.

The Department has obligations under the Act to prevent employees taking detrimental action against people who make disclosures and against people who cooperate with investigations into disclosures. The Department also has obligations under the Act to keep confidential information about the identity of a person who has made a public interest disclosure and information about the content of such a disclosure.

The Department has additional obligations as both an employer and public body to ensure a safe working environment. These arise under the *Occupational Health and Safety Act 2004*, the *Public Administration Act 2004* and the common law. The *Charter of Human Rights and Responsibilities Act 2006* will also be relevant to the decisions and actions the Department takes.

Given the Department's obligations, in its handling of public interest disclosures, the Department will provide welfare support to:

* people who make public interest disclosures
* people who cooperate with investigations of public interest disclosures, and
* people who are the subject of public interest disclosures.

The type of support provided will be dependent on the individual circumstances.

## Welfare support to a discloser or co-operator

Welfare support to a discloser or co-operator should be provided as outlined in **Schedule 2**. It may also be provided through the appointment of a welfare manager.

A welfare manager may be an internal person or a person engaged as a contractor. The Department will also consider referring an employee to its Employee Assistance Program. In the event that the person seeking welfare support is the recipient of a confidentiality notice from IBAC or the Ombudsman, they will still be able to access the Employee Assistance Program unless IBAC or the Ombudsman has made a direction that a specific restricted matter specified in the confidentiality notice must not be disclosed to the Employee Assistance Program.

In determining whether to appoint a welfare manager in any particular case, the Department 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 Department can provide effective support to the persons involved, including keeping them informed of the progress of the disclosure, and
* whether it is within the Department's power to protect the person(s) involved from suffering repercussions.

A welfare manager is responsible for:

* examining the discloser and/or co-operator'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 co-operator of the protections available under the 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' expectations of the process and outcomes are realistic
* maintaining confidentiality, and
* operating discreetly to protect the discloser and/or co-operator from being identified as being involved in a public interest disclosure.

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

The welfare of a discloser or co-operator is also supported by the confidentiality obligations and protections from detrimental action explained in more detail in pages 9 and 10. In particular, an employee of the Department who has made a public interest disclosure and reasonably believes that detrimental action will be, has been or may be taken against them, may request a transfer of employment. Whether a transfer can or will be made in a particular case will, however, be dependent on a number of factors.

Disclosers and co-operators who are invited or compelled to give evidence in an investigation being undertaken by an external agency, such as IBAC or the Victorian Ombudsman, can contact the Public Interest Disclosure Coordinator or Public Interest Disclosure Officers for support.

## Welfare support to people who are the subject of public interest disclosures or complaints

Until a public interest complaint is resolved (either by dismissing or investigating it) the information about a person who is the subject of a disclosure only constitutes an allegation.

Whether a person who is the subject of a disclosure is informed about an allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a public interest disclosure or complaint, or if a decision is made to dismiss the matter.

Nevertheless, there will be circumstances when the subject of a disclosure will be given information about the content of an allegation made against them, particularly where IBAC or another investigating entity investigates a public interest disclosure or complaint or where the Department takes action in respect of the conduct. Where this occurs, the Department will provide welfare support as appropriate, including through a referral to the Department's Employee Assistance Program.

The Department will take reasonable steps to ensure the confidentiality of an employee who is the subject of a disclosure during an assessment of a disclosure and any subsequent investigation. Where a disclosure is dismissed, or investigations do not substantiate the allegations, confidentiality should be maintained in relation to the subject’s identity, as well as the fact of the investigation and any results.

If an employee has been the subject of allegations that are wrong or unsubstantiated, then the Department or IBAC (or other investigating entity) will take steps to ensure there are no adverse consequences for the employee arising out of the disclosure or its investigation. This is particularly crucial where information has been publicly disclosed that has identified the employee, but is also important where such information has become well known across the area where the employee works.

# Information security, reporting and review

## Information security

Ensuring confidentiality is one of the best ways of ensuring that disclosers and others involved in public interest disclosure investigations are protected. To ensure the confidentiality of public interest disclosure matters, the following must occur:

* **Public Interest Disclosure Officers** must ensure that all central files relating to a public interest disclosure, whether paper or electronic, are kept in a locked receptacle or appropriately secure system that can only be accessed by public interest disclosure officers.
* All printed material held in the Department concerning public interest disclosure matters must be kept in files that are clearly marked as a Public Interest Disclosure Act matter, and warn of the criminal penalties that apply to any unauthorised person disclosing information concerning a public interest disclosure, including the content of a public interest disclosure or the identity of a discloser.
* Public Interest Disclosure Officers must ensure that all electronic public interest disclosure records that are registered in the Department’s records management systems, have:
  + - 1. adequate security restrictions on all files
      2. no ability for high level data administrators to view them.
* All electronic files that are stored outside the Department’s computer network (such as on an approved portable storage device) must be given password protection.
* All external requests for information by IBAC or the Victorian Ombudsman are handled in confidence with minimal details provided with gathering information or contacting parties.
* **All employees** must take care to preserve the confidentiality of information in relation to public interest disclosures. For example:
  + - 1. care must be taken when emailing information relevant to a public interest disclosure. For example, ensure that only the discloser has access to the email account
      2. all phone calls and meetings in relation to a public interest disclosure must be conducted in private
      3. hard copy documents for transmission should be placed in two successive windowless envelopes which are sealed and marked “private and confidential” and “to be opened by addressee only”, and personally delivered wherever possible.

## Reporting and review

The Department must collect and publish in its annual report, for each financial year, information about:

* how to access the procedures established by the Department under the Act, and
* the number of disclosures notified to IBAC for determination.

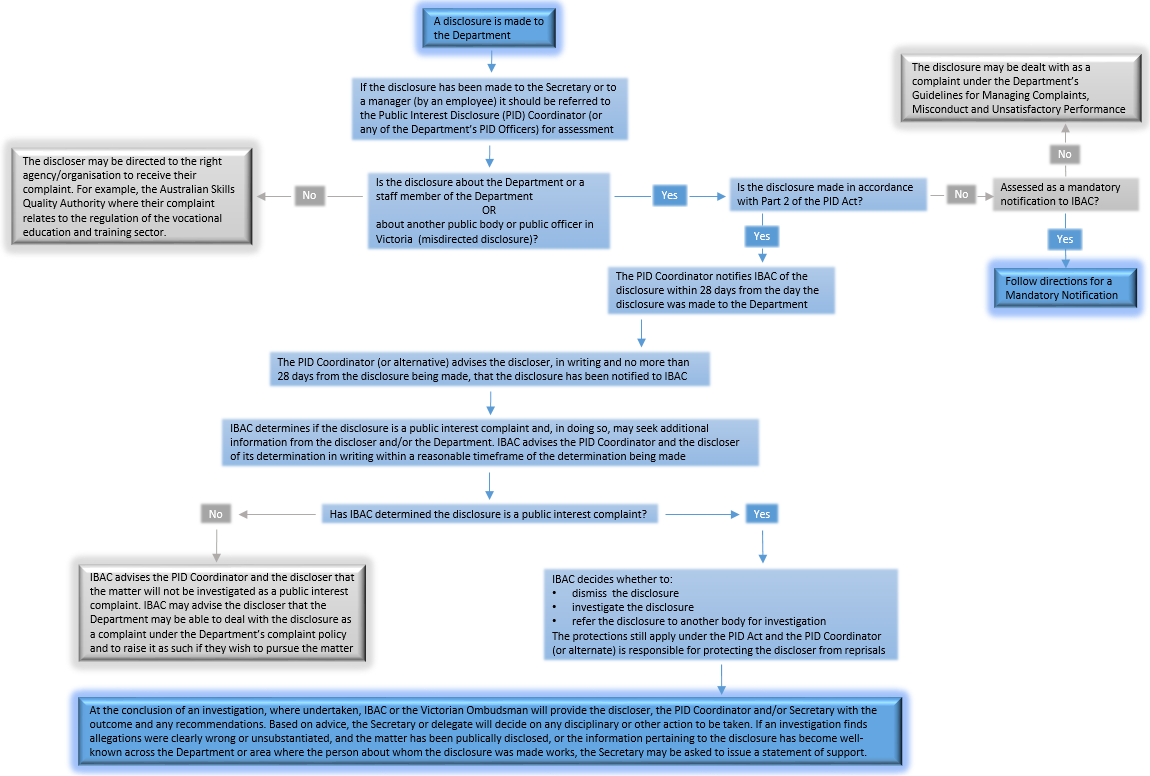
The Public Interest Disclosure Coordinator is responsible for collecting this information.

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

## EDUCATION AND TRAINING

The Integrity, Assurance and Executive Services Division is responsible for raising awareness and supporting individuals to make disclosures, and managers to appropriately handle disclosures. This is achieved through training activities, resources and communications.

# Figure 1: Assessment and notification flow chart



# Schedule 1: Summary of roles and responsibilities in relation to public interest disclosures

|  |  |
| --- | --- |
| Person | Roles and responsibilities |
| Employees | Become familiar with these procedures  Report known or suspected incidents of improper conduct or detrimental action to the Public Interest Disclosure Coordinator (or any of the Department’s Public Interest Disclosure Officers), their manager or supervisor, the manager or supervisor of the person subject of the disclosure, the Secretary or IBAC  Maintain the confidentiality of disclosures they make, including their identity, the content of the disclosure, and information about the handling of their disclosure provided to them by IBAC, unless an exception applies |
| Managers/supervisors | Become familiar with these procedures  Report known or suspected incidents of improper conduct or detrimental action to the Public Interest Disclosure Coordinator or any of the Department’s Public Interest Disclosure Officers  Receive disclosures from people who report to them (directly or indirectly)  Receive disclosures that a discloser honestly believes can be made to them - ‘misdirected disclosures’  When receiving disclosures, being responsible for:   * making sure they are received in private, away from the workplace if necessary * receiving disclosures verbally or in writing, and recording verbal disclosures in writing * forwarding disclosures and supporting material in a secure way and in a timely manner to the Public Interest Disclosure Coordinator, or any of the Department’s Public Interest Disclosure Officers * assisting the Public Interest Disclosure Coordinator to assess information about a disclosure * taking necessary steps to ensure the identity of a person who has made a disclosure and the content of the disclosure is kept confidential * considering whether any immediate action should be taken with respect to a disclosure. Any potential action should be discussed with the Public Interest Disclosure Coordinator before it is taken * support, and maintain the confidentiality of, people who may have made a public interest disclosure * not disclosing the content of a disclosure, including the identity of the person who the disclosure is about, unless an exception applies * not doing anything that is, or may be reasonably perceived to be, victimisation or harassment of a person who has made a public interest disclosure (this does not include legitimate management action) |
| Public Interest Disclosure Coordinator | Give general advice about the making of disclosures  Receive disclosures about the Department, its employees and officers. Receive disclosures which have been made to the Secretary and managers or supervisors  Receive disclosures that a discloser honestly believes can be made to the Department (misdirected disclosures)  Assess whether a disclosure may be a public interest disclosure  Keep a copy of any written statement by a discloser that they do not want the disclosure to be treated as a public interest disclosure  Notify IBAC of public interest disclosures and provide relevant information to IBAC  Inform people who make disclosures of the result of the Department's assessment of their disclosure  Consider appropriate welfare support for a discloser and others involved in a public interest disclosure, including the appointment of a welfare manager  Liaise with managers and supervisors about the appropriateness of taking immediate action  Facilitate the provision of information to IBAC and/or the Victorian Ombudsman in relation to the investigation of public interest complaints  Maintain systems to keep information confidential, including by maintaining information security systems  Compile statistics and information for the Department's annual report  Ensure procedures are reviewed regularly |
| Secretary | Receive disclosures  Consider transfer of employees subject to detrimental action  Ensure appropriate systems are in place  Ensure a safe working environment |

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# Schedule 2: Welfare services that should be provided by the Department

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| **Inform** | At a minimum:   * confirm that the disclosure has been received * make information about the legislative or administrative protections available to the person * describe the action proposed to be taken * if action has been taken, provide details about results of the action |
| **Provide active support** | * Acknowledge the discloser for having come forward * Provide the person with assurance that they have done the right thing and the Department appreciates it * Make a clear offer of support * Assure the discloser that all reasonable steps will be taken to protect them * Give them an undertaking to keep them informed |
| **Manage expectations** | Have an early discussion with the discloser about:   * what outcome they want * whether their expectations are realistic * what the Department is able to deliver |
| **Maintain confidentiality** | The identity of the discloser and the subject matter of their disclosure must be kept confidential:   * Make sure that other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive * Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser (unless they are seeking advice and support from any of the specified categories of persons) * Make sure that hardcopy and electronic files relating to the disclosure are kept in accordance with this policy and are accessible only to those who are involved in dealing with the disclosure |
| **Assess the risks of detrimental action taken in reprisal** | * Be proactive * Do not wait for a complaint of victimisation * Actively monitor the workplace, anticipate problems and deal with them before they develop |
| **Protect the discloser/witness** | * Examine the immediate welfare and protection needs of the person and seek to foster a supportive work environment * Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions * Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a public interest disclosure |
| **Manage the impact of any investigation** | * Prevent the spread of gossip and rumours about an investigation into the disclosure |
| **Keep records** | * Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action * Keep the records in accordance with the guidance provided in these procedures |