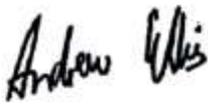


PROCEDURE

Making and handling protected disclosures

DOCUMENT APPROVAL

Date	Content authorisation		Date	Quality assurance authorisation	
	Name	Signature		Name	Signature
27/5/15	Annie Volkering Executive Director Corporate Services		18/5/2015	Andrew Ellis Senior Governance Officer	

CONTENTS

1. Purpose	3
2. Regulatory framework	3
3. Policy statement	3
4. Definitions	3
5. Roles and responsibilities	3
6. Making a disclosure	4
6.1 What is a disclosure?.....	4
6.2 What is not a disclosure?.....	4
6.3 Who can make a protected disclosure?	5
6.4 What can I make a protected disclosure about?	5
6.4.1 Public officer and public body	6
6.4.2 Improper conduct and detrimental action	6
6.4.3 Reasonable grounds.....	6
6.5 How do I make a protected disclosure?	7
6.6 Who do I make my protected disclosure to?	8
7. Handling disclosures	8
7.1 What will happen after I make a disclosure?	8
7.1.1 Receipt of disclosures.....	8
7.1.2 Assessing disclosures	8
7.1.3 Notification to IBAC.....	9
7.1.4 Assessment by IBAC	9
7.2 What protections will I receive?	9
7.3 Welfare management	10
7.4 Protection from detrimental action.....	11
7.5 What happens if a protected disclosure is made against me?	12
7.6 Confidentiality	12
7.7 Offences.....	13
7.8 Alternatives to making a protected disclosure	14
8. References	14
APPENDIX A – GLOSSARY OF TERMS	15
APPENDIX B – ROLES AND RESPONSIBILITIES	17
APPENDIX C – CIVIL AND CRIMINAL PENALTIES	18

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 2 of 18

1. PURPOSE

The purpose of this document is to establish procedures for making and handling disclosures of improper conduct engaged in, and/or detrimental action taken, by the Environment Protection Authority Victoria (EPA) and/or its public officers.

2. REGULATORY FRAMEWORK

The *Protected Disclosure Act 2012* (PD Act) repealed the *Whistleblowers Protection Act 2001* and created a new legislative framework for receiving protected disclosures and protecting those who make them. Under the PD Act, the Independent Broad-based Anti-corruption Commission (IBAC) has a key role in receiving, assessing and investigating disclosures about corrupt or improper conduct.

These procedures have been prepared in accordance with the PD Act and the IBAC Guidelines for Making and Handling Protected Disclosures which are available on the IBAC website at www.ibac.vic.gov.au.

3. POLICY STATEMENT

EPA is committed to the objectives of the PD Act and encourages employees and members of the public to report known or suspected incidences of improper conduct.

EPA will take all reasonable steps to protect and support people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford procedural fairness to the person who is the subject of the disclosure.

This procedure is supported by the following suite of internal EPA policies:

- EPA Integrity Framework
- Protected Disclosure Policy
- Fraud and Corruption Control Policy
- Conflict of Interest Policy

4. DEFINITIONS

Refer to Appendix A for glossary of terms.

5. ROLES AND RESPONSIBILITIES

Refer to Appendix B for roles and responsibilities.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 3 of 18

6. MAKING A DISCLOSURE

6.1 What is a disclosure?

A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the PD Act. A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a protected disclosure by any person.

A complaint or allegation that is already in the public domain will not normally be a protected disclosure, for example if the matter has already been subject to media or other public commentary. The term 'disclosure' is interpreted under the PD Act in the ordinary sense of the word as a 'revelation' to the person receiving it.

The disclosure can relate to improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or the public officer or public body may be going to do it in the future. Disclosures can be made about conduct that occurred prior to the commencement of the PD Act on 10 February 2013.

A disclosure made in accordance with the requirements of Part 2 of the PD Act, may also be a complaint, notification or disclosure made under another Act.

For a disclosure to be a protected disclosure it must be made in accordance with the requirements of Part 2 of the PD Act, and in accordance with the prescribed procedure, as outlined below.

Procedures for making a protected disclosure:

Who can make a disclosure	The disclosure can only be made by certain persons
How to make a disclosure	Must be made verbally, in writing, or in some cases, online, in accordance with specific procedures
Who to make a disclosure to	The disclosure can only be made to certain persons
Who disclosures can be made about	Must be made only about the conduct of public bodies or public officers performing public functions
What disclosures can be made about	Must be about improper conduct or detrimental action taken against a person

6.2 What is not a disclosure?

It **will not** be a protected disclosure if it is:

- made to an entity that cannot receive disclosures, or notified to IBAC by such an entity because such disclosures or notifications do not meet all the requirements under Part 2 of the PD Act
- the disclosure was made about a Public Interest Monitor, the Victorian Inspectorate, a Victorian Inspectorate Officer, or a court
- the discloser expressly states in writing that the disclosure **is not** a disclosure under the PD Act
- the disclosure is not a disclosure under the PD Act if it was made by an officer or employee of an investigating entity in the course of his/her duties or functions **unless** this person expressly states in writing that it **is** a disclosure and the disclosure is otherwise made in accordance with the PD Act requirements.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 4 of 18

- the disclosure does not meet all the requirements under Part 2 of the PD Act and the prescribed procedures in the Regulations outlined above.

An entity receiving a disclosure that does not meet all these requirements is not required under the PD Act to consider whether it is a protected disclosure. However, to ensure that disclosers are not deprived of the opportunity to receive protection, an entity that receives what appears to be a disclosure about improper conduct or detrimental action which has not met all the requirements of the PD Act should consider whether to tell the person about the correct way to make a disclosure, so they have an opportunity to meet the legislative requirements.

In addition, section 11 of the PD Act provides that a disclosure may also be a complaint, notification or disclosure (however described) made under another Act. This enables the entity to consider whether a disclosure that does not meet the requirements under Part 2 of the PD Act could be treated as a complaint, notification or referral to their organisation if it has been made in accordance with their own legislative or administrative requirements.

6.3 Who can make a protected disclosure?

Any person can make a disclosure about improper conduct by public bodies and public officers¹. This includes a person who is a member, officer or employee of a public body or public officer. However, the making of disclosure is not limited only to 'internal' disclosers.

A company or a business cannot make a disclosure. The person making the disclosure must be an individual or a group of individuals making joint disclosures.

Making a joint disclosure overcomes the following limitation on the protections provided by the PD Act. The protections in sections 39, 40 and 41 in Part 6 of the PD Act are only provided to the person who makes a disclosure. This means that if a person makes the disclosure by 'notifying' the organisation on behalf of another person, then it is the 'notifier' who may receive those protections, not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protection against detrimental action taken against them in reprisal for a disclosure made by the 'notifier'.

A disclosure can be made anonymously. However, this creates potential difficulties in being able to assess whether a complaint is a disclosure.

A person can also make a disclosure in circumstances where they cannot identify the person or the organisation to which the disclosure relates.

6.4 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: EPA or an EPA officer; is engaging in, or proposing to engage in; 'improper conduct' and/or 'detrimental action'.

¹ 'Public officer' and 'public body' are defined for the purposes of section 3 of the PD Act by reference to section 6 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act)

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 5 of 18

6.4.1 Public officer and public body

The conduct you are disclosing must be in the performance of an EPA officer's or EPA'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's or body's functions as a public officer or public body.

Public bodies or public officers include EPA, its members and employees.

For a full definition of 'public body' and 'public officer' see section Appendix A of these procedures.

6.4.2 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 Section 4 of this document.

Examples of improper conduct

- An EPA officer takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.
- An EPA officer sells confidential information.
- An EPA officer favours unmeritorious applications for jobs by friends and relatives.

Examples of detrimental action

- EPA demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure or due to the making of a disclosure.
- An EPA officer threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure and against his or her family or friends.
- EPA discriminates against the person who makes a disclosure or against his or her family and associates in subsequent applications for jobs or tenders.

6.4.3 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 PD 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.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 6 of 18

6.5 How do I make a protected disclosure?

You may make a disclosure verbally or in writing. The disclosure may also be anonymous.

Verbal disclosure

You can make a verbal disclosure:

- in person
- by phone
- by leaving a voice mail message
- by any other form of electronic communication that does not require writing (note that an email is considered to be a written disclosure).

The disclosure **must** be made in private. This means that the person making the disclosure must reasonably believe that only the following people are present or able to listen to the conversation:

- the person making the disclosure
- a lawyer representing the person (if any)
- one or more people to whom a disclosure can be made under the PD Act or Regulations.

This does not preclude a group of individuals making of a joint disclosure at the one time.

If the disclosure is made verbally, the public body should ensure that the person receiving the disclosure makes notes at the time recording the disclosure. This person could also record the conversation, but should only do so with the discloser's permission or by giving prior warning that the conversation will be recorded.

Written disclosure

A written disclosure can only be provided to the relevant organisation by:

- personal delivery to the office of the organisation
- mail addressed to the office of the organisation
- email to the email address of the office of the organisation, or to the official email address of a person nominated in the organisation's procedures or in the PD Regulations to receive a disclosure.

IBAC and the Ombudsman can also accept a written disclosure via an online form.

Disclosures cannot be made by fax.

Anonymous disclosure

A discloser need not identify themselves to the organisation to make a disclosure to that organisation under the PD Act.

An anonymous disclosure can be made by using unverifiable email addresses, through anonymous phone calls or in a face-to-face conversation or meeting where the person refuses to identify themselves (provided that meeting or conversation takes place 'in private' in accordance with the PD Regulations).

If the disclosure comes from an email address where the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 7 of 18

6.6 Who do I make my protected disclosure to?

If you wish to make a protected disclosure about EPA or any of its public officers, you may make your disclosure to:

a) Protected Disclosure Coordinator
EPA Victoria
PO Box 4395
Melbourne Victoria 3001
Telephone: 03 9695 2798
Email: protected.disclosure@epa.vic.gov.au

OR

b) 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

7. HANDLING DISCLOSURES

7.1 What will happen after I make a disclosure?

The procedures in this part relate to disclosures made to EPA. Disclosures made to IBAC will be handled in accordance with IBAC's guidelines and processes.

7.1.1 Receipt of disclosures

The receipt of your disclosure to EPA will be acknowledged orally, or in writing (if a postal or email address is known). You will also be advised of the key steps involved in the process for handling your disclosure, including the timeframes involved.

7.1.2 Assessing disclosures

Upon receipt of your disclosure, the Protected Disclosure Coordinator will assess whether the disclosure complies with the requirements of the PD Act.

At this time, the Protected Disclosure Coordinator may also discuss with you the welfare support EPA will provide (for example, the appointment of a welfare manager) and the precautions EPA will take to prevent detrimental action taken in reprisal for you having made a disclosure.

In some circumstances, it may be necessary for EPA to report your disclosure to Victoria Police for immediate investigation. It may also be necessary for EPA to take action to prevent certain future conduct (including taking action against the person you have made the disclosure about).

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 8 of 18

7.1.3 Notification to IBAC

If EPA determines that your disclosure complies with the requirements of the PD Act, it must notify your disclosure to IBAC, in writing, within 28 days of you making the disclosure to EPA (s21(2) PD Act). Your disclosure will then be known as an 'assessable disclosure'.

EPA will advise you orally, or in writing (if a postal or email address is known) within 28 days of you making the disclosure to EPA that your disclosure has been notified to IBAC and that it is an offence under the PD Act to inform anyone that your disclosure has been notified to IBAC. EPA may also provide information to IBAC that it obtained while it was assessing whether your disclosure should be referred to IBAC.

If EPA determines that your disclosure does not comply with the requirements of the PD Act, it will advise you of this within 28 days of you making the disclosure to EPA. In that event, you may wish to seek that your disclosure be dealt with under the EPA's complaint handling process.

Protection for public officers

A public officer is given specific protections under the PD Act to provide information to other public officers or IBAC in dealing with a disclosure they have received. The public officer does not commit an offence under section 95 of the *Constitution Act* or other Act imposing a duty to maintain confidentiality, or breach confidentiality obligations or information disclosure restrictions when he or she acts in good faith and in accordance with the PD Act and Regulations and these guidelines.

7.1.4 Assessment by IBAC

IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.

Once EPA notifies your disclosure to IBAC, IBAC must assess within a reasonable time whether (in its view) your disclosure is a protected disclosure. It may seek additional information from you and/or EPA to make its decision.

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

- dismiss your disclosure;
- investigate your disclosure; or
- refer your disclosure to another body for investigation, such as the Ombudsman.

Regardless of whether IBAC determines your disclosure is a protected disclosure or not, you will still receive the protections under the PD Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

Once your disclosure is notified to IBAC:

- If IBAC determined it to be a protected disclosure complaint, you are unable to withdraw your disclosure, and may be asked to provide assistance to IBAC or investigating entity with their investigation.
- If IBAC determines that your disclosure is not a protected disclosure, the confidentiality requirements set out in section 7.6 below no longer apply.

7.2 What protections will I receive?

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

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 9 of 18

- 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 (s39 PD Act); and
- protection from an action for defamation (s 41 PD Act).

These protections apply to a disclosure from the time you make the disclosure and continue to apply even if EPA determines the disclosure does not comply with the requirements of the PD Act or IBAC determines that the disclosure is not a 'protected disclosure'.

The protections in the PD Act do not apply if you provide false or misleading information or claim 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 you provide to:

- EPA;
- IBAC; or
- an investigating entity.

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

7.3 Welfare management

EPA will provide welfare support to a discloser or a witness in an investigation as the circumstances require.

EPA will also consider appointing a welfare manager when a person has made a protected disclosure or is cooperating, or intends to cooperate, with an investigation.

In determining whether to appoint a welfare manager in any particular case, EPA 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 people involved, taking into account their particular circumstances;
- whether EPA can provide effective support to the people involved, including keeping them informed of the progress of the disclosure; and
- whether it is within EPA's power to protect the people involved from suffering repercussions.

EPA may nominate an employee as welfare manager or engage a contractor to provide welfare services. EPA will also consider referring an employee to its Employee Assistance Program.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 10 of 18

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 should discuss the reasonable expectations with the people they are supporting.

7.4 Protection from detrimental action

EPA will take precautions to prevent its officers 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 EPA 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 PD Act (as set out in section 7.2 of these procedures).

A disclosure of detrimental action is itself a protected disclosure and will be assessed by EPA as a new disclosure in accordance with these procedures.

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

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 public service body or public entity 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:

- the Chief Executive Officer (CEO) of EPA must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the CEO must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' public service body or public entity 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 PD Act sets out remedies that are available to you. You may wish to obtain legal advice about this.

While there are 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.

You must not disclose the content, or information about the content, of a disclosure that has been notified to IBAC by EPA or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the PD Act. See section 7.6 of these procedures for further information.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 11 of 18

7.5 What happens if a protected disclosure is made against me?

EPA 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 you during the handling and investigation of a disclosure as the circumstances require.

EPA will only disclose information about the subject of a disclosure in accordance with the law, including this PD Act (and as explained in these procedures).

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.

7.6 Confidentiality

There are a number of confidentiality obligations which arise under the PD Act and other laws relating to the receipt and investigation of protected disclosures.

Confidentiality provisions do not apply to a person who makes a protected disclosure (s40 PD Act), provided that person does not knowingly provide false or misleading information (s72 PD Act)

If you repeat your disclosure to someone other than as provided by these procedures or permitted by the PD Act, you may lose the protections provided for in the PD Act. For example, if a disclosure is repeated to the media and the media reports on it, you may not be protected from defamation action. You may also breach your confidentiality obligations.

If you are considering disclosing information about your disclosure, you may wish to speak to the Protected Disclosure Coordinator, your welfare manager and/or obtain legal advice first.

EPA will only disclose information about you or your disclosure in accordance with the law, including the PD Act. The PD Act prohibits the disclosure of information received in relation to a disclosure EPA has notified to IBAC except in certain limited circumstances.

The circumstances in which a person may disclose information obtained about a protected disclosure that EPA has notified to IBAC or information which is likely to lead to the identification of the person who made that disclosure include:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the disclosure including disciplinary process or action;
- IBAC has determined that the disclosure is not a protected disclosure;
- where necessary for the purpose of the exercise of functions under the PD Act;
- by an investigating entity where necessary for the purpose of the exercise of functions under the IBAC Act;
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary process or action in respect of conduct that would constitute an offence;
- for the purpose of obtaining legal advice or representation;

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 12 of 18

- to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the PD Act; and
- an investigating entity has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the PD Act (s52 PD Act).

The PD Act also prohibits disclosing information that is likely to lead to your identification unless permitted to do so in accordance with the PD Act (s53 PD Act).

IBAC or the relevant investigating entity may disclose your identity and the content of your disclosure if it is necessary for the purposes of their investigative action. In that case, the public body or public officer to whom the information has been disclosed is bound by the same confidentiality requirements.

7.7 Offences

A person who makes a disclosure will still be held liable for their own conduct that they disclose as part of the protected disclosure.

The person making a protected disclosure is not subject to criminal or civil liability for making the disclosure under section 39 of the PD Act, but section 42 of the PD Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the PD Act.

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

- it is an offence to take or threaten detrimental action against another person in reprisal for a protected disclosure (s45 PD Act);
- it is an offence to disclose the content, or information about the content, of a disclosure that EPA has notified to IBAC or information which is likely to lead to the identification of the person who made that disclosure unless permitted by the PD Act (Part 11 PD 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 (s72 PD Act);
 - falsely claim that a matter is the subject of a protected disclosure (s73 PD Act); and
 - falsely claim that a matter has been notified to IBAC (s74(2) PD Act);
 - disclose that a matter has been notified to IBAC (s74(1) PD Act); and
 - disclose that a matter has been determined to be a PD Complaint (s74(2) PD Act); and
 - disclose that IBAC has decided to investigate or refer a PD complaint (s184 IBAC Act).

Refer to Appendix C for civil and criminal penalties under the PD Act

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 13 of 18

7.8 Alternatives to making a protected disclosure

These procedures are designed to complement usual methods of submitting complaints to EPA.

Members of the public are encouraged to contact EPA at contact@epa.vic.gov.au about any complaints or concerns they have with the services provided by EPA.

EPA duty holders (such as an EPA-licensed or non-licensed businesses) who want to submit a complaint about the conduct of one of EPA's authorised officers should refer to the EPA Website for guidance - www.epa.vic.gov.au/about-us/authorised-officer-complaints.

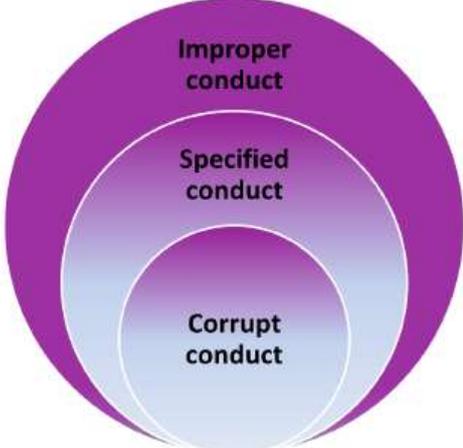
Employees are encouraged to raise matters with their supervisors and managers at any time.

8. REFERENCES

Resource type	Title	Description	Link or publication details
Legislation	Environment Protection Act 1970	Establishes the powers, duties and functions of EPA, including the Chairman's requirement to notify IBAC of apparent corrupt conduct.	Victorian Law Library today
Legislation	Independent Broad-based Anti-corruption Commission Act 2011	Establishes IBAC and facilitates the making of disclosures about, and investigation of, serious improper conduct by public bodies, or public officers.	IBAC Website: http://www.ibac.vic.gov.au/resources/legislation
Legislation	Protected Disclosure Act 2012	Establishes a legislative framework for receiving protected disclosures and protecting those who make them.	IBAC Website: http://www.ibac.vic.gov.au/resources/legislation
Guidelines	Guidelines for Making and Handling Protected Disclosures	A resource for disclosers, investigating entities and Victorian public service bodies on developing internal procedures, making, assessing and handling a disclosure, notifying IBAC, protections provided to disclosers and protecting disclosers from detrimental action.	IBAC Website: http://www.ibac.vic.gov.au/report-corruption-or-misconduct/protected-disclosure

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 14 of 18

APPENDIX A – GLOSSARY OF TERMS

Term	Definition
Corrupt conduct	<p>For the purposes of section 4(1) of the IBAC Act 2011, corrupt conduct means conduct of any—</p> <ul style="list-style-type: none"> (a) person that adversely affects the honest performance by a public officer or public body of their functions; or (b) public officer or public body that constitutes or involves the dishonest performance of their functions; or (c) public officer or public body that knowingly or recklessly breaches public trust; or (d) public officer or a public body that involves the misuse of information or material acquired in the course of the performance of their role or function, whether or not for the benefit of the public body or person; or (e) public officer or public body who conspires or attempts to engage in the above corrupt activity. <p>There is an overlap in the definitions of ‘corrupt conduct’ under the IBAC Act, and specified conduct under the PD Act. Essentially, all types of corrupt conduct are types of specified conduct, and improper conduct encompasses both corrupt and specified conduct (see diagram below).</p> <div style="text-align: center;">  </div> <p><i>Source: IBAC Guidelines for Making and Handling Protected Disclosure</i></p>
Discloser	a person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the PD Act)
Detrimental action	<p>Per section 3 of the PD Act includes—</p> <ul style="list-style-type: none"> (a) action causing injury, loss or damage; (b) intimidation or harassment; (c) discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action;

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 15 of 18

PROCEDURE
Making and handling protected disclosures



Improper conduct	Per section 4 of the PD Act improper conduct means— (a) corrupt conduct; or (b) specified conduct that is not corrupt conduct but that, if proved, would constitute— (i) a criminal offence; or (ii) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the officer who was, or is, engaged in that conduct.
Investigating entity	IBAC, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint
Public body	a public body within the meaning of section 6 of the IBAC Act , IBAC or any other body or entity prescribed for the purposes of this definition
Public officer	a public officer within the meaning of section 6 of the IBAC Act , an IBAC officer or any other person prescribed for the purposes of this definition
Protected disclosure	a) A disclosure made in accordance with Part 2 of the PD Act ; or b) A complaint made in accordance with section 86L(2A) of the <i>Police Regulation Act 1958</i> A complaint or allegation that is already in the public domain will not normally be a protected disclosure, for example if the matter has already been subject to media or other public commentary. The term 'disclosure' is interpreted under the PD Act in the ordinary sense of the word as a 'revelation' to the person receiving it.
Protected disclosure complaint	a disclosure that has been determined by IBAC under section 26 of the PD Act to be a protected disclosure complaint
Protected disclosure coordinator	The EPA employee nominated to receive disclosures of improper or corrupt conduct made in accordance with Part 2 of the PD Act . The designated EPA employee is the Senior Governance Officer in the Risk and Governance Unit.
Specified conduct	As per Section 4(2) of the PD Act , specified conduct is conduct— (a) of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or (d) of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d); or (f) of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that— (i) involves substantial mismanagement of public resources; or (ii) involves substantial risk to public health or safety; or (iii) involves substantial risk to the environment.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 16 of 18

APPENDIX B – ROLES AND RESPONSIBILITIES

Role	Responsibilities
Employees and contractors	<p>All employees and contractors are required to understand and discharge their responsibilities in relation to protected disclosures including:</p> <ul style="list-style-type: none"> reporting known or suspected incidences of improper conduct or detrimental action; supporting those who have made a protected disclosure; refraining from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure; and protecting and maintaining the confidentiality of a person they know or suspect to have made a disclosure.
EPA Chairman	<p>Under section 54C of the Environment Protection Act 1970 (the Act) the EPA Chairman is required to notify IBAC of any matter that appears to involve corrupt conduct.</p>
Protected disclosure coordinator (EPA Senior Governance Officer)	<p>The Protected Disclosure Coordinator (PDC) has a central role in protected disclosure handling and is responsible for:</p> <ul style="list-style-type: none"> conducting training and communication strategies to educate all staff regarding their responsibilities regarding protected disclosures; giving general advice about the making of disclosures under the PD Act; receiving disclosures from the public and/or public officers of EPA; assessing whether a disclosure meets all of the requirements in the PD Act, to be a protected disclosure and an 'assessable disclosure' that must be notified to IBAC; notifying the EPA Chairman of any matter that appears to involve corrupt conduct to enable the Chairman to notify IBAC; carrying out, or appointing an investigator to carry out an investigation into a disclosure matter as required; overseeing and coordinating an investigation where an investigator has been appointed; notifying the Welfare Manager to support the discloser; assessing and monitoring the welfare of the discloser and others involved; keeping the discloser informed of the progress of a disclosure matter; if a disclosure is not notified to IBAC, dealing with the disclosure in accordance with the EPA's complaint handling process; liaising with managers/supervisors in situations where a disclosure discloses improper conduct that may constitute criminal conduct or poses an immediate threat to the health and safety of individuals or preservation of property; maintaining confidentiality; establishing and maintaining a confidential filing system for disclosures; collating statistics about the number of protected disclosures received by the department for the annual report.
Investigator	<p>The investigator to be appointed by the PDC will be responsible for carrying out an internal investigation into a disclosure.</p>
Welfare manager (EPA Manager People and Culture)	<p>The Welfare Manager will:</p> <ul style="list-style-type: none"> Examine the immediate welfare and protection needs of a discloser who has made a disclosure and seek to foster a supportive work environment; Advise the discloser of the legislative and administrative protections available to him/her; Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure; and Ensure the expectations of the discloser are realistic.

Date approved: 27/5/2015	Status and version: FINAL v2.0	Date of next review: 27/5/2017
Content owner: Manager Corporate Strategy and Governance	Quality assured by: Senior Governance Officer	Page 17 of 18

APPENDIX C – CIVIL AND CRIMINAL PENALTIES

	Specific offences	Penalties	Limits on liability/defences
	Detrimental action		
	<p><i>Liability of an individual</i></p> <p>It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> a protected disclosure has been made a person believes a protected disclosure has been made a person believes that another person intends to make a protected disclosure 	<ul style="list-style-type: none"> Criminal penalty: 240 penalty units or 2 years imprisonment or both AND (if person is convicted or found guilty of an offence) Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage 	<ul style="list-style-type: none"> Reason for taking detrimental action is not a 'substantial' reason Discloser has made false disclosure or provided false information IBAC has determined the disclosure is not a protected disclosure complaint and the person taking detrimental action knew about that determination
Criminal offences	<p><i>Vicarious liability of their employer</i></p> <p>Employer may also be held to be jointly and civilly liable for the detrimental action of their employee or agent</p>	<ul style="list-style-type: none"> Criminal penalty: 240 penalty units or 2 years imprisonment or both AND (if person is convicted/ or found guilty of an offence) Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage 	<ul style="list-style-type: none"> Public body proves on balance of probabilities that it took reasonable precautions to prevent the employee/agent from taking detrimental action Policies, procedures and systems will assist in establishing reasonable precautions have been taken
	Disclosure of content of assessable disclosure		
	<p>A person/body must not disclose content of assessable disclosure or information about content</p>	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both (person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in ss52(3) and s54 PD Act
	Disclosure of identity of person making assessable disclosure		
	<p>A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure</p>	<ul style="list-style-type: none"> 120 penalty units or 12 months imprisonment or both (person) 600 penalty units (body corporate) 	<ul style="list-style-type: none"> Exceptions as set out in ss53(2) and s54 PD Act
	Detrimental action		
Civil action	<p>A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction</p>	<ul style="list-style-type: none"> Civil penalty: Court order for damages for any injury, loss or d. including exemplary damages 	
	<p>Injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a protected disclosure</p>		