# VicHealth Protected Disclosure Procedure

## 1. Background and Purpose

VicHealth encourages employees and members of the public to report known or suspected incidences of improper conduct.

VicHealth has established procedures for receiving and handling disclosures of improper conduct engaged in and/or detrimental action taken by VicHealth and/or its public officers.

These procedures have been prepared in accordance with the [Protected Disclosure Act 2012](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/DDE300B846EED9C7CA257616000A3571/81CEA96D4B327853CA257B0E00772C0A/%24FILE/12-85aa002%20authorised.pdf) (Act) and the guidelines of the [Independent Broad-based Anti-corruption Commission (IBAC)](http://www.ibac.vic.gov.au/).

## 2. Who can make a Protected Disclosure?

Any person can make a protected disclosure about improper conduct engaged in, or detrimental action taken by, VicHealth or one of its public officers.

You can make a protected disclosure if you are a member of the public, or if you are a public officer of VicHealth or of another public-sector body.

You can make a disclosure as an individual or together with a group of individuals. A company or business cannot make a protected disclosure.

You do not have to specifically refer to the Act or the protections in the Act for your disclosure to be a ‘protected disclosure’. You may also advise that you do not want your disclosure to be treated as a ‘protected disclosure’. You can also make a disclosure in circumstances where you cannot identify the person or the organisation to which the disclosure relates

## 3. How do I make a Protected Disclosure?

You may make a protected disclosure:

* in person
* by phone
* by leaving a voicemail message
* in writing by post, personal delivery or email
* by any other form of electronic communication
* anonymously.

You may not make a protected disclosure by fax.

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

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

You do not have to identify yourself when making a disclosure. However, if your disclosure is anonymous, this may affect how the disclosure is investigated and you will not be notified of the outcome of any investigation.

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

## 4. What can I make a Protected Disclosure about?

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

* a person, public officer or public body
* is engaging in, or proposing to engage in
* ‘improper conduct’ and/or ‘detrimental action’.

## Public Officer and Public Body

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

Public bodies or public officers include VicHealth, VicHealth’s Board/Committee members and employees.

For a full definition of ‘public body’ and ‘public officer’, see Schedule 1 of these procedures.

## Improper Conduct and Detrimental Action

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

The definitions of improper conduct and detrimental action are explained as follows:

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| ‘Improper conduct’ is defined as:‘CORRUPT CONDUCT’ OR ‘SPECIFIED CONDUCT’ |
| Conduct by any person that:* adversely affects the honest performance of functions by a public officer or public body.

Conduct by a public body or public officer that:* involves the dishonest performance of functions by a public officer or public body
* involves a breach of public trust
* involves a misuse of information acquired in the performance of functions as a public officer or public body
* involves a conspiracy or an attempt to engage in any of the above conduct.
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| ‘Corrupt Conduct’ is:conduct that would constitute a relevant offence:* an indictable offence against an Act
* the following common law offences:
* attempting to pervert the course of justice
* bribery of a public official
* perverting the course of justice.
 | ‘Specified Conduct’ is:* conduct that would constitute a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct.

It may also include conduct that involves:* a substantial mismanagement of public resources
* a substantial risk to public health and safety
* a substantial risk to the environment.
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| ‘Detrimental action’ is defined as:* actual or threatened action taken against a person in reprisal for a protected disclosure if the person taking the action knows or believes that this person or anyone else has made, or intends to make, the disclosure, or has cooperated, or intends to cooperate, with an investigation of the disclosure.
* action can be taken by the person or anyone else permitted or incited by that person to take the action.

Detrimental action includes:* 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 disciplinary action).

Detrimental action is not:* legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances, as long as the fact that a person has made a protected disclosure is not a substantial reason for taking action
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### Examples of Improper Conduct

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

Additional example of improper conduct is outlined on the IBAC website: <https://www.ibac.vic.gov.au/reporting-corruption/what-can-you-complain-about/what-is-corruption>

### Examples of Detrimental Action

* A public body demotes transfers, isolates in the workplace or changes the duties of a person who has made a protected 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 or tenders.

### ‘Reasonable Grounds’

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

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

## 5. Who do I make my Protected Disclosure to?

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

If your disclosure is made to a person or body that cannot receive your disclosure, your disclosure will not be a protected disclosure and you will not be protected under the Act.

It is therefore important that you check that you are providing your disclosure to the right person or body. If in doubt, disclosures should be made directly to [IBAC](http://www.ibac.vic.gov.au/), unless the disclosure is about IBAC or one of its officers.

### Making a Disclosure about VicHealth and/or its Public Officers

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

Protected Disclosure Coordinator

Executive Manager, Corporate Services
VicHealth
15-31 Pelham Street (PO Box 154)

Carlton, Vic 3053 Telephone: (03) 9667 651 3000
Email: protecteddisclosure@vichealth.vic.gov.au

*Or*

Independent Broad Based Anti-Corruption Commission
Level 1, North Tower
459 Collins Street

GPO Box 24234
Melbourne VIC 3000
[www.ibac.vic.gov.au](http://www.ibac.vic.gov.au/)1300 735 135

## 6. What will happen after I make a disclosure?

The process indicated in this procedure relate to disclosures made directly to VicHealth.

Disclosures made to IBAC will be handled in accordance with IBAC’s guidelines and processes.

### Receipt of Disclosures

The receipt of your disclosure to VicHealth 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.

### Assessing Disclosures

Upon receipt of your disclosure, the Protected Disclosure Coordinator will assess whether the disclosure complies with the requirements of the Act (as set out in Parts 2 to 5 of these procedures).

The Protected Disclosure Coordinator may also discuss with you the welfare support VicHealth will provide (for example, the appointment of a welfare manager). The precautions VicHealth will take to prevent detrimental action taken in reprisal for you having made a disclosure. For more information on this, see Parts 8 and 9 of these procedures.

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

### Notification to IBAC

If VicHealth determines that your disclosure complies with the requirements of the Act, it must notify your disclosure to IBAC, in writing, within 28 days of you making the disclosure to VicHealth. Your disclosure will then be known as an ‘assessable disclosure’.

VicHealth will advise you orally, or in writing (if a postal or email address is known) within 28 days of you making the disclosure to VicHealth that your disclosure has been notified to IBAC and that it is an offence under the Act to inform anyone that your disclosure has been notified to IBAC.

VicHealth may also provide information to IBAC that it obtained while it was assessing whether your disclosure should be referred to IBAC.

If VicHealth determines that your disclosure does not comply with the requirements of the Act, it will advise you of this within 28 days of you making the disclosure to VicHealth. In that event, you may wish to seek that your disclosure be dealt with under VicHealth’s complaint handling process and/or other relevant organisation (e.g. Fair Work Commission, Human Rights Commission etc) as a complaint.

### Assessment by IBAC

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

Once VicHealth 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 VicHealth 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
* 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 Act. This includes protection from detrimental action taken in reprisal for you making the disclosure.

However, if IBAC determines that your disclosure is not a protected disclosure, the confidentiality requirements set out in Part 11 of these procedures no longer apply in relation to your disclosure.

## 7. What protections will I receive?

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

* immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure
* immunity from committing an offence under the [Constitution Act 1975](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/LTObjSt1.nsf/DDE300B846EED9C7CA257616000A3571/E9AF39B1A5312645CA257761001C82E7/%24FILE/75-8750a195.pdf) or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information
* immunity from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information
* protection from an action for defamation.

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

The protections in the 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:

* VicHealth
* IBAC
* an investigating entity.

In addition to these protections, VicHealth recognises that the welfare and protection from detrimental action of people making genuine protected disclosures is essential for the effective implementation of the Act and is relevant to VicHealth’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.

## 8. Welfare Management

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

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

A welfare manager is responsible for:

* examining the discloser’s and/or witness’ immediate welfare and protection needs and, where that person is an employee, fostering a supportive work environment
* providing practical advice and support
* advising the discloser and/or witness of the protections available under the Act
* receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (for example, harassment, intimidation or victimisation)
* ensuring that the discloser’s and/or witness’ expectations of the process and outcomes are realistic
* maintaining confidentiality
* operating discreetly to protect the discloser and/or witness from being identified as being involved in a protected disclosure.

In determining whether to appoint a welfare manager, VicHealth will consider whether:

* the disclosure has proceeded, or is likely to proceed, to an investigation
* there are any real risks of detrimental action against the people involved, considering their circumstances
* VicHealth can provide effective support to the people involved, including keeping them informed of the progress of the disclosure
* it is within the VicHealth’s power to protect the people involved from suffering repercussions.

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

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.

## 9. Protection from Detrimental Action

VicHealth will take precautions to prevent its public 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 VicHealth will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

If a person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the person receiving the report (irrespective of their role) will record details of the incident and advise the person of the protections they will receive under the Act (as set out in Part 7 of these procedures).

A disclosure of detrimental action is itself a protected disclosure and will be assessed by VicHealth 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, VicHealth 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 VicHealth 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
* 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 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 VicHealth or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act. See Part 11 of these procedures for further information.

## 10. What happens if a Protected Disclosure is made against me?

VicHealth 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 employees during the handling and investigation of a disclosure as the circumstances require.

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

## 11. Confidentiality

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

If you repeat your disclosure to someone other than as provided by these procedures or permitted by the Act, you may lose the protections provided for in the 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.

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

The circumstances in which a person may disclose information obtained about a protected disclosure that VicHealth 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 Act
* by an investigating entity where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-Corruption Commission Act 2011
* 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
* to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act
* 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 Act.

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

## 12 Criminal Offences

There are a number of offences set out in the Act relating to breaches of the requirements of the Act.

The key offences to be aware of are:

* it is an offence to take detrimental action against another person in reprisal for a protected disclosure
* it is an offence to disclose the content, or information about the content, of a disclosure that the Commission 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 Act
* it is an offence for any person to:
	+ make false disclosure or prove false further information: A person must not provide information intending it be acted on as a protected disclosure, or further information that relates to a protected disclosure, knowing it to be false or misleading
	+ claim that a matter is the subject of a protected disclosure knowing the claim to be false
	+ falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint
* it is an offence for any person to:
	+ disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act
	+ disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

## 13. Alternatives to Making a ‘Protected Disclosure’

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

Members of the public are encouraged to contact VicHealth about any complaints or concerns they have with the services provided by VicHealth.

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

## 14. Review

This policy and procedures are reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC’s guidelines.

## Schedule 1

### What is a Public Body?

A public body is:

1. a public sector body within the meaning of s 4(1) of the [Public Administration Act 2004](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/A99B41C7E71945B0CA257D5700006609/%24FILE/04-108aa045%20authorised.pdf)
2. a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university
3. the Electoral Boundaries Commission constituted under the Electoral Boundaries Commission Act 1982
4. a Council
5. a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise)
6. any other body or entity prescribed for the purposes of this definition.

### What is a Public Officer?

A public officer is:

1. a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the [Public Administration Act 2004](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt8.nsf/DDE300B846EED9C7CA257616000A3571/A99B41C7E71945B0CA257D5700006609/%24FILE/04-108aa045%20authorised.pdf)
2. a person to whom a provision of the Public Administration Act 2004 applies as a result of the application of Part 7 of that Act
3. an ongoing employee or temporary employee in the teaching service under the Education and Training Reform Act 2006
4. a judicial employee employed under Division 3 of Part 6 of the Public Administration Act 2004
5. a Ministerial officer employed under Division 1 of Part 6 of the Public Administration Act 2004
6. an electorate officer within the meaning of the Parliamentary Administration Act 2005
7. a Parliamentary adviser employed under Division 2 of Part 6 of the Public Administration Act 2004
8. a Parliamentary officer within the meaning of the Parliamentary Administration Act 2005
9. a member of police personnel
10. a responsible Minister of the Crown
11. a member of the Legislative Assembly or the Legislative Council
12. a Councillor within the meaning of section 3(1) of the Local Government Act 1989
13. a member of Council staff employed under the Local Government Act 1989
14. a judge, a magistrate, a coroner or a member of VCAT
15. an associate judge or a judicial registrar
16. a Crown Prosecutor
17. the Chief Crown Prosecutor
18. the Director of Public Prosecutions
19. the Governor, the Lieutenant-Governor or the Administrator of the State
20. the Auditor-General
21. the Ombudsman
22. the Electoral Commissioner
23. the holder of any other statutory office or any other prerogative office
24. any other person in the service of the Crown or a public body
25. a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)
26. a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition
27. an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.

## Schedule 2 – Who can receive disclosures about the Victorian Health Promotion Foundation (VicHealth) and its public officers?

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| **The subject of disclosure** | **Who to make the disclosure to:** |
| VicHealth | VicHealth or IBAC |
| VicHealth public officer |  |
| * Board Member
 | VicHealth or IBAC |
| * Employee
 | VicHealth or IBAC |