

## Protected disclosure procedures

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### Introduction

The *Protected Disclosure Act 2012* (the Act) came into effect in February 2013 and replaced the *Whistleblowers Protection Act 2001*.

The Act encourages and facilitates disclosures of known or suspected improper conduct of public officers, public bodies and other persons and disclosures of detrimental action taken in reprisal for a person making a disclosure under the Act.

The Act provides protection for those who make a disclosure and for those persons who may suffer detrimental action in reprisal for that disclosure. It also provides for the investigation of disclosures that meet the definition of a *protected disclosure*.

Disclosures about improper conduct can be made by employees or by any member of the public.

These procedures provide an outline of the relevant parts of the Act. Please see the Independent Broad-based Anti-corruption Commission's (IBAC) website at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au) and their guidelines for more information about protected disclosures.



<b>Quick guide</b>	
<b>Who can make a disclosure?</b>	Any person or a group of people. This includes the public and Tribunal staff (including members).
<b>How do I make a disclosure?</b>	<p>Verbally or in writing, but not by fax to the following bodies:</p> <p>Disclosures about Mental Health Tribunal <b>staff</b>:</p> <p>Protected Disclosure Coordinator Department of Health 50 Lonsdale Street Melbourne VIC 3000 Telephone: 1300 045 866 Website: <a href="https://providers.dhhs.vic.gov.au/protected-disclosure">https://providers.dhhs.vic.gov.au/protected-disclosure</a> Email: <a href="mailto:protected.disclosure@dhhs.vic.gov.au">protected.disclosure@dhhs.vic.gov.au</a></p> <p>You can also contact IBAC regarding disclosures about Tribunal staff members. However, if you have a disclosure about a <b>Tribunal member</b> or the <b>Tribunal</b> as a whole, only IBAC can deal with it.</p> <p>IBAC's contact details are:</p> <p>Level 1, North Tower 459 Collins Street Melbourne VIC 3000 GPO Box 24234 Melbourne VIC 3001 Telephone: 1300 735 135 Website: <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a></p> <p>Download a complaint form or use IBAC's secure online form here: <a href="https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form">https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form</a></p>
<b>What can I make a disclosure about?</b>	<ul style="list-style-type: none"><li>• Corrupt or improper conduct by a public body or public officer performing public functions.</li><li>• Detrimental action by a public body or public officer taken in reprisal for a disclosure.</li></ul> <p>The Tribunal is a public body and its employees and Tribunal members are public officers.</p> <p>Corrupt and improper conduct and detrimental action are explained below in this document and on IBAC's website.</p>

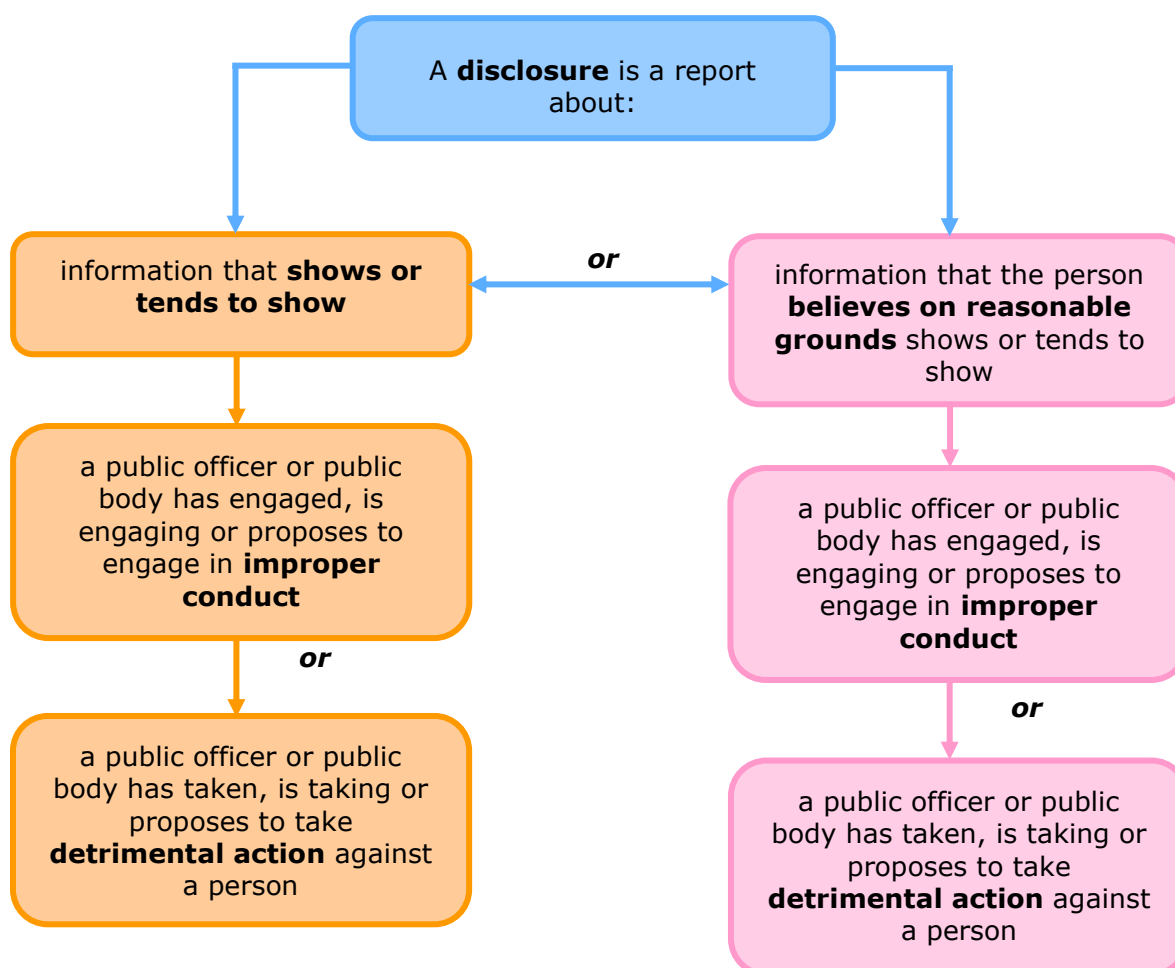


## What is a disclosure?

A disclosure is a report made by a person or group of people about:

- *improper conduct* by public bodies or public officers; or
- *detrimental action* taken against a person by public bodies or public officers *in reprisal* for the person making a protected disclosure.

Under the Act, the report must itself show or tend to show evidence of the improper conduct or a discloser must believe on reasonable grounds that there is improper conduct. A mere suspicion or allegation that is unsupported by further information or facts will not meet this threshold. 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 has occurred, is occurring or will occur.



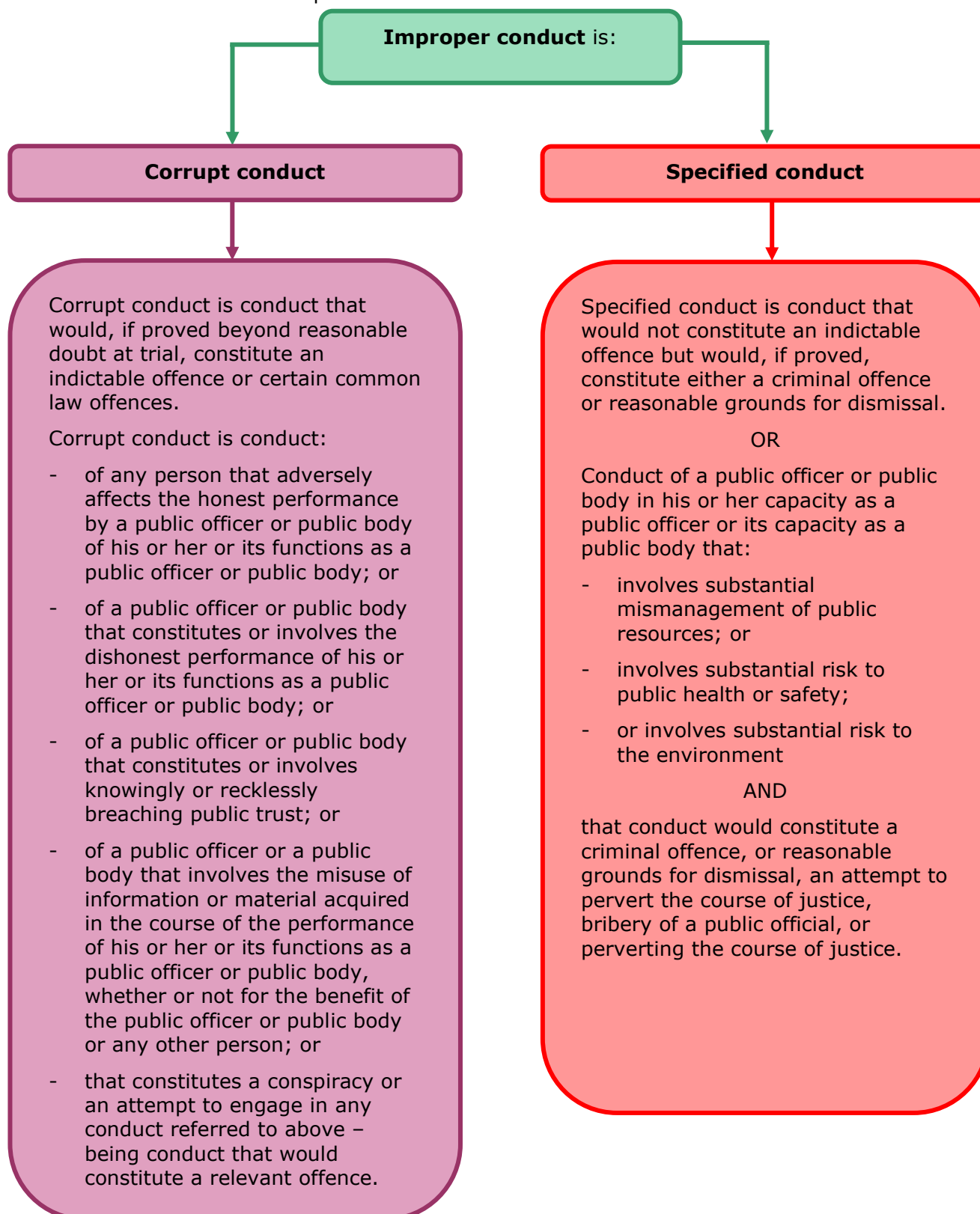
Some other points to note about disclosures:

- a disclosure may be about conduct that has occurred before the commencement of the Act;
- the improper conduct or detrimental action against a person may already have taken place, may be occurring now or the public officer or public body may be going to do it in the future; and
- information that is in the public domain will not normally be deemed a protected disclosure.



## What is *improper conduct*?

*Improper conduct* is defined as *corrupt conduct*, or *specified conduct* that is not corrupt conduct but that, if proved, would constitute a criminal offence or reasonable ground for terminating the employment of the officer who was or is engaged in that conduct. The improper conduct must be in the performance of a person or body's function as a public officer or public body. To be clear, the Mental Health Tribunal is a public body. Tribunal staff and Tribunal members are public officers.





### **Example of improper conduct**

*A member of staff uses the Tribunal's corporate credit card for expenses incurred at restaurants, resorts and hiring a luxury sports car.*

### **What is detrimental action?**

The Act prohibits a person taking detrimental action against another person *in reprisal* for someone making a protected disclosure. The person engaging in the detrimental action must be a public officer or public body.

Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

A threat to carry out detrimental action will suffice.

A person must not incite someone else to carry out the detrimental action.

To qualify as detrimental action, the action must be taken against a person in *reprisal* for making the protected disclosure. This means that detrimental action or threat of detrimental action must be made in the belief that a person has made or intends to make a disclosure or the person who has cooperated or intends to cooperate with an investigation of a protected disclosure.

### **Example of detrimental action**

*An employee has made a protected disclosure about their manager. In reprisal for the disclosure, the manager demotes the employee.*

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.

### **How do I make a disclosure?**

A person may make a disclosure verbally, in writing (post or email) and anonymously. A disclosure cannot be made via facsimile.

Verbal disclosures can be made in person, by telephone, or by leaving a voicemail message.

Disclosures must be made in private. Therefore, it is important you make the disclosure to the correct body. Please note that there are different bodies to complain to, depending on whether your complaint is about Tribunal staff or Tribunal members (see below).

You can ask someone else to make a disclosure on your behalf. However, if you ask another person to make the disclosure, only that person will receive protection under the Act. Your protection will be limited protection against detrimental action taken against you in reprisal for the disclosure.

The purported disclosure cannot be a mere allegation or suspicion that is not supported by any facts or circumstances.



The information must show or tend to show improper conduct or be a belief on reasonable grounds. This means that there must be some information supporting the belief. For more information on this requirement see the [IBAC Guidelines](#).

#### To whom to make a disclosure

If you wish to make a protected disclosure about the **Tribunal's employees**, contact:

Protected Disclosure Coordinator  
Department of Health  
50 Lonsdale Street  
Melbourne VIC 3000  
Telephone: 1300 045 866  
Website: <https://providers.dhhs.vic.gov.au/protected-disclosure>  
Email: [protected.disclosure@dhhs.vic.gov.au](mailto:protected.disclosure@dhhs.vic.gov.au)

You can also contact IBAC regarding disclosures about Tribunal staff members. However, if you have a disclosure about the **Tribunal** as a whole or a **Tribunal member**, only IBAC can deal with it. IBAC's contact details are:

IBAC  
Level 1, North Tower  
459 Collins Street  
Melbourne VIC 3000  
GPO Box 24234  
Melbourne VIC 3001  
Telephone: 1300 735 135  
Website: [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)  
Online complaint form: <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form>

You can also contact IBAC for further information about protected disclosures.

### **What will happen after I make a disclosure to the Department of Health?**

If you make your disclosure (about a Tribunal staff member) to the Department of Health, your disclosure will be acknowledged and you will be advised of the key steps involved in the handling of your disclosure, including the expected timeframes. Please note, you will only be contacted if you provide contact details. If you make a disclosure anonymously, the Department will be unable to contact you.

Upon receipt, the Department will assess the disclosure and make sure it complies with the requirements of the Act (explained above).

If the Department determines your disclosure complies with the Act, it will notify IBAC within 28 days of you making the disclosure. The disclosure is then known as an *assessable disclosure*. The Department will let you know that it has notified IBAC of the assessable disclosure.

If the Department determines that your disclosure does not comply with the Act, it will advise you within 28 days of you making the disclosure.

You may wish to pursue the complaint via the Tribunal's normal complaint-handling process (please see [www.mht.vic.gov.au](http://www.mht.vic.gov.au) for further information about the Tribunal's complaint-handling procedures).

The Department's protected disclosure policy is available [here](#).



## What will IBAC do?

If you have a disclosure about Tribunal staff, you may make the disclosure directly to IBAC. However, if you have a disclosure about the Tribunal as a whole or a Tribunal member, you *must* make your disclosure directly to IBAC.

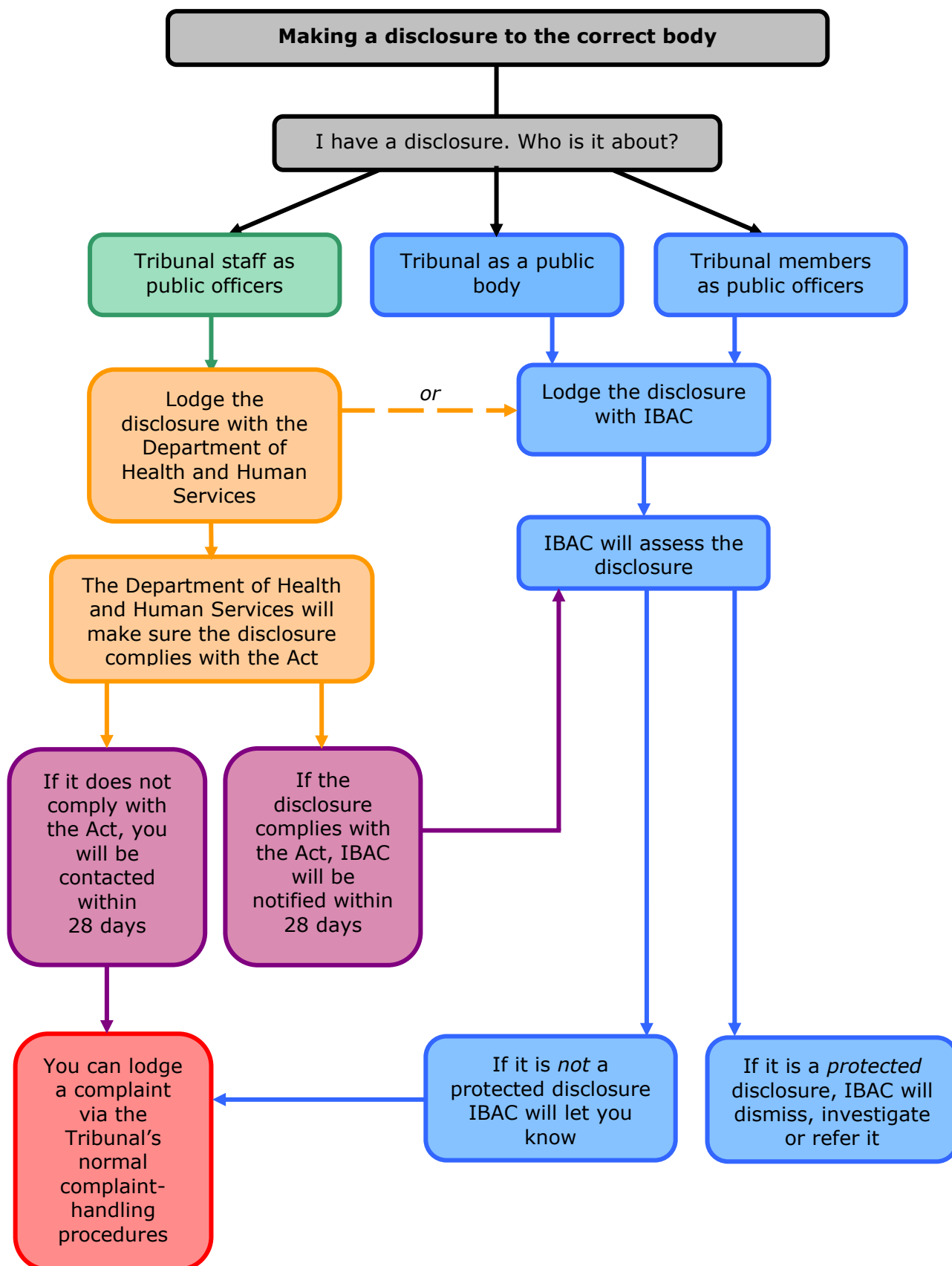
For detailed information on IBAC's procedures and guidelines, visit [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

Once IBAC receives a disclosure (direct from the discloser or from the Department of Health), it will assess within a reasonable time whether the disclosure meets all of the requirements under the Act and decide whether it is a *protected* disclosure. Your disclosure is not a *protected* disclosure under the Act until IBAC decides it is a *protected* disclosure.

If IBAC determines the disclosure is *not* a protected disclosure, the confidentiality protections under the Act, described below, will *not* apply in relation to the disclosure. However, the other protections outlined below will apply.

If IBAC determines the disclosure *is* a protected disclosure, it will decide what action to take and write to you about the protections under the Act. IBAC may dismiss, investigate or refer a matter. Please note that IBAC will not refer a matter to the Tribunal for investigation. If appropriate to do so, IBAC may refer the protected disclosure to the Ombudsman, the Chief Commissioner of Police or the Victorian Inspectorate.

Within a reasonable time, IBAC will notify you in writing of the determination and the action that IBAC will take.







## Protection under the Act

If you make a disclosure, you will receive certain protections under the Act even if the disclosure is not assessed as a *protected* disclosure. This includes protection from detrimental action taken in reprisal for you making the disclosure.

The Act's protections include:

- immunity from civil or criminal liability;
- immunity from administrative action (such as disciplinary action);
- immunity from committing an offence under an Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- immunity from breaching any other obligation requiring confidentiality or otherwise restricting the disclosure of information;
- protection from an action from defamation; and
- protection from detrimental action in reprisal.

The protections do not apply if you provide false or misleading information.

The Act provides protection to persons who make a disclosure from the time the disclosure is made to Department of Health or IBAC.

Please note that a person is not protected against legitimate management action and will still be held liable for their own conduct that they disclose, even though they have made a disclosure under the Act.

### Confidentiality

Under the Act, a person or body must not disclose the content or information about the content of a disclosure or any information that is likely to lead to the identification of a person who has made a disclosure. This means that you must not tell anyone else about the disclosure except in the circumstances set out in the Act.

These confidentiality provisions do not apply if IBAC has determined that the disclosure is not a protected disclosure.

If IBAC investigates a protected disclosure about the Tribunal and/or its staff and/or Tribunal members, IBAC may contact the Tribunal for the purpose of investigation. IBAC may identify you and the content of your disclosure if it is necessary to do so. In these circumstances, the Tribunal will be bound by the Act's confidentiality requirements.

### Protection from detrimental action

The Tribunal will take precautions to prevent its employees and Tribunal members from taking detrimental action in reprisal for a protected disclosure. The precautions will depend on the circumstances of the discloser and the protected disclosure. If possible, the Tribunal will contact and consult you in regard to these precautions.



## Criminal offences under the Act

There are a number of criminal offences under the Act of which you should be aware. It is an offence to:

- disclose the content (or information about the content) of a disclosure that has been notified to IBAC (by the discloser or the Department of Health) or information that is likely to lead to the identification of the discloser unless permitted by the Act;
- provide false or misleading information that relates to a protected disclosure;
- falsely claim that a matter is the subject of a protected disclosure;
- disclose that a disclosure has been notified to IBAC for assessment unless permitted under the Act; and
- disclose that a disclosure has been determined to be a protected disclosure unless permitted under the Act.

## Complaints and feedback

If you do not want to make a formal disclosure under the Act but still have a concern you wish to raise, you may use the Tribunal's usual complaint and feedback procedures.

The Tribunal encourages its users and employees to communicate complaints and other feedback regarding its services.

The Tribunal's complaints and feedback procedures are available at [www.mht.vic.gov.au](http://www.mht.vic.gov.au).

## Freedom of Information

The *Freedom of Information Act 1982* does not apply to any document in the Tribunal's or Department of Health's possession that relates to a protected disclosure, an assessable disclosure or that is likely to lead to the identification of a person who made an assessable disclosure.

For more information on the Tribunal's freedom of information procedures, please visit the Tribunal's website.