



An independent voice promoting
rights and resolving complaints
about disability services

MAKING AND HANDLING PROTECTED DISCLOSURES

PROCEDURES
AUG 2013

Quick reference guide to protected disclosures

Who can make a disclosure?	Any individual or group of individuals. A disclosure cannot be made by a business or company. (refer to Part 2 of these procedures for more information)
How do I make a disclosure?	Verbally or in writing (but not by fax) in accordance with specific procedures. (refer to Part 3 of these procedures for more information)
What can I make a disclosure about?	Improper conduct engaged in, and/ or detrimental action taken by, public bodies or public officers performing public functions. This includes DSC and/or its staff. (refer to Part 4 of these procedures for more information)
To whom can I make a disclosure?	If you wish to make a protected disclosure about DSC or any of its employees and/or officers, you may contact: The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 GPO Box 24234, Melbourne, VIC 3001 Telephone: 1300 735 135 Website: www.ibac.vic.gov.au

1. BACKGROUND

The Disability Services Commissioner (DSC) encourages employees and members of the public to report known or suspected incidences of corrupt or improper conduct.

These procedures have been prepared in accordance with the Protected Disclosure Act 2012 (the Act) and the guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) which are available on the IBAC website (www.ibac.vic.gov.au).

2. WHO CAN MAKE A PROTECTED DISCLOSURE?

Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by DSC employees.

You can make a protected disclosure if you are a member of the public, an employee or officer of DSC or an employee, officer or member of another public body or department.

You can make a disclosure as an individual or together with a group of individuals.

A company or business cannot make a protected disclosure.

You can ask someone else to make a disclosure on your behalf. However, if you ask someone else to make a disclosure on your behalf, only that person will receive the full protection of the Act in relation to that disclosure. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the disclosure that has been made.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a 'protected disclosure'. You may also advise that you do not want your disclosure to be treated as a 'protected disclosure'.

3. HOW DO I MAKE A PROTECTED DISCLOSURE?

You may make a protected disclosure:

- a. in person;
- b. by phone;
- c. by leaving a voicemail message;
- d. in writing by post, personal delivery or email;
- e. by any other form of electronic communication; and/or
- f. anonymously.

You may **not** make a protected disclosure by fax.

A protected disclosure must be made in private so it is important that only the person to whom you are making the disclosure to can hear or receive your disclosure. For example, if you make your disclosure by email, your disclosure should be sent to the email address of the person to whom you are making the disclosure to, rather than a group email. You are not precluded from making a joint disclosure with a group of individuals at the same time.

If you are making your disclosure verbally, the person receiving your disclosure may take notes of your discussion. The person receiving your disclosure may also want to record the conversation, but will only do so with your permission.

4. WHAT CAN I MAKE A PROTECTED DISCLOSURE ABOUT?

You may make a protected disclosure about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, that:

- a. a person, public officer or public body;
- b. is engaging in, or proposing to engage in;
- c. 'improper conduct' and/or 'detrimental action'.

Public officer and public body

The conduct you are disclosing must be in the performance of a person or body's function as a public officer or public body. In other words, there must be a link between the alleged improper conduct and/or detrimental action and the person or body's functions as a public officer or public body.

Public bodies or public officers include DSC employees and officers.

For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

Improper conduct and detrimental action

The conduct you are disclosing must be improper conduct and/or detrimental action.

The definitions of improper conduct and detrimental action are explained in the diagram on the next page.

‘Improper conduct’ is defined as:

‘CORRUPT CONDUCT’ or ‘SPECIFIED CONDUCT’

CORRUPT CONDUCT IS:

Conduct that:

adversely affects the honest performance of functions by a public officer or public body;

- involves the dishonest performance of functions by a public officer or public body;
- involves a breach of public trust;
- involves a misuse of information acquired in the performance of functions as a public officer or public body; or
- involves a conspiracy or an attempt to engage in any of the above conduct

AND

would constitute:

- an indictable offence;
 - » an attempt to pervert the course of justice;
 - » bribery of a public official; or
 - » perverting the course of justice.

SPECIFIED CONDUCT IS:

Corrupt conduct that would not constitute an indictable offence, but would constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct

OR

Conduct that:

- involves a substantial mismanagement of public resources;
- involves a substantial risk to public health and safety; or
- Involves a substantial risk to the environment

AND

- would constitute a criminal offence, or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

‘DETRIMENTAL CONDUCT’ IS DEFINED AS:

Action taken against a person who has made a protected disclosure which:

- causes injury, loss or damage;
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business (including disciplinary action).

Detrimental action is not:

- legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

Examples of improper conduct

1. A DSC employee sells confidential information.
2. A public officer favours unmeritorious applications for jobs or permits by friends and relatives.

Examples of detrimental action

1. A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure.
2. A person threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure and his or her family or friends.

‘Reasonable grounds’

Your belief that improper conduct or detrimental action has occurred, is occurring, or will occur does not have to be based on actual proof. It is enough if you believe (as opposed to know) that improper conduct or detrimental action has occurred, is occurring or will occur. However, you must have reasonable grounds for your belief.

A mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be protected by the Act. For example, it is not enough to say ‘I know X is corrupt’. You must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

5. WHO DO I MAKE MY PROTECTED DISCLOSURE TO?

Who you can make your protected disclosure to depends on the person or body your disclosure is about as only certain persons and entities can receive protected disclosures.

If your disclosure is made to a person or entity that cannot receive your disclosure (such as DSC), your disclosure will not be a protected disclosure and you will not be protected under the Act. It is therefore important that you check that you are providing your disclosure to the right person or body. If in doubt, disclosures should be made directly to IBAC, unless the disclosure is about IBAC or one of its officers.

Making a disclosure about DSC and/or its employees and officers

If you wish to make a protected disclosure about DSC or any of its employees and/or officers, you may make your disclosure to:

IBAC

Level 1, North Tower
459 Collins Street
Melbourne Vic 3000
GPO Box 24234,
Melbourne VIC 3001
www.ibac.vic.gov.au
1300 735 135

6. PROTECTION FROM DETRIMENTAL ACTION

DSC will take precautions to prevent its employees and agents from taking detrimental action in reprisal for a protected disclosure. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by DSC will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the person receiving the report (irrespective of their role) will record details of the incident and advise the person of the protections they will receive under the Act.

If you are an employee who has made a protected disclosure and you believe on reasonable grounds that detrimental action will be, is being, or has been taken against you, you 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:

- a. The Disability Services Commissioner must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you
- b. The Disability Services Commissioner must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action
- c. The head of the 'receiving' government agency consents to the transfer.

If you have sustained injury, loss or damage as a result of detrimental action taken against you in reprisal for making a disclosure, the Act sets out remedies that are available to you. You may wish to obtain legal advice about this.

Whilst there are these protections, there are also responsibilities. You must not take detrimental action against another person in reprisal for a protected disclosure and, if you have been involved in the improper conduct or detrimental action which is the subject of your disclosure, you will still be held liable for your own involvement. Making a disclosure does not provide you with immunity for your own wrongdoing.

7. WHAT HAPPENS IF A PROTECTED DISCLOSURE IS MADE AGAINST ME?

DSC recognises that employees against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide support during the handling and investigation of a disclosure as the circumstances require.

8. ALTERNATIVES TO MAKING A 'PROTECTED DISCLOSURE'

Members of the public are encouraged to use the DSC feedback process to communicate complaints or concerns with the services provided by DSC.

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

9. REVIEW

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

SCHEDULE 1

What is a public body and what is a public officer?

A public body is:

- a). A public sector body within the meaning of s 4(1) of the Public Administration Act 2004;
- b). A body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;
- c). The Electoral Boundaries Commission constituted under the Electoral Boundaries Commission Act 1982;
- d). A Council;
- e). A body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise); or
- f). Any other body or entity prescribed for the purposes of this definition.

A public officer is:

- a). A person 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;
- b). A person to whom a provision of the Public Administration Act 2004 applies as a result of the application of Part 7 of that Act;
- c). An ongoing employee or temporary employee in the teaching service under the Education and Training Reform Act 2006;
- d). A judicial employee employed under Division 3 of Part 6 of the Public Administration Act 2004;
- e). A Ministerial officer employed under Division 1 of Part 6 of the Public Administration Act 2004;
- f). An electorate officer within the meaning of the Parliamentary Administration Act 2005;
- g). A Parliamentary adviser employed under Division 2 of Part 6 of the Public Administration Act 2004;
- h). A Parliamentary officer within the meaning of the Parliamentary Administration Act 2005;
- i). A member of police personnel;
- j). A responsible Minister of the Crown;
- k). A member of the Legislative Assembly or the Legislative Council;
- l). A Councillor within the meaning of section 3(1) of the Local Government Act 1989;
- m). A member of Council staff employed under the Local Government Act 1989;

- n). A judge, a magistrate, a coroner or a member of VCAT;
- o). An associate judge or a judicial registrar;
- p). A Crown Prosecutor;
- q). The Chief Crown Prosecutor;
- r). The Director of Public Prosecutions;
- s). The Governor, the Lieutenant-Governor or the Administrator of the State;
- t). The Auditor-General;
- u). The Ombudsman;
- v). The Electoral Commissioner;
- w). The holder of any other statutory office or any other prerogative office;
- x). Any other person in the service of the Crown or a public body;
- y). 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);
- z). A person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition; or
- aa). An employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.