

# Cenitex Public Interest Disclosures procedure

1. This document sets out Cenitex's procedures on public interest disclosures under the *Public Interest Disclosures Act 2012 (the PID Act)*.
2. Cenitex:
  - is committed to the aims and objectives of the PID Act, and will not tolerate employee conduct that is contrary to the Act
  - will take all reasonable steps to protect people who make disclosures under the PID Act from 'detrimental action', and will take appropriate action against employees who have taken detrimental action (including disciplinary action)
  - will afford procedural fairness to anyone who is the subject of allegations in a disclosure
  - recognises the value of transparency and accountability in its administrative and management practices and supports disclosures that reveal improper conduct or detrimental action
  - will manage the welfare of persons connected with public interest disclosures consistently with its obligations under the PID Act
  - be visible, approachable, communicative and lead by example in establishing a workplace that supports public interest disclosures.
3. These procedures are reviewed annually and were last updated on 30 December 2019. They supplement the guidelines produced by the Independent Broad-Based Anti-Corruption Commission (**IBAC**) (available [here](#) and [here](#)).

## Key terms

Cooperator:	Someone who cooperates or intends to cooperate with an investigation of a disclosure
Detrimental action	Action against a person in reprisal for them having made a public interest disclosure
Investigative entity	A body authorised to investigate a protected disclosure complaint
Disclosure	A disclosure about improper conduct in the public sector under the PID Act
Discloser	Someone who makes a public interest disclosure
Public interest disclosure	A disclosure determined by IBAC to be a public interest disclosure

Guidelines:

IBAC's *Guidelines on Handling Public Interest Disclosures* (available [here](#)) and *Guidelines for Public Interest Disclosure Welfare Management* (available [here](#))

## WHAT IS A PUBLIC INTEREST DISCLOSURE?

4. A Public Interest Disclosure (PID)<sup>1</sup> is a disclosure by a natural person that:
  - shows or tends to show; or
  - includes information that the person reasonably believes shows or tends to show

'improper conduct' has, is, or is proposed to occur, or that 'detrimental action' has, is, or is proposed to be taken in reprisal for a PID.
5. Cenitex is **not** a body that can receive PIDs, so such disclosures must be referred to other integrity bodies such as IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee.
6. After a PID is made, IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee will assess the disclosure, and if appropriate, it is determined to be a disclosure to a Public Interest Complaint (PIC). IBAC will determine that the disclosure is a PIC if it considers that it shows that a person, public officer or public body has engaged, is engaging, or proposes to engage in 'improper conduct' or 'detrimental action'. Determination that a disclosure is a PIC may lead to an investigation of the disclosure by the investigating entity, or other further action to address the complaint.

### ***Improper conduct***

7. 'Improper conduct' means the following kinds of conduct:
  - Corrupt conduct (as defined in the *Independent Broad-Based Anti-Corruption Commission Act 2011 (IBAC Act)*)
  - Conduct of a public officer or public body, in their capacity as a public officer or a public body, that constitutes:
    - A 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

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<sup>1</sup> Previously called a 'protected disclosure'.

- Substantial risk to the environment
  - Conduct of any person that adversely affects a public officer's honest performance of their functions
  - Conduct of any person that adversely affects or is intended to adversely affect a public officer's effective performance of their functions, which results in a benefit to that person.
  - A conspiracy or attempt to engage in any of the conduct discussed above.
8. Trivial conduct is not improper conduct. (But the PID Act does not define 'trivial' conduct, so this will be determined by reference to the ordinary meaning of the term, and a consideration of the individual facts of the disclosure.)

***Detrimental action***

9. A person takes 'detrimental action' against a person in reprisal for a PID if:
- 9.1 the person takes or threatens detrimental action against the other person because, or in the belief that:
- (a) the other person or anyone else has made, or intends to make, the disclosure; or
  - (b) the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- 9.2 for either of those reasons, the person incites or permits someone else to take or threaten detrimental action against the other person.<sup>2</sup>
10. Detrimental action includes:
- threats to safety or property of a discloser or a discloser's family or friends
  - demotion, transfer, isolation or change in duties of a discloser due to his or her having made a disclosure
  - discriminating or disadvantaging a discloser in their career, profession, employment, trade or business
  - discriminating against the discloser, their family, or associates, in applications for promotions, jobs, permits or tenders
  - other actions causing injury, loss or damage.

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<sup>2</sup> Previously, a discloser would have to prove that the disclosure was a 'substantial reason' for action being taken against them. This is no longer required: if the fact that an employee has made a disclosure forms any part of the reason for action being taken against them, the action may be 'detrimental action'.

11. However, legitimate management action taken against a person who has made a disclosure is not detrimental action.
12. It is an offence, punishable by fine or imprisonment, to take detrimental action against another person in reprisal for a PID. Detrimental action in reprisal for a disclosure can be grounds for a further PID. Where the detrimental action is of a serious nature likely to amount to a criminal offence, Cenitex will also consider reporting the matter to the police or IBAC.
13. A discloser may:
  - take civil action for damages against someone who takes detrimental action against them (including Cenitex, if the person was acting in the course of their employment with Cenitex, or as Cenitex's agent)
  - seek relief from a court to prevent detrimental action from being taken.

## PROTECTIONS FOR MAKING A PID

### Protections for a discloser

15. The PID Act provides the following protections for disclosers:
  - immunity from civil or criminal liability for making disclosure (including in proceedings for defamation) or any liability arising by way of administrative process (such as disciplinary action)
  - someone who makes a PID does not, by making a PID, breach any other confidentiality obligations that might otherwise be thought to apply
16. A disclosure that is made to a person or body who cannot receive disclosures under the PID Act (e.g. a journalist or politician) will not attract the protections under the PID Act, except in the limited circumstances specified in s 38A of the Act.
17. These protections apply from the time of the disclosure, even if IBAC determines that the PID is not a PIC. The protections also apply to further information provided to IBAC (or other relevant investigative entity).
18. In addition to these protections, it is an offence to disclose the content of a disclosure, or the identity of a person who has made a disclosure. Confidentiality obligations under the PID Act are discussed further below.
19. A discloser is **not** protected under the PID Act if they provide false or misleading information relating to a PID, falsely claim that a matter is the subject of a PID, or falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest complaint. A discloser is also not protected from legitimate management action, or the consequences of their own conduct (even if this was disclosed as part of the PID).

### Maintaining confidentiality

20. The PID Act prohibits the including any details in any report or recommendation that is likely to lead to the identification of a discloser, and also prohibits the identification of the person the subject of a disclosure in an annual report or any reports to Parliament.
21. The three elements of the confidentiality requirements are:
  - 21.1 An investigative body to whom IBAC refers a PIC may disclose information where this is necessary to perform its investigative functions.
  - 21.2 Disclosers may always seek advice and support from specified categories of persons without seeking permission. These changes enable information about an assessable disclosure (content or information about the content) to be provided to a trade union, employee assistance program, the Victorian WorkCover Authority or for the purposes of an application to the Fair Work Commission.

- 21.3 Recipients of confidentiality notices are entitled to disclose restricted matters to certain categories of persons, unless the issuing agency directs otherwise.
22. Consistently with this, Cenitex will take the following steps to protect confidentiality:
- 22.1 *Staff training:* Cenitex will provide all staff with these procedures, and training on these procedures. Staff with specific responsibilities under the PID Act and staff with information management responsibilities will receive additional training.
- 22.2 *Information management:* Ensure all files are secure and only accessible by the PID Coordinator (see discussion below), investigating entity or welfare manager. Electronic files will be produced and stored on a stand-alone computer and given password protection. Backup files will be stored on CD or DVD. Printed material will be kept in files clearly identified as containing PID material and display a warning of the criminal penalties that apply to unauthorised access or disclosure of information relating to a PID. The Welfare Manager will not divulge information relating to the disclosed matter except to the PID Coordinator or investigating entity. Cenitex will not email documents relevant to a PID matter and ensure that all telephone calls and meetings between relevant persons are in private.
- 22.3 *Appropriately responding to FOI Requests:* Under the *Freedom of Information Act 1982 (FOI Act)*, Cenitex is generally required to give access to documents in its possession, but documents that relate to a PID or that are likely to lead to the identification of the person who made a PID are exempted from this requirement. Cenitex will contact IBAC before providing any document originating from IBAC or relating to a PID in response to an FOI request.

### **Exceptions to maintaining confidentiality**

23. It an offence to disclose information connected with a PID. Exceptions are:
- where disclosure is required in order for Cenitex, investigating entity, or other relevant entity to exercise its functions under the PID Act
  - where disclosure is in accordance with an investigative entity's direction or authorisation
  - where disclosure is necessary to take lawful action to response to the conduct the subject of the disclosure (e.g., disciplinary process or action)
  - where IBAC or the Victorian Inspectorate has determined that the disclosure is not a PID
  - when an investigative entity has published a report to Parliament in accordance with its confidentiality obligations

- for the purpose of obtaining legal advice about matters specified in the PID Act
- to enable compliance with the PID Act:
  - where a person does not have a sufficient knowledge of the English language, to an interpreter
  - where a person is a minor, to a parent or guardian
  - where a person is suffering a disability and is not able to understand, to an independent person
  - in disciplinary actions or legal proceedings for certain offences in the PID Act or other specified Acts.

## HOW TO MAKE A DISCLOSURE

24. The entities to whom a PID may be made are listed in Section 1.4 of IBAC's *Guidelines for Making and Handling Public Interest Disclosures*. Disclosures about Cenitex should be made to IBAC.
25. A disclosure must be made in accordance with the procedures set out the PID Act, and with any procedures established by the receiving entity. A disclosure may be made orally or in writing and may be made anonymously. Written disclosures to IBAC be made via its online form (available [here](#)).
26. After a disclosure is notified to IBAC, IBAC will determine whether it is a PID. A disclosure will not be treated as a PID if, within 28 days of the disclosure, the discloser gives a written statement to the entity that received the disclosure, stating that the disclosure is not a PID.

### ***If IBAC determines the disclosure is a PIC***

27. If IBAC determines the PID is a PIC, it will advise the discloser in writing that the discloser has rights, protections and obligations under the PID Act the protections under the PID Act apply to the discloser.
28. Once IBAC has determined that a disclosure is a PIC, the discloser cannot withdraw that disclosure.

### ***If IBAC determines the disclosure is not a PIC***

29. If IBAC determines that a disclosure is not a PIC, it will advise the discloser in writing. The rights, protections and obligations of a person who has made a public interest disclosure under the PID Act will still apply. IBAC will also inform the discloser if it thinks that the disclosure could be dealt with by another entity, even if it is not a protected interest disclosure.

### ***Other information***

30. If IBAC or another investigative entity is investigating a PID, it may contact Cenitex or the person who is the subject of the disclosure. Disclosure of information to IBAC (or other relevant investigative entity) does not breach the confidentiality requirements under the PID Act. Where Cenitex is advised of the discloser's identity, it will manage the welfare of that person, including by protecting them from detrimental action.
31. An investigative entity must generally inform the discloser of the outcome of its investigation, including any action it has taken and recommendations it has made. The investigative entity may provide written information to Cenitex about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to Cenitex. However, the investigative entity must not provide any information that is likely to lead to the identification of a discloser. IBAC does not have to provide any information about the results of an investigation or other action taken in relation to

an investigation where this might result in any of the possible adverse outcomes specified in s 163(4) of the IBAC Act (such as where providing the information would put a person's safety at risk).

## WELFARE MANAGEMENT

32. Cenitex is committed to protecting persons who make public interest disclosures from detrimental action taken in reprisal for such disclosures. Cenitex is also committed to protecting the welfare of people who have cooperated or intend to cooperate with an investigation of a public interest disclosure complaint, and persons who are the subject of allegations in a disclosure.
33. As Cenitex cannot receive disclosures, it may not know that a person has made a disclosure. Because of confidentiality obligations, a person who has made a public interest disclosure must not discuss the matter with anyone else except IBAC (or other investigative entity to which IBAC has referred the disclosure). Therefore, Cenitex will only know that a person should be protected under the PID Act if it is informed of the disclosure by IBAC or other relevant investigative entity (or where information has been disclosed to Cenitex under one of the exceptions to non-disclosure under ss 53(2) or 54 of the PID Act).
34. Once Cenitex is aware of a discloser's identity (and other relevant information about the disclosure), it will keep this information confidential, and manage the welfare of any relevant persons in accordance with its obligations under the PID Act, including by ensuring that disclosers and cooperators are protected from detrimental action against them in reprisal for the disclosure. Cenitex will ensure its workplace culture supports disclosers and persons who cooperate with an investigation, including by supporting persons (even if they are external to the organisation).
35. Special legal responsibilities apply to persons within Cenitex, and persons who are clients or users of Cenitex's services:
  - such persons must ensure the health and wellbeing of employees of a public sector body under occupational health and safety laws, the *Charter of Human Rights and Responsibilities Act 2006*, the *Public Administration Act 2004*, and Victorian Public Sector Codes of Conduct
  - other legal requirements may also apply to decisions or conduct affects a customer, client or other user of Cenitex's services.
36. For internal persons, Cenitex will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment. For external persons, Cenitex will take reasonable steps to provide appropriate support. Cenitex will discuss reasonable expectations with all persons receiving welfare management in connection with a public interest disclosure.

### Support for disclosers and co-operators

37. Cenitex will support disclosers and cooperators by:
  - 37.1 keeping them informed of an action that is proposed to be taken in relation to the disclosure, and the outcome of any action
  - 37.2 providing the legal protections available to the person

- 37.3 managing expectations through early discussion about the outcomes sought, whether their expectations are realistic, and what Cenitex can do
- 37.4 protecting confidentiality by:
- (a) protecting the identity of the discloser or cooperator;
  - (b) reminding the discloser or cooperator not to reveal information that would allow them to be identified
  - (c) ensuring that files relating to the disclosure are accessible only to those who are involved in managing disclosures
- 37.5 proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint to be made by the discloser or cooperator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- 37.6 protecting the discloser or cooperator by:
- (a) examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment
  - (b) listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for making a public interest disclosure
  - (c) assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes (i.e. other than disclosure under the Act)
- 37.7 preventing the spread of gossip and rumours about any investigation into a complaint (where Cenitex is aware of the investigation)
- 37.8 keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

### **Appointment of welfare manager**

38. Consistently with IBAC's guidance, the following questions will be considered in deciding if a welfare manager needs to be appointed:
- Whether there are real risks of detrimental action against the person, taking into account their particular circumstances?
  - Can Cenitex ensure that it will take the person seriously and treat them with respect?

- Can Cenitex ensure that it will give the person effective support? (This includes keeping them informed of the status of their disclosure.)
  - Can Cenitex protect the person from suffering repercussions by dealing with the matter discreetly and confidentially? Can it respond swiftly and fairly to any allegations the person has, in fact, suffered retribution?
39. If the answer to the first question is 'yes', IBAC recommends the appointment of a dedicated welfare officer. If the answer to the first question is 'no', and Cenitex can meet the needs set out in the remainder of the question, there may be no need for welfare manager. Usually, a welfare manager will only be needed where a disclosure proceeds to investigation, but each case will be assessed on its own merits.
40. A welfare manager must not divulge any details relating to a disclosed matter to any person other than the PID Coordinator or Cenitex's CEO. However, information relating to a PID (or the identity of the person who made the PID) may be disclosed to a health practitioner, trade union or an employee assistance program in order to assist the person who made the PID to seek advice or support.
41. Usually, the welfare manager will, in addition to providing general support:
- Advise the person of their rights under the PID Act.
  - Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions.
  - Ensure that all meetings between the welfare manager and the person are conducted discreetly to protect the person from being identified as being involved in the disclosure and that the person knows that they can access the Cenitex Employee Assistance Program.
  - Discuss the issue of reasonable expectations with the discloser or cooperator.

### **Welfare of subjects of a disclosure**

42. Until a public interest disclosure complaint is resolved (either by dismissing or investigating it), the information about the person is only an allegation. Therefore, Cenitex will also meet the welfare needs of a person who is the subject of a public interest disclosure.
43. Cenitex will decide whether the person who is the subject of a disclosure is informed about the allegation made against them depending on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a protected public interest disclosure, or a decision is made to dismiss the matter.
44. The PID Act limits the disclosure of information about the content of disclosures or which would be likely to identify a discloser. However, Cenitex may give information about the disclosure to the subject of the disclosure:

- if it is directed or authorised to do so by the investigative entity investigating the public interest disclosure complaint
  - for the purpose of taking action with respect to the conduct alleged, including disciplinary action.
45. Investigating entities may also inform the subject of the public interest disclosure for the purposes of conducting that investigation or taking action as a result of the investigation.

### **Welfare services**

46. Cenitex's Public Interest Disclosure Coordinator (**PID Coordinator**) has a key role in how ensuring that the welfare of any persons connected with a public interest disclosure is properly managed. The PID Coordinator:
- 46.1 provides general advice about the PID Act and about integrity agencies including IBAC
  - 46.2 ensures that we carry out our responsibilities under the PID Act and associated regulations and guidelines
  - 46.3 is our chief liaison with IBAC about the PID Act
  - 46.4 will take all necessary steps to ensure information received or obtained in connection with a disclosure is confidential, including the identities of the discloser or other persons connected with the disclosure
  - 46.5 arranges necessary and appropriate welfare support for the discloser, including by appointing a Welfare Manager to support the discloser and to protect them from reprisals
  - 46.6 collates statistics that Cenitex is required to report under the PID Act.
47. Cenitex's PID Coordinator is the Director Strategy and Governance (PO Box 2750, Melbourne VIC 3000, Ph: (03) 8688 1872).
48. The subject of a disclosure may have a welfare manager appointed by Cenitex or be referred to Cenitex's EAP program. Alternatively, the PID Coordinator will provide support and advice to the subject of a disclosure, particularly in relation to their rights and obligations under the PID Act and other related matters. Cenitex will consider each matter on a case-by-case basis, taking into account the information it has been provided by the investigative entity and the person's particular circumstances.

### **Confidentiality**

49. Cenitex will take all reasonable steps to ensure the confidentiality of a person who is the subjected of a public interest disclosure. Where the disclosure is dismissed or investigations do not substantive the allegations, confidentiality will be maintained

in relation to the subject's identity, as well as the fact of the investigation and any results.

### **Procedural fairness**

50. The subject of an allegation has a right to be accorded procedural fairness before a decision is made about their conduct, this includes the right to:
- be informed about the substance of the allegations against them
  - have the opportunity to answer the allegations before a final decision is made
  - be informed about the substance of any adverse comment that may be included in any report arising from an investigation
  - have his/her defence set out fairly in any report.
51. If the matter has been investigated, the investigating entity is responsible for carrying out this consultation.

### **If the allegations are wrong or unsubstantiated**

52. If someone has been the subject of wrong or unsubstantiated allegations, Cenitex and the investigating entity will ensure there are no adverse consequences for the person arising out of the disclosure or its investigation, particularly where information has been publicly disclosed that has identified the person, or such information has become well known within Cenitex.

### **If detrimental action is reported**

53. If any person reports potential detrimental action taken in reprisal for a disclosure, the Welfare Manager or PID Coordinator must record details of the incident and advise the person of their rights under the PID Act.

## TRANSFER OF EMPLOYEES

54. An employee who has made a PID, and who reasonably believes that detrimental action is being, will be, or has been taken against them, can request a transfer of employment. The transfer may be permanent or temporary, and post-transfer service will be treated as continuous with pre-transfer service.
55. A public body service Head may transfer the employee on terms and conditions of employment that are no less favourable overall, provided:
- the employee requests/consents to the transfer
  - the public body service Head reasonably suspects that detrimental action will be, is being, or has been taken against that employee
  - the public body service Head considers that the transfer will avoid, reduce or eliminate the risk of detrimental action against the employee
  - the Head of the public service body or entity to which the employee will be transferred consents to the transfer.

### **If the discloser is implicated in the relevant improper conduct or detrimental action**

56. Where a discloser is implicated in the improper conduct disclosed and an investigative entity has provided the necessary information to Cenitex, Cenitex will protect the discloser from detrimental action in accordance with the PID Act. However, under the PID Act, a person's liability for their own conduct is not affected by having disclosed that conduct under the Act, therefore a discloser is not protected from reasonable consequences flowing from their involvement in improper conduct. That said, in some cases, admission to conduct may be a mitigating factor when considering disciplinary or other action.
57. Managing a discloser's welfare may become complicated when the discloser is implicated in misconduct, whether or not that misconduct is related to the disclosure. Taking disciplinary or other action against a person who has made a PID may also create the perception that the action is in reprisal for the disclosure. Accordingly:
- 57.1 Cenitex's CEO will make the final decision after considering the advice of the PID Coordinator or welfare manager about whether disciplinary or other action will be taken against a discloser.
- 57.2 Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosure has been appropriately dealt with. In all cases where disciplinary or other action is being considered, any such action will not be taken without Cenitex ensuring that:
- the fact that a person has made a PID is not a reason for Cenitex taking the PID 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.

58. Cenitex will take care to thoroughly document the process if any action is taken against the disclosure, including why any disciplinary or other action is taken, and explain why the action does not constitute reprisal against the discloser. The discloser will be informed of any such proposed action and any mitigating factors that have been taken into account, be afforded procedural fairness. Communications with the discloser will be in plain English and reasonable support will be offered where appropriate.