



Information sheet

Key changes – *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 (No.2/2019)*

www.ibac.vic.gov.au

Legislated changes commencing **1 January 2020** will require agencies to update their policies and procedures in relation to public interest disclosures (PIDs). This information sheet outlines the key changes to the system.

Background

Victoria's public interest disclosure scheme is vitally important in ensuring that people who report improper conduct and corruption in the Victorian public sector (disclosers) can do so in the knowledge that they will be protected.

Protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

Amendments have been made to a number of Acts relating to the operation of Victoria's integrity system, established to facilitate the confidential disclosure and investigation of improper conduct in relation to public bodies and public officers.

The new legislated arrangements aim to improve access for those making PIDs and flexibility for agencies investigating PIDs.

Overall, the new PID scheme will provide a lower threshold for making PIDs to IBAC, a 'no wrong door' principle for handling PIDs made to a receiving agency, and increased flexibility and alternative pathways for how investigating agencies handle PIDs (and public interest complaints, PICs).

The legislation has established a new parliamentary oversight committee, the [Integrity and Oversight Committee](https://www.parliament.vic.gov.au/ioc/function-iao)¹ (IOC), consolidating the oversight of a number of Victorian integrity agencies, including the Independent Broad-based Anti-corruption Commission (IBAC).

Protected Disclosure Act 2012 renamed the *Public Interest Disclosures Act 2012*

The *Protected Disclosure Act 2012* changes in name to the *Public Interest Disclosure Act 2012* (PID Act).

The terms 'protected disclosure' and 'protected disclosure complaint' have been replaced with:

- **Public Interest Disclosure** – disclosure by a natural person of information that shows / tends to show or information that the person reasonably believes shows / tends to show improper conduct or detrimental action (previously a protected disclosure)
- **Public Interest Complaint** – a public interest disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint (previously a protected disclosure complaint).

Once a PID has been assessed and is determined to be a PIC, additional rules apply, for example restricting when and to whom the matter can be referred and other altered confidentiality and notification requirements.

¹ More information on the IOC is available at: <https://www.parliament.vic.gov.au/ioc/function-iao>

Improper conduct

The definition of 'improper conduct' has been revised to specify the following categories:

- corrupt conduct
- criminal offence
- serious professional misconduct
- dishonest performance of public functions
- intentional or reckless breach of public trust
- intentional or reckless misuse of information
- substantial mismanagement of public resources
- substantial risk to health or safety of a person
- substantial risk to the environment
- conduct of any person that adversely affects the honest performance by a public officer of their functions
- conduct of any person that 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.

Bodies that can receive PIDs

A person may make a public interest disclosure to the following bodies:

- IBAC
- Victorian Ombudsman
- Victorian Inspectorate (in relation to IBAC and the Public Interest Monitor)
- Victoria Police
- Public Service Bodies (within the meaning of the *Public Administration Act 2004* – for a full list of public service bodies, see Appendix A)
- local councils
- Judicial Commission of Victoria
- IOC (in relation to the Victorian Inspectorate)
- President of the Legislative Council (limited to members of the Legislative Council)
- Speaker of the Legislative Assembly (limited to members of the Legislative Assembly).

The addition of the IOC as a new body to the scheme represents the key change here.

Bodies that cannot receive PIDs

Any public sector body not listed above, or in Appendix A, may not receive a public interest disclosure. Persons wishing to make a PID about such bodies should be directed to IBAC.

Public sector bodies that cannot receive PIDs must still have systems in place to manage confidentiality, welfare support and risk management measures for PIDs made about their organisation.

Bodies that can assess and determine a PID

Only IBAC, the Victorian Inspectorate and now the IOC can determine that a PID meets the criteria to be a PIC. The Victorian Inspectorate may only assess PIDs about IBAC officers and the Public Interest Monitor. The IOC may only assess PIDs about the Victorian Inspectorate or a Victorian Inspectorate Officer. All other PIDs are to be assessed by IBAC.

For a PID to be determined a PIC:

- It must be made in accordance with the PID Act (it must be made to a body who is able to receive the disclosure)
- The information must:
 - show or tend to show that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct or detrimental action or
 - information that the person reasonably believes shows or tends to show that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct or detrimental action.

IBAC may refer a PIC to another more appropriate body for investigation. IBAC will also be able to refer complaints back to agencies for action with the consent of complainants and agencies.

Bodies that can investigate PICs

Under the current scheme the following bodies can investigate PICs:

- IBAC
- Victorian Ombudsman
- Victorian Inspectorate
- Chief Commissioner of Police
- Judicial Commission of Victoria.

Under the new scheme, the following bodies have been added:

- the Chief Municipal Inspector
- the Information Commissioner
- the Racing Integrity Commissioner.

Misdirected disclosures

The legislation provides a new 'no wrong door' provision. This allows for a PID made to the wrong receiving entity to be redirected to another receiving entity, without the discloser losing the protections of the PID scheme, where:

- the receiving entity must be an entity to which a PID ordinarily may be made and
- the person making the disclosure must honestly believe that the receiving entity was the appropriate entity to receive the disclosure.

For example, if the Victorian Ombudsman receives a misdirected PID about Victoria Police it can redirect the PID to IBAC for assessment.

A misdirected PID does not capture PIDs about Members of Parliament. PIDs about Members of Parliament have not changed; they must still be made to the President of the Legislative Council (members of the Legislative Council) or Speaker of the House (members of the Legislative Assembly).

External disclosures

A new class of disclosure is created for 'external disclosures'. External disclosures are defined as a PID made to a person or body who is not an entity to whom a PID can be made under Division 2, Part 2 of the PID Act (the part which prescribes how and to whom PIDs must be made).

A discloser may disclose the details of a PIC to an external person or body (who is not able to receive disclosures) if the assessing entity does not notify the discloser about any action taken in response to the original disclosure within six months and has not responded to a request for advice within 30 days. An external disclosure may also be made if the investigation of the original disclosure is not completed within 12 months, and the investigating entity has not responded to a request for advice within 30 days.

Finally an external disclosure may be made where the investigation of the original disclosure was not completed within 12 months, the discloser has received an update within 30 days of requesting it, but the discloser has then not received any further update advising that the investigation has been completed within a further six months of that response.

Some exemptions apply, for example, in relation to any information that may prejudice a criminal investigation or proceeding, or other legal proceeding, or information that is likely to lead to the disclosure of an investigative method.

A practical example of this could be a discloser who reports the nature of a PIC to a journalist if the assessing entity (for example, IBAC) does not provide an outcome letter to a discloser within six months of the disclosure being made and does not respond within 30 days to a further request for advice from the discloser.

Detrimental action – defence test lowered

From 1 January 2020, there is a lower threshold for proving that detrimental action has taken place. Prior to 1 January 2020, a discloser would have to prove that detrimental action was a 'substantial reason' for their employer (manager) taking action against them following their disclosure, but from 1 January 2020 'substantial' has been removed from section 45.

In practical terms this means that if the fact that an employee has made a disclosure forms *any part* of the reason for which action is taken against that employee, it will constitute detrimental action and be reportable as a public interest disclosure under the scheme as well as being a criminal offence.

Confidentiality obligations

The three main elements of the revised confidentiality requirements are:

- Firstly, to ensure that all bodies to whom a public interest complaint is referred, are permitted to disclose information necessary to perform their investigative functions.
- Second, to make it clear that complainants may always seek advice and support from specified categories of persons without seeking permission. These changes enable information about an assessable disclosure (content or information about the content) to be provided to a trade union, employee assistance program, the Victorian WorkCover Authority or for the purposes of an application to the Fair Work Commission.
- Third, to change the statutory requirements around confidentiality notices used in investigations across the integrity system, to make it a presumption that recipients of confidentiality notices will be entitled to disclose restricted matters to certain categories or persons, unless the issuing agency makes a direction to the contrary.

Key terms

A glossary of key terms is contained in Appendix B.

Further Information

Please note that this factsheet is intended to provide guidance only. Further information and guidance can be found on the IBAC website at www.ibac.vic.gov.au.

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IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

To report corruption now, visit www.ibac.vic.gov.au or call **1300 735 135**.

If you need help with translation, call the Translating and Interpreting Service on **13 14 50** or visit www.ibac.vic.gov.au/general/accessibility/tr

Appendix A – Public service bodies

State Government departments:

- Department of Education and Training
- Department of Environment, Land, Water and Planning
- Department of Health and Human Services
- Department of Jobs, Precincts and Regions
- Department of Justice and Community Safety
- Department of Premier and Cabinet
- Department of Transport
- Department of Treasury and Finance.

Administrative offices:

- Family Safety Victoria
- Latrobe Valley Authority
- Local Government Inspectorate
- Major Transport Infrastructure Authority
- Office of Projects Victoria
- Office of the Chief Parliamentary Counsel
- Office of the Governor
- Office of the Victorian Government Architect
- Public Record Office Victoria
- Safer Care Victoria
- Service Victoria
- Victorian Agency for Health Information
- Victorian Government Solicitors Office.

All local councils

Victorian Public Sector Commission

Appendix B – Glossary of key terms

Key term	Definition
Public interest disclosure (PID)	A disclosure by a natural person of information that shows or tends to show, or information that the person reasonably believes shows or tends to show, improper conduct or detrimental action (where the particular disclosure relates to an earlier PID). PIDs were previously known as protected disclosures.
Public interest complaint (PIC)	A PID that has been determined by IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee to be a PIC. PICs were previously known as protected disclosure complaints.
Natural person	A human being, not a legal entity like a corporate body.
Public officer	As defined in section 6 of the <i>Public Interest Disclosures Act 2012</i> .
Public body	As defined in section 6 of the <i>Public Interest Disclosures Act 2012</i> .
Serious professional misconduct	Conduct that constitutes a serious breach of an established professional code of conduct and/or other serious departures from the person's professional responsibilities.
Detrimental action	As defined in s 3 of the <i>Public Interest Disclosures Act 2012</i> .
Confidentiality obligations	The obligations on those receiving information relating to a public interest disclosure to not disclose that information, unless authorised by law. The primary obligations in relation to PIDs and PICs are contained in section 52, 53 and 54 of the <i>Public Interest Disclosures Act 2012</i> , and section 184 of the IBAC Act. Note also that confidentiality notices may also be issued in an investigation of a PIC. Breaches of these confidentiality obligation include criminal sanctions.