

**VICTORIAN PHARMACY AUTHORITY
PROTECTED DISCLOSURE PROCEDURE**

Quick reference guide to protected disclosures

Who can make a disclosure?	Any individual or group of individuals A disclosure <i>cannot</i> be made by a business or company
How do I make a disclosure?	Verbally or in writing (but not by fax) in accordance with specific procedures
What can I make a disclosure about?	Known or reasonably suspected Improper conduct engaged in, and/or detrimental action taken by, public bodies or public officers performing public functions This includes the Authority and its employees, officers and members
To whom can I make a disclosure?	If you wish to make a protected disclosure about the Victorian Pharmacy Authority you must make that disclosure to: The Independent Broad-based Anti-corruption Commission (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

The Victorian Pharmacy Authority (The Authority) encourages its employees, officers and members, and also members of the public and other persons to report known or suspected incidences of corrupt or improper conduct.

The purpose of this document is to describe the procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by the Authority and/or its employees, officers or members.

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). This document aims to provide a summary of the legislation and guidelines and the obligations of the Authority.

Who can make a protected disclosure?

Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by, the Authority or one of its employees, officers or members.

A person can make a protected disclosure if they are a member of the public, an employee, officer or member of the Authority, or an employee, officer or member of another department or public body.

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

A company or business cannot make a protected disclosure.

A person can ask someone else to make a disclosure on their behalf. However, if they ask someone else to make a disclosure on their behalf, only that person will receive the full protection of the Act in relation to that disclosure. Protection will be limited to confidentiality and protection against detrimental action taken against the discloser in reprisal for the disclosure that has been made. In such circumstances it is recommended to make the disclosure jointly.

A person does not have to specifically refer to the Act or the protections in the Act for their disclosure to be a 'protected disclosure'. A person may also advise that they do not want their disclosure to be treated as a 'protected disclosure'.

How can a protected disclosure be made?

A person may make a protected disclosure:

- in person;
- by phone;
- by leaving a voicemail message;
- in writing by post, personal delivery or email;
- by any other form of electronic communication (but not fax); and/or
- anonymously.

A person 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 the disclosure is being made can hear or receive the disclosure. For example, if a disclosure is made by email, the disclosure should be sent to the email address of the person to whom the disclosure is made, rather than a group email. A person is not precluded from making a joint disclosure with a group of individuals at the same time.

If a disclosure is made verbally, the person receiving the disclosure may take notes of the discussion. The person receiving the disclosure may also want to record the conversation, but will only do so with permission of the discloser.

A person does not have to identify themselves when making a disclosure. However, if the disclosure is anonymous, this may affect how the disclosure is investigated and the discloser will not be notified of the outcome of any investigation. This will also affect the Authority's ability to protect the discloser from adverse measures if the discloser's identity becomes known as a result of notification by the IBAC.

If the discloser cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

What can a protected disclosure be made about?

A person may make a protected disclosure about information that shows or tends to show, or that they 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 being disclosed 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 the Victorian Pharmacy Authority. For a full definition of 'public body' and 'public officer' see Schedule 1 of these procedures.

Improper conduct and detrimental action

The conduct being disclosed must be improper conduct and/or detrimental action.

The definitions of improper conduct and detrimental action are explained in the diagram below.

'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

An Authority employee takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.

An Authority employee sells confidential information.

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.
3. A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

Reasonable grounds

A 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 the person *believes* (as opposed to *knows*) that improper conduct or detrimental action has occurred, is occurring or will occur. However, there must be *reasonable grounds* for the 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'. A person must have information that would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.

To whom can a protected disclosure be made?

Who a protected disclosure can be made to depends on the person or body the disclosure is about as only certain persons and entities can receive protected disclosures.

If the disclosure is made to a person or entity that cannot receive the disclosure, the disclosure will **not** be a protected disclosure and the discloser will **not** be protected under the Act. It is therefore important to check that the disclosure is being provided 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 the Authority and/or its employees, officers or members

If a person wishes to make a protected disclosure about the Authority and/or any of its employees, officers or members, the disclosure must be made 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

What will happen after a disclosure is made?

Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes. This information can be viewed on the IBAC's website at www.ibac.vic.gov.au

Assessment by IBAC

Disclosures about the Authority should only be made to the IBAC. The Authority is a public body that cannot receive disclosures. IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.

Once a disclosure has been notified to the IBAC, IBAC must assess within a reasonable time whether (in its view) the disclosure is a protected disclosure. It may seek additional information in order to make its decision.

If IBAC determines that a disclosure is a protected disclosure, it must decide to either:

- dismiss the disclosure,
- investigate the disclosure, or
- refer the disclosure to another body for investigation, either the Victorian Ombudsman or the Victoria Police.

The person making the disclosure will be advised the outcome of the IBAC determination.

IBAC will investigate the substance of the disclosure. IBAC may contact the Authority to obtain further information about the disclosure or if the discloser wishes to invoke protections under the Act which require the Authority to be involved. This should be the only manner in which the Authority is made aware of a disclosure and so it is the only way to invoke the protections within the Authority (for example, the appointment of a Welfare Officer; see Welfare Management below). For further information about IBAC and the handling of disclosures by IBAC, see IBAC's website at <http://www.ibac.vic.gov.au>

Protections for person making a disclosure

The Act sets out the protections provided to persons who make a disclosure in accordance with the Act. These include:

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
- immunity from committing an offence under the *Constitution Act 1975* 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.

These protections apply to a disclosure from the time the disclosure is made and continue to apply even if IBAC determines that the disclosure is not a 'protected disclosure'.

The protections in the Act do not apply if a person knowingly provides false or misleading information or claims that a matter is the subject of a protected disclosure knowing that claim to be false.

The protections will apply to further information relating to a protected disclosure that a person provides to IBAC or an investigating entity.

In addition to these protections, the Authority recognises that the welfare and protection from detrimental action of persons making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to the Authority's obligation to create a safe working environment under the *Occupational Health and Safety Act 2004*, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004 (Vic)* and the common law.

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Welfare Management

The Authority is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures. The Authority will provide welfare support to a discloser or a witness in an investigation as the circumstances require.

The Authority must, where it is aware of or has been provided the identities of the discloser/s and co-operator/s, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the protected disclosure.

If a disclosure is determined as a protected disclosure complaint by IBAC, and the Authority is made aware of the protected disclosure by IBAC, the Authority will protect the identity of the discloser and content of the person's disclosure to ensure confidentiality.

Protection against detrimental action

The Authority 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 the Authority 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.

A disclosure of detrimental action is itself a protected disclosure and should be made to IBAC.

Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the Authority may consider reporting the matter to the police or IBAC.

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

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

A person must not disclose the content, or information about the content, of a disclosure that has been notified to IBAC or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act.

What happens if a protected disclosure is made against me?

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

The Authority will only disclose information about the subject of a disclosure in accordance with the law, including this Act.

Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation and the identity of the person who is the subject of the disclosure will remain confidential.

Confidentiality

As the Authority cannot receive disclosures, the Authority therefore may not know that a person has made a protected disclosure. Confidentiality obligations under the Act require a person who has made a protected disclosure not to discuss the matter with any other person except with the IBAC (or another investigative entity to which the IBAC may have referred the disclosure). Therefore, the Authority may only be made aware that a person requires protection under the Act if that information has been provided to the Authority by the IBAC or a body involved in or investigating the disclosure.

Once the Authority has been made aware of the identity of a Discloser, and any other relevant information about the protected disclosure, the Authority will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act and this Procedure.

There are exceptions to the obligation of confidentiality specified in the Act.

Criminal offences

There are a number of offences set out in the Act relating to breaches of the requirements of the Act. The key offences to be aware of are:

- it is an offence to take detrimental action against another person in reprisal for a protected disclosure
- it is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC by the Authority or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act
- it is an offence for any person to:
 - provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure
 - claim that a matter is the subject of a protected disclosure knowing the claim to be false
 - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint
- it is an offence for any person to:
 - disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act
 - disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

Summary

1. The Victorian Pharmacy Authority cannot receive protected disclosures.
2. Disclosures about improper conduct and/or detrimental action in relation to the Authority or its employees/members must be made to IBAC.
3. The Authority will take steps to ensure disclosers and co-operators are protected against detrimental action when notified about a disclosure.
4. The Registrar is responsible for welfare management procedures.
5. If a report of detrimental action is received the Registrar should record the details of the incident and advise the person of their rights under the PD Act to make a disclosure to IBAC.

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)
- (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
- (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.