
Subject: Protected Disclosure
Section: Organisational
Responsibility: Chief Executive Officer
Authorised: Board of Management



OBJECTIVE

Boort District Health (BDH) is committed to the aims and objectives of the *Protected Disclosure Act 2012* and to complying with the requirements of the Act, which provides for the disclosure of improper conduct by public bodies and public officials and the protection for those who come forward with a disclosure. It also provides for the investigation of disclosures that meet the legislative definition of a protected disclosure. The *Protected Disclosure Act 2012* replaced the *Whistle-blowers Protection Act 2001*.

DEFINITION

The main objectives of the *Protected Disclosure Act 2012* are to:

- promote a culture in which individuals feel safe to make a disclosure;
- protect makers of protected disclosures from adverse consequences;
- provide a framework for investigating disclosed matters; and
- ensure that investigated matters are dealt with properly

PRINCIPLES

Boort District Health (BDH) recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial management of public resources, or conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment. Improper conduct by staff or actions that involves reprisals against any person making a protected disclosure will not be tolerated.

The *Protected Disclosure Act 2012* establishes an independent and external process for making disclosures about the most serious forms of improper conduct. Many other types of improper conduct or misconduct, which fall outside the scope of the Act, can be notified to BDH and managed internally. The *Inquiries Act 2014* provides for the establishment of Royal Commissions, Boards of Inquiry and Formal Reviews.

As an organisation, BDH is prohibited from discriminating against, disadvantaging, dismissing or threatening to dismiss an employee or take or threatens to take any other detrimental action against an employee who makes a Protected Disclosure or gives information to a Commission, Inquiry or Review encompassed by the *Inquiries Act 2014*.

A BDH employee who takes detrimental action against another person in reprisal for the making of a Protected Disclosure or the giving of information to a Commission, Inquiry or Review encompassed by the *Inquiries Act* is liable to criminal penalty.

BDH employees must not engage in conduct that constitutes a contravention of an order of a member of a Commission, Board of Inquiry or Formal Review. Additionally, it is unlawful for a person to take detrimental action against another person who is or was a commissioner because the other person is or was a member of a Commission, Board of Inquiry or Formal Review.

The identity of a person who has made a Protected Disclosure must be kept confidential. A breach of confidentiality may result in criminal penalties, including fines and imprisonment.

Complaints about patient/consumer incidents are outside the scope of this document and are addressed in the Comments and Feedback Policy.

DEFINITIONS:

Corrupt Conduct: types of conduct that would (if proved) be an indictable criminal offence or the offence of perverting the course of justice, attempting to pervert the course of justice, or bribery of a public official.

Detrimental Action: includes action causing injury, loss or damage, intimidation or harassment; and discrimination, disadvantage or adverse treatment (including disciplinary action) in relation to a person's employment, career, profession, trade or business. Examples include: personal injury, property damage or loss and demotion, transfer, or isolation in the workplace.

Detrimental Action Against Another Person in Reprisal for a Protected Disclosure occurs when a person:

1. Takes or threatens to take action against the other person because (or in the belief that) any person has made or intends to make the Protected Disclosure or has cooperated or intends to cooperate with an investigation of the Protected Disclosure; or
2. Incites or permits someone else to take or threaten to take action against any person because that person has made or intends to make the Protected Disclosure or has cooperated or intends to cooperate with an investigation of Protected Disclosure.

IBAC: means the Independent Broad-based Anti-Corruption Commission, which is a Public Body set up under the Independent Broad-based Anti-Corruption Commissioner Act 2011. IBAC has a range of functions including investigation, education and prevention functions. It is overseen by the Victorian Inspectorate.

Improper Conduct: means

- Corrupt conduct; or
- Any conduct which is not Corrupt Conduct but (if proved) would be a criminal offence or reasonable grounds for dismissal or termination of the Public Officer who engaged in that conduct.

Protected Disclosure: is a disclosure of Improper Conduct or Detrimental Action Against Another Person in Reprisal for a Protected Disclosure that is made in accordance with the requirements of the Protected Disclosure Act. Those requirements include that the disclosure shows, or is on reasonable grounds believed by the individual making the disclosure to show, that:

1. A person, Public Officer or Public Body has engaged in, is engaging in, or proposes to engage in Improper Conduct; or
2. A Public Officer or Public Body has taken, is taking, or proposes to take Detrimental Action Against Another Person in Reprisal for a Protected Disclosure.

A Protected Disclosure is made directly to the IBAC in accordance with the *Protected Disclosure Act 2012* which affords the person making the disclosure protection from liability and from detrimental action in reprisal for making the disclosure.

Public Officer: includes a person employed in any capacity or holding any office in the public sector (which includes public health services), any other person in the service of a Public Body, a person performing a public function on behalf of a Public Officer or Public Body (whether under contract or otherwise), and an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a delegate of, a Public Body or Public Officer.

APPLICATION OF POLICY:

Any person, whether internal or external to BDH, can make a Protected Disclosure. BDH is a public body and as such cannot receive disclosures however has an obligation to protect people against detrimental action that might be taken against them if they choose to make a protected disclosure. Only reports which are made directly to IBAC are able to be treated as protected disclosures. BDH is committed to the highest standards of ethics and probity in the performance of its duties and the delivery of its services to the community.

Where a person wishes to make a protected disclosure, BDH shall:

1. Ensure the person is immediately referred to IBAC and provided with all contact information:

Independent Broad-based Anti-Corruption Commission (IBAC)
Level 1, North Tower,
459 Collins Street, GPO Box 24234,
Melbourne, VIC 3000
Phone 1300 735 135
Fax (03) 8635 6444

Protected Disclosures may also be made online:

<https://www.ibac.vic.gov.au/reporting-corruption/report>

(If the Protected Disclosure concerns the Chief Executive Officer then the individual shall be directed to Board Chair for assistance.)

2. Maintain the security and confidentiality of all information they may have been given in relation to the disclosure and ensure disposal is secure; and
3. Ensure there are no detrimental actions taken against any person known to be making a protected disclosure.

Further information about the types of public bodies and public officers about whom disclosures can be made can be found in the *Public Administration Act 2004* and the *Independent Broad-based Anti-Corruption Commission Act 2011*.

Section 57 Notification – Mandatory Notification of Suspected Corruption

Section 57 of the Independent Broad-based Anti-Corruption Commission Act 2011, from 1 December 2016, sets out the obligation of relevant principal officers to make mandatory notifications to IBAC

Where the CEO (as the relevant principal officer) suspects on reasonable grounds that a matter involves 'corrupt conduct' occurring, or having occurred the CEO must notify IBAC of the matter. In making this notification, the CEO must comply with IBAC's '*Directions for Mandatory Notifications of Suspected Corruption*' available for download on IBAC's website at www.ibac.vic.gov.au/notifications. Notification to IBAC must be made using the 'Mandatory Notification Form for Relevant Principals Officers' available for download on IBAC's website at www.ibac.vic.gov.au/notifications.

Detrimental Action

Under the *Protected Disclosure Act 2012*, a BDH person who takes detrimental action against another person in reprisal for the making of a Protected Disclosure is liable to criminal penalty.

The *Protected Disclosure Act 2012* defines detrimental action to include action causing injury or loss or damage, intimidation or harassment, discrimination and subjecting a person to disadvantage or adverse treatment in a wide range of areas relating to their BDH role. A threat to take particular action can itself constitute detrimental action. There must be a linkage between the action or threatened action and the making of a protected disclosure.

As an organisation, BDH is prohibited from discriminating against or disadvantaging a person who makes a Protected Disclosure.

In addition to, criminal liability, detrimental action may also give rise to a civil liability for monetary compensation.

BDH is committed to ensure that the statutory protections under the Protected Disclosure Act are provided to every Protected Individual who makes a Protected Disclosure or who cooperates with an investigation into matters raised by a Protected Disclosure.

A report of actual or threatened detrimental action in reprisal for the making of a Protected Disclosure or for cooperating with an investigation into a Protected Disclosure must be reported directly to IBAC.

If an officer or employee suspects that some form of detrimental action may have occurred, they should raise their concerns with the Chief Executive Officer immediately.

If disciplinary action is being contemplated in relation to an individual known to have made a Protected Disclosure, the Chief Executive Officer will determine whether the proposed or any other action will proceed.

In every case where disciplinary or other action is being contemplated in relation to an individual known to have made a Protected Disclosure, the Chief Executive Officer must be satisfied that:

- the making of the Protected Disclosure is not a substantial reason for the taking of the action,
- there are good and sufficient grounds that would fully justify similar action against any other person in the same circumstances, and
- there are good and sufficient grounds that justify exercising any discretion to institute the action.

The Chief Executive Officer, in consultation with legal counsel, will fully document the decision making process the reasons why the disciplinary or other action is being taken and why it is not in retribution for the making of a Protected Disclosure.

The Chief Executive Officer will clearly advise the individual, in writing, of the action proposed to be taken and of any mitigating factors taken into account.

The identity of a person who has made a Protected Disclosure must be kept confidential. A breach of confidentiality may result in criminal penalties, including fines and imprisonment.

EVALUATION

All Protected Disclosures are handled in strict accordance with legislative requirements BDH is committed to the purposes on which the *Protected Disclosure Act 2012* and the *Inquiries Act 2014* are based:

- to encourage and facilitate disclosure of improper conduct within BDH
- provide protection for persons who:
 - make such disclosures or;
 - participate in investigations by the Independent Broad-based Anti-Corruption Commission or Royal Commissions.

References:

Relevant Legislation & Guidelines

Independent Broad-based Anti-Corruption Commission Act 2011 (Vic)

Protected Disclosure Act 2012 (Vic).

Public Administration Act 2004 (Vic)

Links:

Fact Sheets <http://www.ombudsman.vic.gov.au>

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

Last Review Dates:

2020

Next Review Date:

September 2022