
C10. Public Interest Disclosure – SUMMARY

A public interest disclosure is a disclosure made in line with the Public Interest Disclosures Act 2012.

What is a public interest disclosure?

A public interest disclosure is a report made by an individual about:

- improper conduct of public officers or public bodies
- detrimental action that a public officer or public body has taken against a person in reprisal for having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.

Who can make a public interest disclosure?

Any individual (for instance, an employee of LanguageLoop, a member of the public or a stakeholder) may make a disclosure.

A person who makes a public interest disclosure is known as a discloser, or colloquially as a 'whistle blower'.

What can I make a public interest disclosure about?

You may make a disclosure about improper conduct and detrimental action taken by public bodies or public officers performing public functions. This includes LanguageLoop.

Improper conduct is defined in the PID Act. Examples of improper conduct include serious professional misconduct, intentional or reckless breach of public trust and conduct adversely affecting the honest performance of a public officer.

A disclosure can relate to conduct or action that:

- may have already taken place
- may be occurring now
- may happen in the future.

How do I make a disclosure?

You can make a disclosure about LanguageLoop or its staff by contacting:

1) Your Manager or Director

2) LL Protected Disclosure Officer. The Protected Disclosure Officer is the Chair of the Board.

3) IBAC. Disclosures and complaints to IBAC must be made in writing by:

- completing IBAC's [online complaints form](http://www.ibac.vic.gov.au/reporting-corruption/report) at www.ibac.vic.gov.au/reporting-corruption/report or
- downloading a copy of a [complaint form](#) and sending it to the email or postal address on the form. For further information call 1300 735 135 or visit www.ibac.vic.gov.au

4) Victorian Ombudsman. The Ombudsman can be contacted:

- by phone on 1800 806 314

- Via the Ombudsman's [online form](http://www.ombudsman.vic.gov.au/complaints/make-complaint/) at www.ombudsman.vic.gov.au/complaints/make-complaint/
- Post: Level 2, 570 Bourke Street, Melbourne, Victoria 3000

What happens after I make a disclosure?

LanguageLoop will conduct an assessment to determine if your disclosure meets the threshold of a public interest disclosure. If your disclosure meets this threshold, LanguageLoop is obligated to refer the matter to IBAC for further assessment.

If your disclosure is not assessed as a public interest disclosure, LanguageLoop will consider what other action should be taken, including whether the matter should be investigated internally.

What kind of protections do disclosers have?

Once a report has been formally assessed by LanguageLoop or IBAC as a public interest disclosure, the discloser receives a number of protections. The discloser:

- cannot be fired, disciplined or bullied for making a disclosure
- is not subject to any civil or criminal liability for making a disclosure
- is not committing an offence against the Constitution Act 1975 or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information
- is not breaching any other obligation (made by oath, rule of law or practice) requiring them to maintain confidentiality or otherwise restrict confidentiality
- cannot be held liable for defamation in relation to information included in a public interest disclosure.

In most circumstances, the content of a public interest disclosure, and the identity of the discloser, must also be kept confidential.

Purpose of the Public Interest Disclosures Act

The PID Act aims to:

- encourage and assist people to report improper conduct and detrimental action taken in reprisal for a public interest disclosure
- provide certain protections for people who make a disclosure or those who may suffer detrimental action in reprisal for a disclosure
- ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure and the content of that disclosure.

More information

LanguageLoop's full policy follows this Summary.

C10. Public Interest Disclosure Policy – FULL POLICY

Policy Owner: Director Corporate Services/CEO

This Procedure is based on the Department of Families, Fairness & Housing (DFFH) *Public Interest Disclosure Procedures – June 2023*. It helps anyone who wants to report wrongdoing within VITS LanguageLoop (LL).

It describes:

- how to make a disclosure under Victoria's public sector whistleblower laws – *the Public Interest Disclosures Act 2012* (the PID Act)
- what happens to those disclosures
- legal and other protections for people who make disclosures.

The Procedure also helps staff and other people handle disclosures and understand their rights and obligations under the PID Act.

VITS LanguageLoop is a public body under the Act. Employees and board members of VITS LanguageLoop are public officers under the Act.

VITS LanguageLoop implements the Act by:

- I. Encouraging its board members and staff to raise matters of concern internally, so that they can be appropriately addressed by the organisation
- II. Applying the principles of natural justice in any investigation of a public interest disclosure
- III. Recognising that staff and board members against whom disclosures are made must also be supported during the handling and investigation of complaints
- IV. Protecting whistleblowers against detrimental action taken in reprisal for the making of protected disclosures
- V. Taking all reasonable steps to ensure the confidentiality of both the whistleblower and the person who is subject to disclosure

This procedure does not replace existing organisational grievance processes.

Generally, activity that is primarily directed at a staff member, like harassment or bullying, are personal grievances and fall outside this procedure. Other organisational procedures are available to deal with such matters. This procedure should only be followed if a staff member, Board member or member of the public elects to make a disclosure of alleged improper conduct or detrimental action and the disclosure is in accordance with Part 2 of the Act.

DEFINITIONS

Public interest disclosure means:

A public interest disclosure is a report about wrongdoing which meets specific requirements set out in the PID Act. A public interest disclosure is a disclosure by a person:

- about improper conduct or detrimental action
- by a public officer or a public body or, in some cases, another person¹
- where the information shows or tends to show, or the discloser has a reasonable belief that it shows or tends to show, that the conduct has occurred in the past, is occurring now or will occur in the future.

Improper conduct means:

Improper conduct is not limited to corrupt conduct. It also includes other misconduct, such as conduct by a public officer or body that constitutes a criminal offence, serious professional misconduct, dishonest performance of public functions or conduct that constitutes a substantial risk to the health of one or more people. See Appendix 1 for more information.

Examples of improper conduct include:

- taking or offering bribes
- misusing information or material acquired at work
- committing fraud, theft or embezzlement
- misusing power to harm, oppress or disadvantage a person
- stealing public resources such as money or equipment
- using a corporate credit card to buy personal items
- accepting gifts or hospitality from someone in return for special treatment
- favouring a relative or friend for a department job or contract.

Detrimental action means:

Detrimental action is actual or threatened action taken in reprisal for someone:

- making or intending to make a public interest disclosure
- cooperating or intending to cooperate with an investigation into a disclosure.

Examples of detrimental action include harassment, discrimination and other adverse treatment in employment (such as demotion, isolation or transfer).

See Appendix 1 for more information on what can be detrimental action under the PID Act.

DISCLOSURES

Disclosures can be made about:

- public officers
- public bodies, such as the department, its administrative offices and portfolio agencies.
- a person or body performing a public function on behalf of the State, public body or public officer. This includes contractors, consultants, volunteers and funded

¹ A person who is not a public officer can engage in improper conduct where their conduct adversely affects, or is intended to adversely affect, the honest performance by a public officer or public body of their functions. A person who is not a public officer can engage in detrimental action.

agencies. An example would be a community service organisation delivering out-of-home care services, or a volunteer sitting on a grant assessment panel.

- a person who is not a public officer or is not employed by a public body, where their conduct is (or is intended to) adversely affect the honest performance of a public body or public officer. An example would be a member of the public who tries to bribe a public officer.
- example would be a member of the public who tries to bribe a public officer.

LL can receive disclosures where they relate to the conduct of LL or its employees.

For disclosures about other bodies and who to make them to, refer to IBAC's website: www.ibac.vic.gov.au.

People can still make a disclosure even if they cannot identify the person or the body to whom the disclosure relates. In those cases, they should make the disclosure directly to IBAC.

A person can make a disclosure where they have information that:

- shows or tends to show that improper conduct or detrimental action has occurred, is occurring or is going to occur; or
- they reasonably believe shows or tends to show that improper conduct or detrimental action has occurred, is occurring or is going to occur.

A reasonable belief requires more than a suspicion—the belief must have supporting facts and circumstances. For example, a disclosure cannot be a one sentence statement like 'I know XYZ is corrupt'.

The test is whether a reasonable person, who has the same information, could believe that the person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct or take detrimental action against a person.

MAKING A PUBLIC INTEREST DISCLOSURE

Who can make a disclosure?

Anyone can make a public interest disclosure, including:

- members of the public and employees of a public body
- individuals or a group of people (joint disclosures can be made by more than one person making a disclosure together), but not a company or business.²

A person can ask another person to make a disclosure on their behalf. However, only the second person will receive the full protections of the PID Act.

People who have concerns about identifying themselves can make a disclosure anonymously (please see relevant section below). They still retain the protections available under the PID Act. However, it is helpful if anonymous disclosers provide

² Although a company or business cannot make a disclosure, its officers and employees can. A disclosure must be made by a natural person, not by a company or business.

some method of contact, such as a deidentified phone number or email address, in case the department or investigative bodies need more information.

information.

To ensure the protections available from the PID Act apply, disclosures must be made to an organisation that is authorised to receive disclosures (please see relevant section below).

Who can receive a disclosure?

Anyone who would like to make a public interest disclosure about the conduct of LanguageLoop or its employees can do so via one of the following options:

5) Your Manager or Director

6) LL Protected Disclosure Officer. The Protected Disclosure Officer is the Chair of the Board.

7) IBAC. Disclosures and complaints to IBAC must be made in writing by:

- completing IBAC's [online complaints form](http://www.ibac.vic.gov.au/reporting-corruption/report) at www.ibac.vic.gov.au/reporting-corruption/report or
- downloading a copy of a [complaint form](#) and sending it to the email or postal address on the form. For further information call 1300 735 135 or visit www.ibac.vic.gov.au

8) Victorian Ombudsman. The Ombudsman can be contacted:

- by phone on 1800 806 314
- Via the Ombudsman's [online form](http://www.ombudsman.vic.gov.au/complaints/make-complaint/) at www.ombudsman.vic.gov.au/complaints/make-complaint/
- Post: Level 2, 570 Bourke Street, Melbourne, Victoria 3000

Misdirected disclosures

There is 'no wrong door' for making a public interest disclosure. This means that if LL receives a disclosure that PID Act does not allow it to receive, it takes one of two actions:

- If the person honestly believes they complained to the right place, and the public body or officer is within IBAC's jurisdiction – LL must assess the disclosure and decide if it is a potential public interest disclosure – the protections under the PID Act still apply.
- If LL has reason to believe the person knows they have complained to the wrong organisation – LL will help them secure the protections under the PID Act by advising:
 - what organisations can receive their disclosure; and
 - that the disclosure is not protected under the PID Act until it is received and assessed as a public interest disclosure by an organisation who can receive it.

How to make a disclosure

Disclosures must be made in line with the PID Act to qualify for the protections provided in that Act. Disclosures can be made verbally or in writing. They can also be made anonymously.

Private verbal disclosure

People can make a disclosure in person, by phone or by leaving a voice mail message for a person.

Verbal disclosures must be made in private. This means that the discloser must reasonably believe that the only other people present or able to hear the conversation are:

- a lawyer representing the discloser (if any)
- one or more people receiving the disclosure under the PID Act or PID Regulations.

This does not stop a group of individuals from making a joint disclosure.

If the disclosure is made verbally, the person receiving the disclosure should make notes at the time. This person can also record the conversation, but only if the discloser gives that person permission to do so.

Written disclosure

People can make a written disclosure to LanguageLoop by:

- delivering it in person to the CEO, Director of Corporate Services, Director of Operations, or the Protected Disclosure Officer (the Chair of the Board).
- emailing it to the CEO, Director of Corporate Service, Director of Operations, or the Protected Disclosure Officer (the Chair of the Board).

Written disclosures can also be made directly to IBAC or the Victorian Ombudsman in the ways listed above.

Anonymous disclosure

A discloser does not need to identify themselves if they do not want to.

People can make an anonymous disclosure by using a non-identifying email address, making an anonymous phone call or face-to-face (provided the meeting or conversation takes place in private in accordance with the PID Regulations).

A discloser can use a pseudonym or a fake name for future contact if they wish.

It is always preferable to provide a method for contact, even while maintaining anonymity. Otherwise, LL's or IBAC's ability to assess the disclosure, request additional information or take necessary steps may be limited.

If the discloser cannot be identified from the information they provide, it will be treated as an anonymous disclosure.

When making a disclosure, it is helpful to provide:

- a description of the alleged improper conduct or detrimental action
- information about who is involved, and where and when the conduct occurred, is occurring or may occur
- the grounds for believing the conduct occurred, is occurring or may occur
- any supporting documentation.

It is preferable if the discloser refers to the PID Act or says that they want the matter to be treated as a disclosure. If it is not clear whether a person wants to make a public interest disclosure, the department may ask them to confirm in writing that the disclosure was intended as a public interest disclosure and therefore may be notified to IBAC.

If a person makes a disclosure and then decides that they do not want the report to be treated as a public interest disclosure, they must advise LL within 28 days of making the disclosure.

HANDLING DISCLOSURES

Receipt

Where a disclosure is made to a manager/director, it must be referred to the LL Protected Disclosure Officer as soon as possible.

LL Protected Disclosure Officer will contact the discloser to acknowledge receipt of the disclosure verbally or in writing, unless the disclosure does not provide any contact details. The LL Protected Disclosure Officer will also advise the discloser of the key steps in the process.

Assessment

The LL Protected Disclosure Officer will assess whether the disclosure meets the criteria for a public interest disclosure under the PID Act within 28 days of receiving it.

For an allegation or a report to be considered a public interest disclosure, it must:

- be about improper conduct or detrimental action by a public officer or a public body or, in some cases, another person³
- show or tend to show, or the discloser must have a reasonable belief that the information shows or tends to show, that the conduct has occurred in the past, is occurring now or will occur in the future.

In assessing whether the disclosure meets these requirements, the LL Protected Disclosure Officer will consider all information provided about the alleged conduct and assess whether it meets the definitions under the Act.

Factors that may be considered include:

- What is the discloser's connection to the alleged conduct? Are they a victim, a witness, or a participant?
- How did the discloser come to know about the conduct? Were they directly involved in it? Did they observe it happening to another person? Did someone else tell them about it?

³ A person who is not a public officer can engage in improper conduct where their conduct adversely affects, or is intended to adversely affect, the honest performance by a public officer or public body of their functions. A person who is not a public officer can engage in detrimental action.

- How detailed is the information provided? Is there sufficient information to enable the department to consider whether there is improper conduct or detrimental action?
- How reliable is the information? Is it supported by other information?

The LL Protected Disclosure Officer may:

- seek further information from the discloser
- make discreet and limited enquiries to obtain further information about the disclosure
- discuss welfare support available to the discloser
- discuss the steps the department will take to prevent possible detrimental action being taken against the discloser in reprisal for having made a disclosure.

Notification of assessment

The department will notify the discloser of the outcome of its assessment.

If we assess that the disclosure is a public interest disclosure, LL will:

- notify IBAC in writing, within 28 days after the disclosure was made, that:
 - the disclosure is a public interest disclosure
 - LL is sending the disclosure to IBAC for further assessment and possible action, as required by the PID Act.
- provide IBAC with any information obtained regarding the disclosure during LL's enquiries. This information can be provided by LL at the time of notification, or at any later time.

notify the discloser in writing, within 28 days after the disclosure was made, that the disclosure has been sent to IBAC for assessment (unless no contact details have been provided).

If we assess that the disclosure is not a public interest disclosure, LL will notify the discloser in writing, within 28 days after the disclosure was made, that:

- it does not consider the disclosure shows or tends to show improper conduct or detrimental action
- the disclosure has not been sent to IBAC (or other relevant bodies) for assessment⁴
- the discloser's identity does not have to be kept confidential, but protections under Part 6 of the PID Act apply
- the discloser can choose to approach IBAC directly.

LL will only provide the discloser with this information if they have:

- provided contact details
- indicated (or it otherwise appears) that they wish to receive the protections that apply to a public interest disclosure under the PID Act.

⁴ The PID Act requires disclosures about some bodies or officers to be sent to organisations other than IBAC. For example, disclosures about IBAC officers that meet the requirements of the Act are notified to the Victorian Inspectorate. Disclosures about the Victorian Inspectorate that meet the requirements of the Act are notified to the Integrity and Oversight Committee.

LL will also consider whether the disclosure could be dealt with according to LL's complaint handling procedures or misconduct processes.

Other reporting obligations

LL may be obliged to notify IBAC of the disclosure even if the discloser later withdraws their disclosure where there are reasonable grounds for suspecting corrupt conduct is occurring or has occurred.

In some circumstances, it may also be necessary for LL to:

- report information disclosed to Victoria Police for immediate investigation
- take action to prevent certain future conduct from occurring (including possible action in relation to the subject of the disclosure)

External disclosures

In certain limited circumstances, a person can make a disclosure to someone other than LL or people listed above. One example is where the investigating entity has significantly delayed in responding or updating the discloser.⁵

A practical example could be where a discloser gives the content of their public interest complaint to a journalist because IBAC has not provided an outcome letter within six months and has not responded to contact from the discloser within 30 days.

People are encouraged to contact IBAC for advice before making an external disclosure.

IBAC ASSESSMENT

When IBAC receives a public interest disclosure, it must determine whether the disclosure is a 'public interest complaint'.

IBAC advises the following people of its determination in writing:

- the relevant notifying entity; and
- the discloser, advising of the action it intends to take and the protections that apply.

If the disclosure is a public interest complaint

If IBAC determines that the disclosure is a public interest complaint, the complaint is protected.

IBAC may choose to:

- **investigate** the complaint
- **refer** the complaint to:
 - the Victorian Ombudsman, Victoria Police (if a criminal matter), Chief Municipal Inspector, Information Commissioner, Racing Integrity Commissioner or Judicial Commission to investigate
 - another public body for action (with the discloser's consent).

⁵ External disclosures are disclosures that can be made to a person or body who is not an entity to whom a public interest disclosure can be made under the PID Act. For further information on external disclosures, please refer to section 38A of the PID Act.

- **take no further action.** IBAC may close or dismiss the complaint. This may occur for several reasons, such as it considers that the complaint:
 - lacks substance or credibility
 - is vexatious or trivial
 - is about a matter that neither IBAC, nor a body specified in the IBAC Act, can investigate.

If the disclosure is not a public interest complaint

If IBAC determines that the disclosure is **not** a public interest complaint, the identity of the discloser does not have to be kept confidential but certain protections still apply.

IBAC may choose to:

- **refer** the matter to another agency, such as the Victorian Ombudsman, to investigate
- **refer** the matter back to LL for consideration
- **refer** disclosures about Victoria Police misconduct to the Chief Commissioner of Police
- **take no further action** under the PID Act.

More information on the actions that IBAC can take, see IBAC's [Guidelines for handling public interest disclosures](#).

Urgent action while a disclosure is being assessed

In some instances, disclosures can relate to conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct.

Examples are:

- a child protection worker allegedly harming children in care
- a housing officer disclosing confidential client information that may put clients at risk
- the theft of high-value assets.

In these cases, LL can take immediate action while considering whether to notify IBAC, or while waiting for IBAC's decision. LL can also report criminal conduct to Victoria Police for immediate investigation or take management action against an employee to prevent future misconduct.

PROTECTIONS

When do protections apply?

A discloser receives certain protections under the PID Act if they make a disclosure to a person or organisation authorised to receive it and it is assessed as a public interest disclosure.

How the discloser is protected

The discloser:

- cannot be fired, disciplined, or bullied for making a disclosure (known as detrimental action)
- is protected from defamation action in relation to information included in a public interest disclosure.

The discloser also receives immunity from:

- civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
- committing an offence under section 95 of the *Constitution Act 1975* (Vic) or a provision of any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of information
- breaching any other obligation (made by oath or affirmation, rule of law, practice, or under an agreement) requiring the discloser to maintain confidentiality or otherwise restricting disclosure of information.

Disclosers who provide false or misleading information, or were involved in the wrongdoing, should be mindful of the limits of these protections (see Limits on protections below).

Protection from detrimental action

LL will not tolerate detrimental action against any person for making a disclosure. LL will take steps to identify, assess, control and monitor risks of reprisals faced by disclosers and witnesses.

When the Protected Disclosure Officer receives a report of detrimental action, they:

- will record the details
- will advise the person of their rights under the PID Act
- may treat the report as a new disclosure under the PID Act if the detrimental action is likely to amount to a criminal conduct, consider reporting the matter to Victoria Police or IBAC.

An employee who has made a disclosure and believes they are the subject of detrimental action may also request a transfer of employment in certain circumstances. The Protected Disclosure Officer will monitor discloser and witness work arrangements to minimise the opportunity for detrimental action and the adverse impact of investigations.

It is also an offence to take detrimental action against a person.

Taking legal action

A person may take legal action if they have sustained injury, loss, or damage as a result of detrimental action in reprisal for making a disclosure or assisting an investigation. The PID Act sets out remedies that are available. A person considering legal action under the PID Act may wish to obtain legal advice about their options.

Limits on protections

The above protections do not apply if the discloser:

- knowingly provides false or misleading information

- claims that a matter is the subject of a public interest disclosure, or has been determined to be public interest complaint, knowing that this is not true.

The PID Act also specifically states that a person is still liable for their own conduct even if they disclose that conduct. This means, for example, that a person who has engaged in improper conduct cannot escape the consequences by disclosing their own wrongdoing under the PID Act.

An employee who makes a disclosure is not protected against legitimate management action being taken in relation to them.

CONFIDENTIALITY

Confidentiality is another protection provided to disclosers and other people involved in a public interest complaint.

There are two main restrictions on disclosing information. These are outlined below. Breaching either of these restrictions is an offence.

These two restrictions do not apply to the discloser. However, disclosers who publicise the content of their disclosure and reveal their own identity can impede the fair assessment and investigation of matters and increase the risk of reprisals. Disclosers are encouraged to speak with the Protected Disclosure Officer before sharing this type of information.

Content of a public interest disclosure

The PID Act prohibits disclosure of the content, or information about the content, of any disclosure that has been assessed as a public interest disclosure.

This restriction applies to a person or body that receives a disclosure or is provided information about the disclosure by an investigating entity assessing or investigating it.

Identity of a person making a public interest disclosure

This PID Act prohibits disclosure of information that would be likely to lead to the identification of a person who has made a public interest disclosure.

This restriction applies to any person or body other than the discloser.

If IBAC assesses that a disclosure is not a public interest complaint, these confidentiality requirements cease to apply.

Where the disclosure proceeds to an investigation, IBAC and other investigating entities may issue a confidentiality notice in circumstances where disclosure of certain types of information is likely to prejudice the investigation, safety or reputation of a person or the fair trial of a person.

Exceptions to confidentiality requirements

Confidentiality requirements do not apply in certain circumstances, such as when:

- a body is exercising its functions under the PID Act. One example would be where the department discloses information to IBAC when notifying it of a public interest disclosure.
- it is necessary to investigate a public interest complaint (note that disclosure is only permitted by an investigating entity for the purpose of the exercise of functions under the PID Act)
- it is not a public interest complaint (as determined by IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee) and the disclosure occurs after this determination
- it is relevant to an investigation by Victoria Police into criminal conduct, the disclosure is to Victoria Police and an investigating entity has previously disclosed the information to the Chief Commissioner of Police relating to actual or potential criminal conduct
- it is for the purpose of:
 - a proceeding or a disciplinary process under a relevant Act
 - helping the discloser to seek advice or support from a registered health practitioner, trade union or employee assistance program
 - a workers compensation claim (to the Victorian WorkCover Authority) or an application to the Fair Work Commission
 - the discloser obtaining legal advice or representation, interpretive services, the advice of a parent or guardian (for disclosers under 18 years), the advice of an independent person (for disclosers who are illiterate or have mental or physical impairments).

The content of a disclosure can also be released where:

- it is in accordance with a direction or authorisation from the investigating entity that is investigating the public interest complaint
- the disclosure is necessary for taking lawful action in relation to the conduct that is the subject of the disclosure.

The identity of a person making a disclosure does not need to be kept confidential if the discloser gives written consent.

How we protect information

LL has a secure information management system for the receipt, storage, assessment and notification of public interest disclosures.

Only employees who are Protected Disclosure Officers have access to this system. Protected Disclosure Officers are responsible for ensuring all electronic records have:

- adequate security restrictions on all files
- cannot be viewed by high level data administrators.

Protected Disclosure Officers will develop a risk management plan for every disclosure to manage the risk of confidentiality breaches.

All printed material held at LL concerning public interest disclosure matters is kept in files that are clearly marked as a PID Act matter with appropriate warnings. These documents are also held in locked cabinets and only accessible to Protected Disclosure Officers.

LL will also limit to the greatest possible extent, the number of people who can be made aware of the discloser's identity, or information that could identify the discloser.

All external requests for information by IBAC or the Victorian Ombudsman are handled in confidence with minimal details provided by the Protected Disclosure Officer when they are gathering information or contacting parties.

LL requires all employees to take care to preserve the confidentiality of information in relation to public interest disclosures. For example, LL reminds employees to:

- take care when emailing information relevant to a public interest disclosure
- conduct all phone calls and meetings in relation to a public interest disclosure in private
- transmit hard copy documents securely by placing them in two successive windowless envelopes which are sealed and marked “private and confidential” and “to be opened by addressee only” and are personally delivered wherever possible.

Documents that disclose information about the identity of a person who has made a public interest disclosure, or include information relating to a public interest disclosure, are not subject to the *Freedom of Information Act 1982 (Vic)* (FOI Act). LL will contact IBAC before providing any document originating from IBAC or relating to a public interest disclosure, if requested under the FOI Act.

Reporting obligations

Under the PID Act LL will include in its annual report:

- information about how to access this policy
- the number and types of disclosures notified to IBAC in that financial year.

LL will not include any information that could lead to the identification of a person who has made a disclosure.

OFFENCES AND DISCIPLINARY ACTION

A breach of the PID Act may amount to a criminal offence. Some of these offences may attract a criminal penalty of up to 240 penalty units, two years imprisonment or both. For example, it is an offence to:

- take, threaten to take, or incite another person to take detrimental action against someone in reprisal for a public interest disclosure (section 45 of the PID Act)
- disclose the content of a public interest disclosure (section 57 of the PID Act)
- disclose the identity of person who has made a public interest disclosure (or information likely to lead to that person's identification) (section 53 of the PID Act)
- make a false disclosure (section 72 of the PID Act)
- falsely claim that a matter is the subject of a public interest disclosure (section 73 of the PID Act).

If a person is convicted or found guilty of an offence, there may also be a possible court order for reinstatement or reemployment of a person who has been subjected to detrimental action. A civil penalty (damages to compensate for injury, loss or damage) may also apply.

Disciplinary action against a discloser

Taking disciplinary or other action against a person who has made a disclosure may create the perception that the action is in reprisal for the disclosure. Where the

department is contemplating disciplinary or other action it takes care to demonstrate that:

- the fact that a person has made a public interest disclosure is not a part of the reason for taking action against the employee
- there are good and sufficient grounds that would fully justify action against any other person in the same circumstances
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

If LL cannot demonstrate the above conditions have been met, it leaves itself open to allegations of taking detrimental action against a person for having made a public interest disclosure.

Care is taken to thoroughly document the process. This includes recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the public interest disclosure.

LL should seek legal advice before taking any action against a person who is suspected or known to have made a public interest disclosure.

The discloser will be clearly advised of the proposed action to be taken and of any mitigating factors that have been considered.

Disciplinary action against the subject

There may be circumstances where the subject of a public interest disclosure is stood down from work pending an investigation and is subject to an internal misconduct process.

Under the *Public Administration Act 2004* (Vic), 'misconduct' includes:

- contraventions of a provision of the *Public Administration Act 2004*, its regulations, or breaches of the Code of Conduct for Victorian Public Sector Employees
- improper conduct in an official capacity
- an employee making improper use of their position.

If an employee or supplier has breached criminal law, then they may be subject to prosecution.

WELFARE SUPPORT

It takes courage to speak up and make a disclosure about improper conduct by a public official or public body.

LL recognises that it must protect the welfare of persons making public interest disclosures. This is essential for the effective implementation of the PID Act and is relevant to LL's obligation to create a safe working environment under the *Occupational Health and Safety Act 2004* (Vic), the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Public Administration Act 2004*.

LL also recognises that involvement in investigations of any kind may be challenging and stressful for employees.

Welfare support for disclosers and co-operators

LL will provide support to:

- disclosers
- people who are cooperating, or intend to cooperate, with an investigation or enquiries about a public interest disclosure (such as witnesses).

The type of support depends on the circumstances. It generally includes:

- acknowledging the discloser for coming forward
- speaking with the discloser to understand what outcome they are seeking, and explaining what LL can deliver
- keeping the discloser informed
- maintaining confidentiality
- assessing the risks to the welfare of people involved in the disclosure and developing risk management plans
- listening and responding to any concerns about detrimental action
- aiming to prevent the spread of gossip and rumours about an investigation
- keeping records of welfare support, including contact and follow up actions.

LL may appoint a welfare manager to coordinate welfare support. In most cases, this is only required where a public interest disclosure proceeds to investigation, but each case is considered on its merits. LL may appoint an internal person as the welfare manager or engage a contractor to provide welfare services. Welfare managers can only be expected to provide reasonable support. They will discuss reasonable expectations with the person they are supporting.

LL will also consider referring an employee to its EAP.

Welfare support for subjects

LL recognises that until a public interest complaint is dismissed or investigated, the allegations against the subject of the disclosure are only allegations.

The subject may not always be informed about the allegations. LL may not reveal this information because of the confidentiality provisions in the PID Act. Investigating entities may inform the subject for the purposes of conducting their investigation or taking action as a result of the investigation. The subject may never be informed if IBAC determines the matter is not a public interest complaint, or a decision is made to dismiss the matter.

nes the matter is not a public interest complaint, or a decision is made to dismiss the matter.

If the subject becomes aware of the allegations, LL may consider welfare support. The type of support will depend on the circumstances. It may include LL:

- taking reasonable steps to ensure confidentiality during the process. However, an investigating entity may disclose the subject's identity as part of its investigation including, in some cases, publishing the subject's name in public hearings or its investigation report. LL may also need to disclose the subject's identity for the purpose of taking separate misconduct or management action while the disclosure is being assessed or investigated.
- e misconduct or management action while the disclosure is being assessed or investigated.

- referring the subject to LL's EAP.
- if the disclosure is dismissed or not substantiated on investigation, maintaining confidentiality in relation to the subject's identity, the fact of the investigation and any results.

Investigating entities such as IBAC and the Victorian Ombudsman have certain obligations to provide procedural fairness before making adverse findings. People involved in investigations can obtain more information about these processes from the investigating entity.

If someone has been the subject of allegations that are wrong or unsubstantiated, LL will work to ensure there are no adverse consequences arising out of the disclosure or its investigation. This is particularly crucial where the person's identity has been publicly disclosed, or where such information has become well known across within LL.

ROLES AND RESPONSIBILITIES

All employees

- Always act with the highest standards of integrity.
- Abide by the Code of Conduct for Victorian Public Sector Employees and this policy.
- Report corrupt and improper conduct and/or detrimental action.
- Not engage in conduct that is, or could be perceived to be, improper conduct or detrimental action.
- Maintain confidentiality of any disclosures that they make or receive, or that they become aware of (unless an exception applies).

Managers and Directors

In addition to the above, managers and supervisors are responsible for:

- Receiving disclosures in accordance with this policy
- Notifying the Protected Disclosure Officer or referring the discloser to the Protected Disclosure Officer to make their disclosure directly
- Forwarding potential disclosures and supporting evidence promptly to the Protected Disclosure Officer for assessment
- Ensuring confidentiality of the identity of the person who has made the disclosure, the content of the disclosure and the person who is the subject of the disclosure. This includes:
 - arranging for disclosures to be made privately
 - not 'reporting up' and only providing the information to the Protected Disclosure Officer, or IBAC.

Penalties may apply to any breach of confidentiality.

Protected Disclosure Officer/s

The Protected Disclosure Officer/s are nominated employees within LL who receive and notify IBAC of potential public interest disclosures. The Protected Disclosure Officer/s are responsible for:

- Providing advice about making disclosures under the PID Act.
- Receiving disclosures, including phone calls, emails and letters from members of the public or employees.
- Assessing disclosures and where necessary collecting further information and evidence to inform this assessment.
- Notifying IBAC of public interest disclosures within 28 days of the disclosure and providing IBAC with the relevant information.
- Notifying disclosers within 28 days of receiving the disclosure whether their disclosure has been notified to IBAC.
- Liaising with managers/directors in situations where a discloser reports improper conduct that may constitute criminal conduct or pose an immediate threat to the health and safety of individuals or preservation of property.
- Maintaining confidentiality, including establishing a confidential filing system for disclosures and securely storing information about disclosures.
- Ensuring compliance with the PID Act and PID Regulations, the IBAC Act and IBAC guidance including keeping appropriate records.
- Responding to IBAC and other investigating entities on public interest disclosures or complaints that are subject to assessment, investigation or review by IBAC and other external integrity agencies, including providing evidence to those agencies.
- Assisting with education on how to raise disclosures and increasing knowledge of the public interest disclosure framework.
- Collecting statistics on public interest disclosures for annual reporting purposes.
- Performing a welfare function, including:
 - monitoring the welfare of the discloser and others involved in a public interest disclosure
 - appointing a welfare manager where required
 - providing disclosers and witnesses with information about public interest disclosures and the IBAC process and reminding them of their obligations under legislation
 - assisting with the practical operation of public interest disclosure / complaint investigations and enquiries, such as discreetly arranging leave for employees where required for the purpose of giving evidence
 - when requested, connecting disclosers and witnesses with access to legal representation and specialist welfare support
 - monitoring discloser and witness work arrangements to minimise the opportunity for detrimental action and the adverse impact of investigations.

REVIEW OF THIS PROCEDURE

These procedures are reviewed at least every three years to ensure that they meet the objectives of the PID Act and accord with IBAC's guidelines.

RELATED DOCUMENTS

- *Public Interest Disclosures Act 2012 (Vic)*
- *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*

- *Public Administration Act 2004 (Vic)*
- *Code of Conduct for Victorian Public Sector Employees*
- *Managing misconduct procedure VPS 2020*
- *Victorian Public Sector Commission Management of Misconduct Common Policy*
- *Constitution Act 1975 (Vic)*
- *Occupational Health & Safety Act 2004 (Vic)*
- *Charter of Human Rights and Responsibilities Act 2006 (Vic)*

Appendix 1: Improper conduct and detrimental action

A public interest disclosure must meet the requirements of the PID Act. It must be a disclosure about improper conduct or detrimental action which shows or tends to show that the conduct has occurred, may be occurring now or will happen in the future by a person, public body or public officer. The terms 'improper conduct' and 'detrimental action' are defined in the PID Act.

Improper conduct

'Improper conduct' is defined in the PID Act to include:

- corrupt conduct; or
- conduct of a public officer or public body acting in their capacity as a public officer or a public body that constitutes:
 - a criminal offence
 - serious professional misconduct
 - dishonest performance of public functions
 - an intentional or reckless breach of public trust, misuse of information or material acquired in the course of the performance of their functions (as a public officer or public body)
 - a substantial mismanagement of public resources
 - a substantial risk to the environment or the health or safety of one or more persons.
- conduct of any person that:
 - adversely affects the honest performance by a public officer or public body in the performance of their functions (as a public officer or public body)
 - is intended to adversely affect the effective performance or exercise by a public officer or public body of their functions or powers and results in the person, or an associate of the person, obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument
 - an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument
 - a financial benefit or real or personal property
 - any other direct or indirect monetary or proprietary gain that the person would not have otherwise obtained.
- conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to above.

If the conduct is trivial, it will not meet the threshold of 'improper conduct'.

When assessing allegations of improper conduct, there must be a link between the conduct and the official function of a public officer or public body.

Detrimental action

It is an offence for a person to take, threaten to take or allow another person to take detrimental action against another person in reprisal for making a public interest disclosure. The PID Act describes detrimental action as:

- action causing injury, loss, or damage
- intimidation or harassment

- discrimination, disadvantage, or adverse treatment in relation to a person's employment, career, profession, trade, or business, including the taking of disciplinary action.

A person does not need to have actually taken the detrimental action, but can have threatened to do so, or incited or permitted someone else to do so. However, it must be because the other person has (or the person believes the other person has):

- made, or intends to make, the disclosure
- cooperated or intends to cooperate with an investigation of the disclosure.

The PID Act does not prevent a manager taking reasonable management action against a person who has made a disclosure, provided that the making of the disclosure is not the reason for the management action being taken. Management action that may be undertaken can include any action that is required to be taken in respect of performance development (including training), conditions of employment or discipline, or actions to ensure the safety of the workplace.

e safety of the workplace.

Examples of detrimental action

- 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
- 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
- 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.

Policy History

Date created/updated	Author	Date Board Approved	Next Review Due
April 2024	CEO and Director, Corporate Services	18 April 2024	April 2026