

EAST GIPPSLAND CATCHMENT MANAGEMENT AUTHORITY

Public Interest Disclosures

**Established under the Public Interest Disclosure Act 2012
and the Public Interest Disclosure Regulations 2019**

**PUBLIC INTEREST DISCLOSURE PROCEDURE
QUICK REFERENCE GUIDE TO PUBLIC INTEREST DISCLOSURES**

<p>How do I make a public interest disclosure (PID)?</p>	<ul style="list-style-type: none"> • Verbally, or • in writing (but not by fax), <p>to IBAC. PID's cannot be made directly to the Authority. (Refer to Part 2 of this procedure for more information)</p>
<p>Who can make a PID?</p>	<ul style="list-style-type: none"> • Any individual or group of individuals can make a PID. • A business or company cannot make a PID. <p>(Refer to Part 3 of this procedure for more information)</p>
<p>What can I make a PID about?</p>	<p>Improper conduct and/or detrimental action taken:</p> <ul style="list-style-type: none"> • by public bodies or public officers performing public functions, and/or • members of the public seeking to improperly influence public officers. <p>This includes the Authority and its Board members, members of Board Committees, members of Advisory Groups, employees of and contractors to the CMA.</p> <p>People seeking protection under the Act should carefully consider whether their complaint meets these basic thresholds before reporting. (Refer to Part 4 of this procedure for more information)</p>
<p>To whom can I make a PID?</p>	<p>If you wish to make a public interest disclosure about the Authority and/or its officers or employees, you should contact:</p> <ul style="list-style-type: none"> • The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 or Website: www.ibac.vic.gov.au <p>IBAC also provides an online form.</p> <ul style="list-style-type: none"> • The Victorian Ombudsman can be contacted in writing at: Victorian Ombudsman Level 2, 570 Bourke Street Melbourne VIC 3000 <p>The Ombudsman also provides an online form. (Remember that that Authority cannot receive PIDs. Refer to Part 5 of these procedures for more information)</p>

PROCEDURE

MAKING A PUBLIC INTEREST DISCLOSURE (PID)

What is a PID?

A PID can be made about information that shows or tends to show, or that you believe on reasonable grounds shows or tends to show, each of the following:

- a) a person, public officer or public body
- b) is engaging in, or proposing to engage in
- c) 'improper conduct' and/or 'detrimental action'.

The Authority is a public body. Its officers and employees are public officers.

What are '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.

Mere suspicion, allegation or conclusion that is unsupported by further information, facts or circumstances will not be a PID under 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.

Improper conduct

Improper conduct includes corrupt conduct, criminal offences and other conduct specified in the Act. If the conduct is trivial, it will not meet the threshold of improper conduct. There needs to be a link between the conduct and the official function of a public officer or public body.

What Improper Conduct includes

Conduct of a public officer or public body engaged in their capacity as a public officer or a public body that constitutes any of the following:

- corrupt conduct
- criminal offence
- serious professional misconduct
- dishonest performance of public functions
- intentional or reckless breach of public trust
- intentional or reckless misuse of information
- substantial mismanagement of public resources
- substantial risk to health or safety of a person
- substantial risk to the environment

and conduct of any person that:

adversely affects the honest performance by a public officer or public body of their public functions;

- is intended to adversely affect the effective performance by a public officer of their functions for the benefit of the other person.

Detrimental Action

Detrimental Action includes any of the following:

- 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
- threatening to do any of the above.

Who can make a PID?

Any person can make a PID about improper conduct engaged in, or detrimental action taken by, the Authority, its officers or employees (or any other public sector employee).

- a member of the public,
- an employee or officer of the Authority.
- You can make a PID:
 - as an individual, or
 - together with a group of individuals.
- A company or business cannot make a PID.
- You can ask someone else to make a PID on your behalf. However, if you ask someone else to make a PID on your behalf, only that person will receive the full protection of the Act in relation to that PID. Your protection will be limited to confidentiality and protection against detrimental action taken against you in reprisal for the PID that has been made.

You do not have to specifically refer to the Act or the protections in the Act for your PID to be a 'PID'.

How can a PID be made?

PIDs about the Authority and its members and staff should be made to IBAC. The Authority cannot receive a PID under the Act. However, the Authority has established this Procedure to facilitate and encourage the making of PIDs.

You may make a PID to IBAC:

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

You may not make a PID by fax.

You can make a joint PID with a group of individuals at the same time.

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

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

You may make a PID about the Authority or any of its employees and/or officers to either:

- *The Independent Broad-based Anti-corruption Commission (IBAC)*

Level 1, North Tower
459 Collins Street
Melbourne Vic 3000 or
Website: www.ibac.vic.gov.au

IBAC also provides an [online form](#).

OR

- ***The Victorian Ombudsman:***

Level 2, 570 Bourke Street
Melbourne VIC 3000
The Ombudsman also provides an [online form](#).

The Authority is not permitted to receive PIDs.

What will happen after I make a public interest disclosure?

PIDs made to IBAC will be handled in accordance with IBAC's guidelines and processes.

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

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

- dismiss your PID;
- investigate your PID; or
- refer your PID to another body for investigation, such as the Victoria Police, the Ombudsman or the Victorian WorkCover Authority.

Regardless of whether IBAC determines your disclosure is a PID 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 PID, the confidentiality requirements set out in Section 5 of this procedure no longer apply in relation to your PID.

The Act sets out the protections provided to persons who make a PID. These include:

- immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the PID;
- immunity from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the PID 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 PID of information; and
- protection from an action for defamation.

What protections will I receive as the discloser?

These protections apply to a PID from the time you make the PID and continue to apply even if IBAC determines that the PID is not a PID.

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 PID knowing that claim to be false.

It is important to note that the IBAC is not required to contact the Authority about any PID you make, so you should not discuss any PID you make to IBAC with the Authority or any person in the Authority unless you have first obtained the permission of IBAC to do so, or IBAC has directed you to do so, or IBAC has contacted the Authority to

provide it with information in order to allow the Authority to provide you with any necessary welfare and support.

Section 54 of the Act, however, provides circumstances in which you can contact the Authority's Employee Assistance Program ("EAP") and other support persons or organisations (such as your doctor or a trade union of which you are a member) in order to seek assistance in connection with making a PID.

Employees, Board Members, Staff and Contractors

Employees, staff and members are encouraged to raise matters of concern and report known or suspected incidences of improper conduct or detrimental action in accordance with this procedure, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

All employees, staff and members of the Authority have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act. All persons must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

Protection from detrimental action

In addition to the "What protections will I receive as the discloser"? section described above, the Authority recognises that the welfare and protection from detrimental action of persons making genuine PIDs is essential for the effective implementation of the Act and is relevant to the Authority's obligation to create a safe working environment under the Occupational Health and Safety Act 2004 (Vic), the Charter of Human Rights and Responsibilities Act 2006 (Vic), the Public Administration Act 2004 (Vic) and the common law.

The Authority will take precautions to prevent its officers, employees and agents from taking detrimental action in reprisal for a PID. This includes identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

The precautions taken by the Authority will depend on individual circumstances and the disclosers and witnesses will, where possible, be consulted about any action that is taken.

A PID of detrimental action is itself a PID and, where the detrimental action is of a serious nature that is likely to amount to a criminal offence, the Authority may consider reporting the matter to the Police or IBAC.

If you are an employee who has made a PID 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 government agency 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 of the Authority must be satisfied there are reasonable grounds to suspect detrimental action will be, is being, or has been taken against you;
- the Chief Executive Officer must consider that the transfer will avoid, reduce or eliminate the risk of detrimental action; and
- the head of the 'receiving' government agency 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 PID, the Act sets out remedies that are available to you. You may wish to obtain legal advice about this.

Whilst there are these protections, there are also responsibilities. You must not take detrimental action against another person in reprisal for a PID.

Making a PID does not provide you with immunity for your own wrongdoing. If you have been involved in improper conduct or detrimental action which is the subject of your PID, you will still be held liable for your own involvement.

You must not disclose the content, or information about the content, of a PID made to IBAC or any information which is likely to lead to the identification of the person who made that PID unless permitted by the Act.

Confidentiality

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

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

If you are considering disclosing information about a PID made by you under the Act, you may wish to speak to the PID Coordinator, your PID Welfare Manager and/or obtain legal advice first.

The Authority will only disclose information about you or your PID in accordance with the law, including the Act.

The circumstances in which you may disclose information about the PID you have made to IBAC include:

- in accordance with a direction or authorisation given by the investigating entity that is investigating the PID;
- to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the PID including disciplinary process or action;
- where IBAC or the Ombudsman has determined that the PID is not a PID;
- where necessary for the purpose of exercising functions under the Act;
- by an investigating body where necessary for the purpose of the exercise of functions under the Independent Broad-based Anti-corruption Commission Act 2011 (Vic);
- for the purpose of a proceeding for an offence under a relevant Act or provision;
- for the purpose of disciplinary proceedings 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; and
- where an investigating body has published a report to Parliament or otherwise made public the content of the PID consistent with the confidentiality requirements of the Act.

The Act also prohibits disclosing information that is likely to lead to your identification except in accordance with the Act.

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

Alternatives to making a PID (Complaints and Feedback to Authority)

These procedures are designed to complement usual methods of submitting complaints and feedback to the Authority.

Members of the public are encouraged to use the Authority's feedback process to communicate complaints or concerns with the services provided by the Authority. More information is available Authority's website: <https://egcma.com.au/contact-us/>

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