

# Protected Disclosure Complaints about Serious Misconduct or Corruption

## Summary

- This brochure might help you understand more about making a protected disclosure, i.e. a complaint about serious misconduct or corruption.

## How to complain

You may complain to our employees or our consumer liaison team about our services generally, and we will try to address your concerns promptly. For more information, visit our website:

[www.thermh.org.au/patients-visitors/coming-hospital/compliments-complaints](http://www.thermh.org.au/patients-visitors/coming-hospital/compliments-complaints).

But if you have a complaint about “improper conduct” (e.g. serious misconduct or corruption) involving our employees or the hospital itself, please contact the Independent Broad-based Anti-corruption Commission (IBAC) directly. IBAC details are below.

You should also contact IBAC if you are worried that someone might take some “detrimental action” (e.g. a reprisal) against you, just because you make such a complaint or are co-operating in an investigation about corruption.

Your complaints to IBAC may be termed Protected Disclosures. Please refer to the Glossary at the end for a full description of **Improper Conduct**, **Protected Disclosure** and **Detrimental Action**.

## Our obligations to you

The Protected Disclosure Act protects you if you genuinely believe your complaint is valid. You must also have reasonable grounds to believe that the information you have supports your complaint.

Melbourne Health is committed to extending the protections under the Act. Indeed, penalties may apply (e.g. fines, imprisonment) to anyone who merely threatens to take detrimental action against you, even if you just intend to make a Protected Disclosure or intend to co-operate with an investigation of a Protected Disclosure.

All our employees are obliged to report to our Chief Executive any allegations you make about detrimental action that affects you or anyone else. They are also required to keep confidential the identity of anyone making a Protected Disclosure; if they do not, they may be liable for criminal penalties (e.g. fines, imprisonment).

## What is not a Protected Disclosure?

Your complaint will **not** be protected if:

- It is already known by others. That is because it is already in the public domain and has lost its protection
- It is a mere assertion, allegation or conclusion. That is because it must be capable of being investigated
- There are no reasonable grounds to believe that your information supports your complaint.

See the **Glossary** section overleaf for more information on what comprises a Protected Disclosure.

---

## Who may make a Protected Disclosure and how?

You (alone or with others) may make a Protected Disclosure, but a company cannot. You can make your disclosure to IBAC directly by telephone, in person, in writing (e.g. email, ordinary post and personal delivery), or anonymously. But you cannot make a Protected Disclosure by facsimile. You can remain anonymous by using unverifiable email addresses, anonymous phone calls or refuse to identify yourself if you meet IBAC officers. If you make a disclosure on behalf of someone else, then you are the 'notifier' and may be protected, but not the other person. That encourages everyone to make proper disclosures.

IBAC will manage your disclosures in accordance with its own guidelines and processes. After its investigation, IBAC must provide you with information about the results of its investigation, including any recommendations and action IBAC will take.

## Your protections from liability

You will be protected from various civil and criminal liabilities if your complaint/disclosure is made to IBAC in the proper way. That also includes protection from claims for defamation, or breaches of any legislation that requires confidentiality. You will be protected from the time you make your complaint/disclosure and that protection continues to apply even if IBAC determines that it is not a Protected Disclosure.

But you will not be protected if:

- You knowingly provide false or misleading information
- If you repeat your disclosure to someone other than IBAC
- You tell others that IBAC has decided to investigate or refer your complaint

You will also not necessarily be protected just because you make a disclosure to IBAC – you may remain liable for your own conduct, even when your conduct has been disclosed.

## Protecting your identity

Your identity will be protected whether you make an anonymous disclosure (see above), or not. That is because the Protected Disclosure Act imposes strict confidentiality over your identity and your disclosure. Also penalties (e.g. fines, imprisonment) apply for any breach. But note, details of you and your disclosure may be needed to be used by IBAC for its investigation. And our employees may need to disclose when required to assist IBAC.

## Protecting your complaint

No-one can use the Freedom of Information Act as a way to get a copy of documents from us relating to your Protected Disclosure, or any documents that would likely lead your identification. We will contact IBAC first, before considering any application made under the Freedom of Information Act.

## Loss?

If you are injured, or incur a loss or damage from any reprisal for making a disclosure, you may wish to obtain legal advice. The Act sets out remedies that are available to you.

## Alternatives to making a Protected Disclosure

For other forms of feedback, complaints or concerns with our services please visit [www.rmh.mh.org.au/feedback](http://www.rmh.mh.org.au/feedback) for more information.

## Further Information

The Melbourne Health Protected Disclosure procedure (available online) contains further information.

## Review

These procedures are reviewed regularly to ensure they meet the objectives of the Act and accord with IBAC's guidelines.

---

## Glossary

### What is Protected Disclosure?

For your complaint to be a “Protected Disclosure”, it must be made to IBAC and be about:

- **Improper Conduct** by our organisation or by any of our employees
- **Detrimental Action** by our organisation or any of our employees against you or someone else

The Improper Conduct or Detrimental Action is not limited to Victoria, but can be done outside the state.

### What is Improper Conduct?

This is a two-step assessment:

Firstly, it is conduct that:

- Adversely affecting us or our employees doing our work honestly
- Involving the dishonest performance by us or our employees of our work
- Where we or our employees breach public trust
- Where we or our employees misuse information we acquire through our work here
- Involves a conspiracy or an attempt to do any of the above.

Secondly, that conduct needs to be very serious so that it is either:

- An indictable offence (or a criminal offence)
- An attempt to pervert the course of justice
- Involves bribery of a public official
- Perverts the course of justice
- Would be reasonable grounds for dismissal.

### Examples of Improper Conduct

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

### What is a Detrimental Action?

Detrimental Action does not include action we may legitimately take in managing our business.

### Examples of Detrimental Action

- An employee (directly or indirectly) threatens, abuses or harasses someone making a disclosure, or threatens, abuses or harasses that person’s family or friends.
- We, or our employees, discriminate against a person making a disclosure or that person’s family and associates in subsequent applications for jobs, permits or tenders.

### Contact:

**IBAC**

1300 735 135

<http://www.ibac.vic.gov.au>

Level 1, North Tower

459 Collins Street Melbourne VICTORIA 3000

GPO Box 24234, Melbourne, VICTORIA 3001

Legal Services | MH09.05.05B | General Legal Counsel | Reviewed Date: December 2015



---

MELBOURNE HEALTH



The information contained in this brochure is for educational purposes only and is not intended as a substituted for consultation with a doctor or health care professional

---