

Public Interest Disclosures

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1. Background and purpose

- 1.1 The Judicial Commission of Victoria (the **Judicial Commission**) is an independent body responsible for investigating complaints about judicial officers and non-judicial members of the Victorian Civil and Administrative Tribunal (**VCAT**). It is established under s 87AAK of the *Constitution Act 1975*.
- 1.2 The Judicial Commission encourages its officers and members of the public to report known or suspected incidents of improper conduct and detrimental action.
- 1.3 The Judicial Commission is required to establish and publish procedures under section 58 of the *Public Interest Disclosures Act 2012* (the **PID Act**):
 - (a) to facilitate the making of disclosures;
 - (b) for the handling of those disclosures and, where appropriate, the notification of those disclosures to the Independent Broad-based Anti-corruption Commission (**IBAC**) or another appropriate entity; and
 - (c) for the protection of persons from detrimental action taken by the Judicial Commission or its members, officers or agents.
- 1.4 These procedures are a resource for Judicial Commission officers and other people making disclosures or considering whether or how to make disclosures.
- 1.5 These procedures have been prepared in accordance with the PID Act, the *Public Interest Disclosures Regulations 2019* (the **Regulations**) and the **IBAC** Guidelines which are available on the IBAC website (www.ibac.vic.gov.au).

2. About the PID Act

2.1 The PID Act is Victoria's public sector whistleblower legislation. It commenced operation on 10 February 2013.

2.2 The purposes of the PID Act are:

- (a) to encourage and facilitate disclosures of improper conduct by public officers, public bodies and other people, and detrimental action taken in reprisal for a person making a disclosure under the Act;
- (b) to provide protection for people who make disclosures, and other people who may suffer detrimental action in reprisal for those disclosures;
- (c) to ensure that those disclosures are properly assessed and, where necessary, investigated; and
- (d) to provide for the confidentiality of disclosures and the identity of the people who make them.

3. What is a public interest disclosure?

- 3.1 A public interest disclosure is a disclosure of information about the *improper conduct* of a person, public body or public officer that a person makes to any of the organisations specified in Part 2 of the PID Act.
- 3.2 A public interest disclosure can also be made about *detrimental action* that a public body or public officer takes against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure.
- 3.3 The Judicial Commission interprets the term 'disclosure' in the ordinary sense of the word, to mean information that is a revelation to the person receiving it. A complaint or allegation that is already in the public domain will not normally be a public interest disclosure. For example, if the matter has already been subject to media or other public commentary.
- 3.4 A public interest disclosure can relate to conduct or action that:
- (a) may have already taken place (including conduct that occurred before the PID Act came into effect on 10 February 2013);
 - (b) may be occurring now; or
 - (c) may happen in the future.

Improper conduct

- 3.5 According to section 4 of the PID Act, improper conduct is either *corrupt conduct* or other *improper conduct*.
- 3.6 Improper conduct does not include conduct that is trivial, even if the conduct may technically fall within one of the categories of improper conduct.
- 3.7 These procedures provide an overview of corrupt conduct and other improper conduct. Whether particular conduct is corrupt or otherwise improper depends on the relevant facts and circumstances. It may be appropriate to seek legal advice about specific matters.

Corrupt conduct

- 3.8 Corrupt conduct is conduct of a certain type that would constitute a relevant offence. It is defined in s 4 of the of the *Independent Broad-based Anti-Corruption Commission Act 2011* (the **IBAC Act**).
- 3.9 The types of conduct that can be corrupt conduct are:
- (a) conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions;

Conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions

'Any person' includes both a public officer and a person who is not a public officer. It includes a body politic or body corporate.

The provision is directed to conduct that improperly influences, induces or persuades a public officer to act in a way that is less than honest.

Bribery typifies conduct that falls within this provision.

- (b) conduct of a public officer or public body that:
- (i) constitutes or involves the dishonest performance of their official functions;
 - (ii) constitutes or involves knowingly or recklessly breaching public trust;
 - (iii) involves misuse of information or material that was obtained in their official capacity;

Public trust

The term 'public trust' reflects common law concepts of official misconduct. It refers to public officers being entrusted with public power for the benefit of the public, not their own benefit. The misuse of those powers involves a breach of public trust.

- (c) conduct of a person intended to adversely affect the effective performance of a public officer or public body and result in the first person (or an associate) obtaining a benefit as described in s 4(da) of the IBAC Act (eg licence, permit, appointment, financial benefit, or other monetary or proprietary gain) that they would not have otherwise obtained; or

Conduct of a person intended to adversely affect the effective performance of a public officer or public body and result in the first person (or an associate) obtaining a benefit

An 'associate' is defined in section 4(2B) of the IBAC Act to mean: a) a person or entity that has an agreement or understanding with the first person or holds a 'relevant financial interest' in a business of the first person; b) a person who is a 'relative' of the first person, and c) where the first person is a body corporate, certain associated persons and bodies, such as a director or employee of a subsidiary company.

Any person can engage in this conduct, it is not limited to public officials.

Conduct which is accidental or unintentional will not fall within this provision.

IBAC provides the following examples of conduct that could fall within this provision:

- lying to a public officer about meeting the criteria for a government grant, resulting in the grant being awarded
- submitting a fabricated quote so that a family member wins a contract awarded by a public body

- (d) conduct that could constitute a conspiracy or an attempt to engage in any of the above conduct.

3.10 Relevant offences, as defined in s 3 of the IBAC Act, are:

(a) indictable offences against an Act; and

Indictable offences against an Act

- The reference to 'an Act' means a Victorian Act.
- Indictable offences are more serious offences than summary offences.
- Offences in the *Crimes Act 1958* and the *Wrongs Act 1958* are deemed to be indictable, unless the contrary intention appears. Offences in other legislation that are described as being level 1 – 6 are presumed to be indictable offences, unless the contrary intention appears. All other offences are presumed to be summary offences, unless the contrary intention appears.
- There are numerous indictable offences against an Act that may be committed by conduct described in section 4(1) of the IBAC Act. For example: theft, obtaining property or financial advantage by deception, and making or using a false document. Guidance about the elements of many offences can be found in the Judicial College of Victoria 'Criminal Charge Book', which is publicly available online at <http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#1262.htm>.

(b) the common law offences of perverting the course of justice, attempting to pervert the course of justice, bribery of a public official, or misconduct in public office.

3.11 In determining whether conduct would constitute a relevant offence, it can be assumed that the required state of mind to commit the relevant offence can be proven: s 4(1A) of the IBAC Act.

3.12 The elements of the offence of perverting the course of justice are:¹

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| <p>1. engaging in conduct that did pervert the course of justice;</p> | <p>The 'course of justice' is the administration of the law by a court.</p> <p>Perversion of the course of justice means that a court's administration of justice has been interfered with.</p> <p>For example, this may occur by eroding the integrity of the court; by hindering access to the court; by deflecting applications that would be made to the court; or denying the court knowledge of relevant law, or true circumstances and facts of the case.</p> <p>This can occur with respect to civil and criminal proceedings.</p> <p>For conduct to pervert the course of justice, it must have been engaged in after court proceedings have commenced.</p> |
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¹ For further information, see the Judicial College of Victoria 'Criminal Charge Book', [7.8.3] <http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#1262.htm>.

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| | <p>Some examples of perverting the course of justice include:</p> <ul style="list-style-type: none"> - persuading a witness not to give evidence; - solicitor speaking to a journalist so that proceeding would be stayed because of publicity. |
| 2. intending for that conduct to pervert the course of justice. | <p>The intent must be directed towards perverting judicial proceedings, not just a police investigation without a connection to future judicial proceedings. It is sufficient to prove the person engaged in conduct for a purpose that would result in the perversion of the course of justice, if that purpose was carried out successfully.</p> |

3.13 The elements of the offence of attempting to pervert the course of justice are:

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| 1. engaging in conduct that has the tendency to pervert the course of justice; and | <p>See above with respect to the offence of perverting the course of justice.</p> <p>However, conduct constituting attempting to pervert the course of justice can occur before judicial proceedings commence (eg by frustrating a police investigation).</p> <p>In contrast to the offence of perverting the course of justice, it is sufficient if the conduct could objectively have the tendency to pervert the course of justice (but need not actually effect such a perversion). Tendency meaning conduct that poses a real risk or possibility of interfering with a court proceeding.</p> |
| 2. intending for that conduct to pervert the course of justice. | <p>See above with respect to the offence of perverting the course of justice.</p> |

3.14 The common law offence of bribery involves:

- (a) receiving or offering an undue reward;
- (b) by or to any person in a public office;
- (c) in order to influence that person's behaviour in that office; and
- (d) to incline that person to act contrary to accepted rules of honesty and integrity.

3.15 The offence of misconduct in public office is described in IBAC's [fact sheet on reporting corruption and misconduct](#) as 'any conduct by a public sector employee

which is unlawful or fails to meet the ethical or professional standards required in the performance of duties or the exercise of powers entrusted to them.² IBAC's 'frequently asked questions about mandatory notifications'³ explains the elements of the offence, based on the Victorian Court of Appeal decision of *R v Quach* (2010) 27 VR 310, as follows:

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| 1. A public official | A person who is a 'public officer' under the IBAC Act/PID Act (see Schedule 1) will ordinarily meet this requirement. |
| 2. In the course of or connected with his/her public office | In <i>Quach</i> , this element was described at [38] as: "The official's conduct will be linked to their office when in doing the impugned act, the official did something he or she was duty bound to refrain from doing, according to the responsibilities of the office." |
| 3. Wilfully misconducts him/herself; by act or omission, for example by wilfully neglecting or failing to perform his/ her duty | This is the mental element of the offence. The conduct must be wilful rather than accidental, in the sense that it is deliberate and considered. The offence also extends to circumstances where the public officer is reckless as to whether their conduct is wrong or not. |
| 4. Without reasonable excuse or justification | This will involve an assessment on the material and information available to the relevant principal officer once they become aware of the corrupt conduct. |
| 5. Where such conduct is serious and meriting criminal punishment, having regard to the responsibilities of the office of the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities | This element was defined in <i>Quach</i> at [47] as conduct that is "so far below acceptable standards as to amount to an abuse of the public's trust in the office holder" and "sufficient to attract criminal punishment." |

Other improper conduct

3.16 Other types of conduct that can be improper conduct, if done by a public officer or public body in their official capacity, are set out in section 4(1)(b)-(d) of the PID Act. Namely:

- (a) a criminal offence – this would include summary as well as indictable offences, provided they are not trivial;
- (b) serious professional misconduct;

² Available at <https://www.ibac.vic.gov.au/docs/default-source/education-resources/information-sheet-reporting-corruption-and-misconduct-20170701.pdf?sfvrsn=77796675_30>.

³ Available at <<https://www.ibac.vic.gov.au/docs/default-source/mandatory-notifications/faq-s-for-mandatory-notifications.pdf>>.

Serious professional misconduct This is not defined in the PID Act. Like the criminal offence of misconduct in public office, it involves a serious failing by a public officer to meet the ethical or professional standards required in the performance of duties or the exercise of powers entrusted to them, but also includes conduct that would not be severe enough to warrant criminal punishment. For assistance in assessing whether misconduct is serious, refer to page 11 of the IBAC Guidelines.

*Making a disclosure **about** the Judicial Commission or a Judicial Commission officer*

- (c) all types of conduct set out at paragraph [3.9] above that does not constitute a relevant offence; and
- (d) conduct of a public officer or public body in their official capacity that:
 - (i) involves substantial mismanagement of public resources;
 - (ii) involves substantial risk to public health or safety; or
 - (iii) involves substantial risk to the environment.

Examples of improper conduct

A public officer takes a bribe or receives a payment other than his or her wages in exchange for the discharge of a public duty.

A public officer sells confidential information.

A public officer favours unmeritorious applications for jobs by friends and relatives.

Detrimental action

3.17 There are two elements of 'detrimental action'.

3.18 First, there must be actual or threatened conduct that is 'detrimental action'. This is defined in section 3 of the PID Act to include:

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

3.19 The words in the definition of 'detrimental action' should be given their ordinary meaning. They broadly describe various types of action which are harmful or unfavourable to a person.

3.20 The second element is reprisal. This means that, detrimental action is taken against a person in reprisal for them (or another person) having made a public interest disclosure or cooperated with the investigation of a public interest disclosure (see s 43 of the PID Act). This includes where a person takes detrimental action because she or he believes 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.
- 3.21 A person can have taken detrimental action without having actually taken the action, but by threatening to do so. Also, person can have taken detrimental action if they incite or permit another person to take or threaten the action.
- 3.22 The reason for the person taking action in reprisal does not need to be a 'substantial' reason for the action. It is enough if it is a reason. However, a manager can take management action against an employee who has made a public interest disclosure only if the fact that the employee has made the public interest disclosure is not a reason for the manager taking the action.
- 3.23 Detrimental action is not an offence if, when the detrimental action was taken, the person who took the action knew that the IBAC, Victorian Inspectorate, or the Integrity and Oversight Committee had determined that the disclosure is not a public interest complaint.
- 3.24 A public interest disclosure under the PID Act can only be made about detrimental action by a public officer or public body: section 9(1) of the PID Act.

Examples of detrimental action

A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure, due to the making of the disclosure.

A public body gives an officer a poor performance review in retaliation for making a public interest disclosure.

A public body excludes a person who made a public interest disclosure from projects that would normally be assigned to them, in reprisal

A public officer threatens, abuses or carries out other forms of harassment directly or indirectly against the person who makes a disclosure or his or her family or friends.

A public body discriminates against the person who makes a disclosure or his or her family or associates in subsequent applications for jobs, permits or tenders.

Public officer or public body

- 3.25 Public interest disclosures may be made about any of the public officers or public bodies defined in section 6 of the PID Act and section 6 of the IBAC Act. For a full definition of 'public officer' and 'public body', see Schedule 1 of these procedures.
- 3.26 A public interest disclosure cannot be made about certain people and entities specified in the PID Act, namely:
- (a) the Office of the Special Investigations Monitor;
 - (b) the Special Investigations Monitor;

- (c) a court; or
- (d) an investigating panel or a member of an investigating panel within the meaning of the Judicial Commission Act.

3.27 A person can still make a disclosure even if they cannot identify the person or the organisation to which the disclosure relates.

4. Who can make a disclosure?

- 4.1 Any natural person can make a disclosure.
- 4.2 A person can make a disclosure as an individual or together with a group of individuals.
- 4.3 A company or business cannot itself make a public interest disclosure, but its officers or employees can.
- 4.4 A person can ask someone else to make a disclosure on their behalf. However, if a person asks someone else to make a disclosure on their behalf, only the second person will receive the full protection of the PID Act in relation to that disclosure. The first person's protection will be limited to confidentiality and protection against detrimental action taken in reprisal for the disclosure that has been made.

5. Who can a public interest disclosure be made to?

- 5.1 This depends on the person or body to which the public interest disclosure relates. Only certain persons and entities can receive public interest disclosures. The PID Act requires public interest disclosures about some public officers or public bodies to be made to specific agencies. These are set out below in Schedule 2 of these procedures.
- 5.2 If a public interest disclosure is not required to be made to an agency specified in Schedule 2, it may be made to:
- (a) IBAC (unless the disclosure is about IBAC or an IBAC Officer, in which case it must be made to the Victorian Inspectorate);
 - (b) the Ombudsman (unless the disclosure is about an Ombudsman Officer, in which case it must be made to IBAC or the Victorian Inspectorate);
 - (c) the Victorian Inspectorate (unless the disclosure is about the Victorian Inspectorate or a Victorian Inspectorate Officer, in which case it must be made to the Integrity and Oversight Committee, Speaker of the Legislative Assembly, or the President of the Legislative Council).
- 5.3 If a person makes a disclosure to a person or entity that cannot receive the disclosure, the disclosure will not be a public interest disclosure. The person will be informed about which organisations can receive disclosures (see IBAC Guidelines).
- 5.4 The person who made the disclosure will not be protected under the PID Act unless the disclosure is a 'misdirected disclosure' or an 'external disclosure'.
- 5.5 A *misdirected disclosure*, under s 18 of the PID Act, is where a disclosure is:
- (a) made to an entity to which a public interest disclosure may be made; and
 - (b) the person who made the disclosure honestly believed that the entity was an appropriate entity to which to make the disclosure; and
 - (c) the disclosure does not relate to a member of Parliament.
- 5.6 The entity that received the misdirected disclosure may notify the misdirected disclosure to IBAC (or the Integrity and Oversight Committee or Victorian Inspectorate Officer in some situations (see paragraph 5.2 above).
- 5.7 Protections that apply to a person who makes a public interest disclosure apply to a person who makes a misdirected disclosure. (These protections are discussed in Part 7 of these procedures).
- 5.8 Under section 38A of the PID Act, an *external disclosure* is a public interest disclosure made to an entity who is not otherwise able to receive a public interest disclosure under the PID Act. Since the Judicial Commission is an entity to whom a public interest disclosure may be made, an 'external disclosure' cannot be made to it.
- 5.9 A person who has made a disclosure to the Judicial Commission and been notified that it has been determined to be a public interest disclosure, may make a disclosure

of information that is substantially the same as the subject matter of the original disclosure to a person or body to whom a disclosure cannot be made under the PID Act; for example to a journalist, in the following circumstances:

- (a) if the Judicial Commission has not notified a person of any action taken in relation to their disclosure within six months of IBAC's notification that it is a public interest complaint within 30 days of the person requesting it; or
- (b) if the Judicial Commission has not completed its investigation within 12 months of IBAC's notification that the disclosure is a public interest complaint and one of the following applies:
 - (i) the Judicial Commission has not given the person advice about the progress of the public interest complaint within 30 days of the person requesting it; or
 - (ii) the Judicial Commission has given the person advice within 30 days of the request but has not advised the person within six months that the investigation has been completed.

5.10 An external disclosure is not a disclosure made in accordance with this section if it contains information that:

- (a) may prejudice a criminal investigation, criminal proceeding or other legal proceeding of which the person making the disclosure is aware; or
- (b) is likely to lead to the disclosure of any investigative method used by IBAC or Victoria Police.

Disclosures about judicial officers and non-judicial VCAT members

- 5.11 A disclosure that relates to a judicial officer or a member of VCAT who is not a judicial officer (**non-judicial VCAT member**) must be made to the Judicial Commission or to IBAC. A 'judicial officer' includes a judge, a magistrate, a coroner, an associate judge or a judicial registrar. For a full definition of 'judicial officer', see Table 1 below.
- 5.12 A non-judicial VCAT member means a member appointed to VCAT, under Part 2 of the *Victorian Civil and Administrative Tribunal Act 1998*, other than the President or a Vice President of VCAT.

Table 1 - Judicial officers

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|--|--|--|---|
| a Judge of the Supreme Court | an Associate Judge of the Supreme Court | a reserve Judge within the meaning of the <i>Constitution Act 1975</i> | a reserve Associate Judge within the meaning of the <i>Supreme Court Act 1986</i> |
| a Judge or reserve Judge of the Supreme Court appointed or assigned to VCAT | a judge of the County Court | an associate judge of the County Court | a reserve judge within the meaning of the <i>County Court Act 1958</i> |
| a reserve associate judge within the meaning of the <i>County Court Act 1958</i> | a judge or reserve judge of the County Court appointed or assigned to VCAT | a magistrate of the Magistrates' Court | a reserve magistrate within the meaning of the <i>Magistrates' Court Act 1989</i> |
| a magistrate or reserve magistrate appointed or assigned to the Coroners Court, the Children's Court or VCAT | a coroner | a reserve coroner within the meaning of the <i>Coroners Act 2008</i> | a judicial registrar of the Supreme Court, the County Court, the Magistrates' Court, the Children's Court or the Coroners Court |

Public interest disclosures about other officers or bodies

- 5.13 The Judicial Commission can only receive public interest disclosures about judicial officers or non-judicial VCAT members.
- 5.14 If a person tries to make a public interest disclosure to the Judicial Commission about a different person or body and the Judicial Commission cannot receive the disclosure, the Judicial Commission will advise the person on how to make the public interest disclosure to the correct body. However, this may not be possible if the person has made the public interest disclosure anonymously. If the Judicial Commission receives a *misdirected disclosure*, it may notify the misdirected disclosure to IBAC (or the Integrity and Oversight Committee or Victorian Inspectorate Officer in some situations (see paragraph 5.2 above).
- 5.15 Any entity that can receive public interest disclosures under the PID Act must establish and publish procedures to facilitate the making of those disclosures. A public interest disclosure must be made in accordance with the relevant entity's procedures.

Making a disclosure about the Judicial Commission or a Judicial Commission officer

- 5.16 5.16 Under s 14(f)(iv) of the PID Act, IBAC or the Victorian Inspectorate can receive public interest disclosures relating to the Judicial Commission or Judicial Commission officers, other than a judicial member of the Board of the Judicial Commission (refer to Part 11 of these procedures).

6. Making a public interest disclosure to the Judicial Commission

How to make a public interest disclosure to the Judicial Commission

- 6.1 A public interest disclosure to the Judicial Commission may be made to the Director of the Judicial Commission.
- 6.2 Persons considering making a public interest disclosure are welcome to contact the Judicial Commission by telephone or in writing in the first instance. The Director of the Judicial Commission will then be in a position to:
- (a) receive a disclosure either orally or in writing;
 - (b) if required, make arrangements to meet with the person seeking to make a disclosure at an appropriate time and location to receive an oral or written disclosure; or
 - (c) make arrangements for an appropriate alternative mode of disclosure.
- 6.3 An oral disclosure to the Judicial Commission must be made by telephone to (03) 9084 9600 or by leaving a voicemail message.
- 6.4 A person should make an oral disclosure in private. This means that the person making the disclosure must reasonably believe that the only other people present or able to listen to the conversation are:
- (a) a lawyer representing the person making the disclosure (if any); and
 - (b) a person to whom a disclosure can be made under the PID Act.
- 6.5 A written disclosure to the Judicial Commission must be:
- (a) sent by post addressed to the office of the Judicial Commission or the Director of the Judicial Commission at GPO Box 4305, Melbourne VIC 3001;
 - (b) sent by email to enquiries@judicialcommission.vic.gov.au;
 - (c) delivered to the William Cooper Justice Centre, 210 William Street, Melbourne, marked to the attention of the Director of the Judicial Commission; or
 - (d) submitted via the online complaint form at <https://www.judicialcommission.vic.gov.au/>
- 6.6 A person may not make a public interest disclosure by fax.
- 6.7 As discussed in Part 5 of these procedures, a public interest disclosure should be made in accordance with Part 2 of the PID Act. A disclosure to the Judicial Commission should relate to a judicial officer or a non-judicial VCAT member.
- 6.8 A person may make a public interest disclosure anonymously. An anonymous disclosure can be made using an unverifiable email address, an anonymous phone call, or face-to-face meeting where the person making the disclosure refuses to

identify themselves. However, if a public interest disclosure is anonymous, this may affect how the disclosure is investigated and the discloser will not be notified of the outcome of any investigation. If the discloser cannot be identified from the disclosure, the disclosure will be treated as an anonymous disclosure.

- 6.9 If a person is making a public interest disclosure verbally, the person receiving the disclosure may take notes of the discussion. The person receiving the disclosure may also want to record the conversation but will only do so with the discloser's permission.
- 6.10 A person does not have to specifically refer to the PID Act or the protections in the PID Act for their disclosure to be a public interest disclosure. Sometimes people disclose information to the Judicial Commission which relates to improper conduct or detrimental action without stating that they want to make a disclosure or asking for protection under the PID Act. We also assess these disclosures under the PID Act.
- 6.11 However, it is helpful if a person making a public interest disclosure provides the following information:
- (a) an indication as to whether they intend to make a public interest disclosure and wish to receive the protections under the PID Act;
 - (b) a description of the alleged improper conduct or detrimental action;
 - (c) their reasons for believing the conduct occurred;
 - (d) their contact details (unless they wish to make a public interest disclosure anonymously);
 - (e) any concerns they have about reprisals for making the disclosure; and
 - (f) any supporting documents.
- 6.12 A person may advise that they do not want their disclosure to be treated or continue to be treated as a 'public interest disclosure' by stating so in writing within 28 days after they make the disclosure. However, the Judicial Commission has separate obligations to notify IBAC and the Victorian Inspectorate about matters involving corrupt conduct or misconduct. The Judicial Commission may still need to notify IBAC or the Victorian Inspectorate under those provisions.
- 6.13 If a person advises that they do not want their disclosure to be treated, or continue to be treated, as a 'public interest disclosure', the protections under Part 6 of the PID Act do not apply to the disclosure (s 19 PID Act).

What happens next

- 6.14 These procedures relate to disclosures made to the Judicial Commission. Disclosures made to other bodies, including IBAC and the Victorian Inspectorate, will be handled in accordance with their guidelines and processes.

Acknowledgement of disclosures

- 6.15 If the discloser has indicated that they intend to make a public interest disclosure and wish to receive the protections under the PID Act, the Judicial Commission will acknowledge receipt of the disclosure verbally or in writing (if a postal or email address is known). The discloser will also be advised of the key steps involved in the process for handling their disclosure, including the timeframes involved.

Assessing disclosures

- 6.16 Upon receipt of a disclosure (even where the discloser does not refer specifically to the PID Act or the protections in the PID Act), the Director of the Judicial Commission will assess whether the disclosure complies with the requirements of the PID Act.
- 6.17 First, the Judicial Commission will assess whether the disclosure complies with the formal requirements in Part 2 of the PID Act, as discussed in these procedures. The Judicial Commission considers a range of issues, including the following:
- (a) is the Judicial Commission able to receive the disclosure? In other words, is the disclosure about a judicial officer or non-judicial VCAT member? If not, is the disclosure made by a person who honestly believed that the Judicial Commission was an appropriate entity to which to make the disclosure, and the disclosure does not relate to a member of Parliament (ie a *misdirected disclosure*)?
 - (b) was the disclosure made by an individual or group of people?
 - (c) was the disclosure made orally or in writing?
 - (d) is the information a 'disclosure', in the sense that it is a revelation to the person receiving it?
 - (e) has the person expressly stated in writing that the disclosure is not a disclosure for the purposes of the PID Act?
- 6.18 Second, the Judicial Commission will assess whether the information discloses improper conduct or detrimental action. This requires the disclosure to satisfy **one of two 'tests'** contained in the PID Act.

- 6.19 The first test is: **does the information show or tend to show there is improper conduct or detrimental action?** This information is assessed as to whether it satisfies the 'elements' of either improper conduct or detrimental action, as defined in the PID Act, and whether any of the exceptions apply. This may require the Judicial Commission to:
- (a) seek further information; or
 - (b) seek further evidence from the discloser.
- 6.20 If it is not clear that the information disclosed shows or tends to show that there is improper conduct or detrimental action, then the Judicial Commission will apply the second test.
- 6.21 The second test is: **does the discloser reasonably believe that the information shows or tends to show there is improper conduct or detrimental action?** This means that:
- (a) the discloser must believe that the information shows or tends to show there is improper conduct or detrimental action; and
 - (b) the discloser's belief must be 'reasonable'.
- 6.22 There must be sufficient information for information to 'show or tend to show' there is improper conduct or detrimental action. This may include direct observations, corroborative observation by others, or other evidence (eg contradictory records). Simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for having a reasonable belief. A belief cannot be based on a mere allegation or conclusion unsupported by any further facts or circumstances.
- 6.23 In assessing whether the discloser's belief is reasonable, the Judicial Commission will consider a range of factors, including the following:
- (a) is the belief based on facts that would be sufficient to make a reasonable person believe there was improper conduct or detrimental action?
 - (b) how reliable is the information the discloser has provided? How would the discloser have obtained the information? How much detail has the discloser provided?
 - (c) how credible is the discloser and the people who have provided the discloser with information?

Urgent action

- 6.24 In some circumstances, the disclosure may be about improper conduct that may pose an immediate threat to the health and safety of individuals, or the preservation of property, or may consist of serious criminal conduct.

- 6.25 In these cases, it may be necessary for the Judicial Commission to report the disclosure to Victoria Police for immediate investigation. It may also be necessary for the Judicial Commission to take action to prevent certain future conduct (including taking action against the person whom the disclosure is about). For example, a judicial officer may be concealing evidence of criminal conduct.
- 6.26 This action may take place before the Judicial Commission has decided whether the disclosure meets all of the requirements in the PID Act, or while the Judicial Commission is awaiting IBAC's decision on a notified matter.
- 6.27 While the PID Act limits the release of information about public interest disclosures, it allows the Judicial Commission to disclose the content of a disclosure 'to the extent necessary for the purpose of taking lawful action' in relation to conduct that is the subject of an assessable disclosure, including disciplinary process or action. However, the Judicial Commission must not reveal the identity of the discloser in taking urgent action.

Notification to IBAC or another appropriate entity

- 6.28 If the Judicial Commission considers that the public interest disclosure that is made in accordance with Part 2 of the PID Act or misdirected disclosure may be a disclosure that satisfies one of the tests for improper conduct or detrimental action (see above [8] - [6.23]), the Judicial Commission must notify the disclosure to IBAC or another appropriate entity (see below [6.29]), in writing, within 28 days of the disclosure being made.
- 6.29 IBAC will generally be the appropriate entity that the Judicial Commission will need to notify. However, the Judicial Commission will need to notify:
- (a) the Victorian Inspectorate, if a misdirected disclosure concerns IBAC, an IBAC officer, or a Public Interest Monitor; or
 - (b) the Integrity and Oversight Committee, if a misdirected disclosure concerns the Victorian Inspectorate or a Victorian Inspectorate officer.
- 6.30 The disclosure will then be known as an 'assessable disclosure'. The Judicial Commission will advise the discloser of the public interest disclosure in writing within 28 days of the disclosure being made that:
- (a) the Judicial Commission considers that the disclosure may be a public interest disclosure; and
 - (b) the disclosure has been notified to IBAC, or the Victorian Inspectorate or the Integrity and Oversight Committee (as the case may be) for assessment;
- 6.31 The Judicial Commission may also provide to IBAC (or other appropriate entity that was notified of the disclosure in accordance with paragraph [6.29] of these procedures) information that it has obtained while it was assessing whether the disclosure should be referred to IBAC (or the other appropriate entity).
- 6.32 If the Judicial Commission notifies the disclosure to IBAC, this does not necessarily prevent the Judicial Commission from continuing to handle the complaint that

constituted the disclosure. The complaint is taken to be a complaint made to the Judicial Commission under section 5 of the Judicial Commission Act.

Action by the Judicial Commission

- 6.33 After considering the complaint made under s 5 of the Judicial Commission Act that constituted the disclosure, if the Judicial Commission determines that it will continue to handle the complaint it will:
- (a) dismiss the matter in whole or in part;
 - (b) refer the complaint to an investigating panel, after giving the judicial officer or non-judicial VCAT member to whom the complaint relates an opportunity to respond; or
 - (c) give the judicial officer or non-judicial VCAT member to whom the complaint relates an opportunity to respond and refer the matter to the person specified by the Judicial Commission Act (which may be the Chief Justice of Victoria or the relevant head of jurisdiction).
- 6.34 The Judicial Commission will give the discloser written notice of the dismissal or referral of the complaint.
- 6.35 The role of an **investigating panel** is to investigate a matter referred by the Judicial Commission. After investigating a matter, the investigating panel may dismiss the matter, refer the matter to the person specified by the Judicial Commission Act (which may be the relevant head of jurisdiction), or prepare a report for the Governor or the Attorney-General if it considers the removal of the judicial officer or non-judicial VCAT member may be warranted on the grounds of misbehaviour or incapacity. The investigating panel will give the discloser written notice of the dismissal or referral of the complaint, or a report prepared in relation to the complaint.
- 6.36 If the Judicial Commission or an investigating panel refers the matter to the relevant **head of jurisdiction or other nominated person**, that person may (among other things) counsel and make recommendations to the relevant judicial officer or non-judicial VCAT member. The Judicial Commission will provide the discloser with information about the outcome of such a referral.
- 6.37 The Judicial Commission's investigative procedures and powers are set out in more detail on the Judicial Commission's website and in the Judicial Commission Act.

Related disclosures

- 6.38 Sometimes, people make additional disclosures in the course of an investigation. If the disclosure concerns the same subject matter as the complaint that is being investigated, this is known as a 'related disclosure'. The Judicial Commission and investigating panels approach these disclosures in the following way:
- (a) if the disclosure is made by the same person who made the original disclosure, the Judicial Commission or the investigating panel (as the case may be) will investigate the matter as part of the Judicial Commission's investigation;
 - (b) if the disclosure is made by another person, the Judicial Commission or the investigating panel will notify IBAC (or another appropriate entity) if it

considers that the related disclosure satisfies one of the tests for improper conduct or detrimental action (see above [6.18] - [6.23]).

- 6.39 The Judicial Commission will investigate the complaint pursuant to its complaint investigative procedures and powers, applying the confidentiality requirements imposed by the PID Act.
- 6.40 The Judicial Commission may refer, dismiss, or provide a report in relation to the matter.
- 6.41 The Judicial Commission's investigative procedures and powers are set out in detail on the Judicial Commission's website and in the Judicial Commission Act.
- 6.42 Where the discloser has indicated that they intend to make a public interest disclosure and wish to receive the protections under the PID Act, and the Judicial Commission considers that the disclosure is not a public interest disclosure, the Judicial Commission will advise the discloser in writing within 28 days of the making of the disclosure that:
- (a) the Judicial Commission considers that the disclosure is not a public interest disclosure;
 - (b) the disclosure has not been notified to IBAC or another appropriate entity for assessment under the PID Act; and
 - (c) the protections under Part 6 of the PID Act apply to the disclosure.
- 6.43 In that event, the discloser may wish to seek that the disclosure be dealt with in accordance with the Judicial Commission's complaint process under the Judicial Commission Act. For further information about the Judicial Commission's complaint process, see the guidelines available at <https://www.judicialcommission.vic.gov.au/complaints/guidelines-for-making-a-complaint>

Assessment by IBAC

- 6.44 IBAC is responsible for identifying, investigating, exposing and preventing corrupt conduct across the whole of the Victorian public sector.
- 6.45 Once the Judicial Commission notifies a disclosure to IBAC, IBAC will determine within a reasonable time whether the disclosure satisfies one of the tests for improper conduct or detrimental action (see above [6.18] - [6.23]). If so, the disclosure is determined to be a 'public interest complaint', unless IBAC considers that:
- (a) it would be more appropriate for the matter to be dealt with by the Judicial Commission or another public body; or
 - (b) the matter has been adequately dealt with by the Judicial Commission, another public body, or as required under an enterprise agreement made under the *Fair Work Act 2009* (Cth).

- (c) IBAC has consulted with the Judicial Commission about whether the disclosure is a public interest complaint; and
 - (d) the person who made the disclosure has consented to it being dealt with other than as a public interest complaint, unless the disclosure was made anonymously.
- 6.46 Before determining that a notified disclosure is not a public interest complaint, IBAC must:
- (a) consult with the Judicial Commission about whether the disclosures is public interest complaint; and
 - (b) ensure the person who made the disclosure has consented to it being dealt with other than as a public interest complaint, unless the disclosure was made anonymously.
- 6.47 IBAC may seek additional information from the discloser and/or the Judicial Commission to make its decision but must not exercise its investigative powers under the IBAC Act when assessing whether a disclosure is a protected disclosure complaint’.
- 6.48 Within a reasonable time after determining that the disclosure is a public interest complaint, IBAC must advise the Judicial Commission of its determination.
- 6.49 Within a reasonable time after determining that the disclosure is a public interest complaint, IBAC must also notify the person who made the disclosure in writing that IBAC has determined that it is a public interest complaint and must provide written information about:
- (a) it being an offence under the PID Act to provide information or further information that the person knows to be false or misleading;
 - (b) protections under Part 6 of the PID Act that apply to the disclosure; and
 - (c) the confidentiality requirements set out in Part 7 of the PID Act (see Part 9 of these procedures).
- 6.50 IBAC must provide written information of the action taken and in case of a decision by IBAC to dismiss a public interest complaint, the reasons for the decision. IBAC may decide not to notify the discloser or Judicial Commission if it considers that notifying would have one of the adverse consequences set out in section 59(4) of the IBAC Act. These adverse consequences include putting a person’s safety at risk or prejudicing an investigation under the IBAC Act’
- 6.51 Where the discloser has indicated that they intend to make a public interest disclosure and wish to receive the protections under the PID Act or it otherwise appears to IBAC that the person wishes to received the protections that apply, and IBAC has determined that their disclosure is not a public interest complaint, IBAC must, within a reasonable time, notify the discloser in writing that:
- (a) IBAC has determined that it is not a public interest complaint (stating the reasons for IBAC determining this) and will not be investigated as a public interest complaint,
-

- (b) that the discloser will still receive the protections under Part 6 of the PID Act for a public interest disclosure. This includes protection from detrimental action taken in reprisal for the person making the disclosure; and
 - (c) that the confidentiality requirements set out in Part 7 of the PID Act (see Part 9 of these procedures) no longer apply in relation to the disclosure.
- 6.52 If IBAC determines that a disclosure is not a public interest complaint but considers that the matter may be able to be dealt with by another entity, IBAC may advise the discloser that they should make a complaint directly to the relevant entity if they wish to pursue the matter.
- 6.53 If IBAC determines that a disclosure is not a public interest complaint, it may assess whether the disclosure is a complaint or notification under the IBAC Act and if so, deal with the disclosure as a complaint or notification under the IBAC Act;
- 6.54 IBAC may defer taking action under section 58 of the IBAC Act in relation to a complaint or notification, other than a public interest complaint, if the subject matter in the complaint or notification is being investigated by the Chief Commissioner of Police, the Ombudsman, the Auditor-General, the Victorian Inspectorate, the Judicial Commission, the Victorian Workcover Authority (and others prescribed in section 73(2) of the IBAC Act and it is more appropriate for that body than IBAC to investigate the complaint or notification
- 6.55 If IBAC determines that the disclosure is a public interest complaint, it must decide to:
- (a) dismiss the disclosure, if there are grounds to do so;
 - (b) investigate the disclosure; or
 - (c) refer the disclosure to the Judicial Commission for investigation of the complaint [if it was made prior to and including 31 December 2019].

Assessment by Victorian Inspectorate or the Integrity and Oversight Committee

- 6.56 Where the Judicial Commission is required to notify a disclosure to the Victorian Inspectorate or the Integrity and Oversight Committee, instead of the IBAC, equivalent provisions apply to it as they apply to IBAC when assessing whether a disclosure is a public interest complaint (as set out above at [**Error! Reference source not found.**] – [6.52]).

IBAC's obligations to inform at the conclusion of an investigation

- 6.57 IBAC must provide the discloser with information about the results of its investigation of a public interest complaint. This will include any action taken by IBAC and any recommendation by IBAC that action or further action be taken.
- 6.58 IBAC may provide written information to the Director of the Judicial Commission about the commencement, conduct or result of an investigation. This includes any actions taken and any recommendations for action or further action. However, IBAC must not provide any information that is likely to lead to a discloser being identified.

- 6.59 IBAC must not provide this information to either the discloser or the Director of the Judicial Commission if it considers the disclosure might result in any of the possible adverse outcomes specified in section 163(4) of the IBAC Act.

7. Protections for people who make a public interest disclosure

7.1 Part 6 of the PID Act sets out the protections provided to people who:

- (a) make a public interest disclosure in accordance with Part 2 of the Act;
- (b) make a misdirected disclosure;
- (c) make an external disclosure; or
- (d) are a police officer or protective services officer making a complaint against another police officer or protective services officer.

7.2 These include:

- (a) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
- (b) protection from committing an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (c) protection from breaching any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- (d) protection from an action for defamation.

7.3 It is a criminal offence to take detrimental action against another person in reprisal for a public interest disclosure. If a discloser (or an investigating entity or Integrity and Oversight Committee (as the case may be)) believes that detrimental action has been or may be taken against them (the discloser) in reprisal for a public interest disclosure, they may apply to the Supreme Court for an order requiring the person who took the detrimental action to take certain steps or prohibiting them from taking certain steps.

7.4 If a discloser has sustained injury, loss or damage as a result of detrimental action taken in reprisal for a disclosure being made, the PID Act sets out remedies that are available to them. Disclosers may wish to obtain legal advice about this.

7.5 These protections apply to a public interest disclosure or misdirected disclosure from the time the discloser makes the disclosure, whether or not:

- (a) the Judicial Commission notifies the disclosure to IBAC (or the Victorian Inspectorate, or the Integrity and Oversight Committee, where appropriate); and
- (b) IBAC (or the Victorian Inspectorate, or the Integrity and Oversight Committee, where the disclosure has been notified to it) determines that the disclosure is a public interest complaint.

7.6 The protections will apply to further information relating to a public interest disclosure that the discloser provides to:

- (a) the Judicial Commission;
 - (b) IBAC; the Victorian Inspectorate; the Integrity and Oversight Committee; or a person engaged by the Integrity and Oversight Committee to investigate the public interest complaint; or
 - (c) an investigating entity that is investigating the public interest complaint.
- 7.7 The protections in the PID Act do not apply if a discloser provides false or misleading information or claims that a matter is the subject of a public interest disclosure knowing that claim to be false. A person who makes a disclosure is also not protected against legitimate management action being taken in relation to them, provided that making a public interest disclosure is not the reason for taking or proposing to take management action.
- 7.8 If a discloser repeats their disclosure to someone other than as permitted by the PID Act, the discloser may lose certain protections provided for in the PID Act. For example, if a disclosure is repeated to the media and the media reports on it, the discloser may not be protected from defamation action.
- 7.9 While there are these protections, there are also responsibilities. In particular, if a discloser has been involved in the improper conduct or detrimental action which is the subject of the disclosure, the discloser will still be held liable for their own involvement. Making a disclosure does not provide a discloser with immunity for their own wrongdoing.

Protections for public officers

7.10 Section 76 of the PID Act provides specific protections for public officers which allow them to provide information to another public officer of that entity or to IBAC in dealing with a disclosure. Provided that the public officer acts in good faith and provides the information in accordance with the PID Act, the Regulations, the Guidelines and the procedures of the entity, the public officer:

- (a) does not commit an offence under the *Constitution Act 1975* or any other Act that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- (b) does not breach any other obligation (made by oath or rule of law or practice) requiring the maintenance of confidentiality or otherwise restricting the disclosure of information; and
- (c) is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for disclosing the information.

8. Welfare management

- 8.1 The Judicial Commission will provide welfare support to a discloser or a witness in an investigation as the circumstances require.
- 8.2 The Judicial Commission's Public Interest Disclosure Officer will consider appointing a welfare manager when a person has made a public interest disclosure or is cooperating, or intending to cooperate, with an investigation of a public interest disclosure.
- 8.3 A welfare manager is responsible for:
- (a) examining the discloser and/or witness' immediate welfare and protection needs and, where appropriate, fostering a supportive work environment;
 - (b) providing practical advice and support such as assisting the discloser and/or witness to seek support from various support services including a registered medical practitioner, an employee assistance program, trade union or the Victorian WorkCover Authority;
 - (c) advising the discloser and/or witness of the protections available under the PID Act;
 - (d) receiving and responding to any disclosures of detrimental action in reprisal for making the disclosure (eg harassment, intimidation or victimisation);
 - (e) ensuring that the discloser and/or witness' expectations of the process and outcomes are realistic;
 - (f) maintaining confidentiality; and
 - (g) operating discreetly to protect the discloser and/or witness from being identified as being involved in a public interest disclosure.
- 8.4 In determining whether to appoint a welfare manager in any particular case, the Public Interest Disclosure Officer will consider:
- (a) whether the disclosure has proceeded, or is likely to proceed, to an investigation;
 - (b) whether there are any real risks of detrimental action against the persons involved, taking into account their particular circumstances;
 - (c) whether they can provide effective support to the persons involved; and
 - (d) whether it is within their power to protect the person/s involved from suffering repercussions.
- 8.5 The Public Interest Disclosure Officer may appoint an internal person as welfare manager or engage a contractor to provide welfare services.

- 8.6 If a welfare manager is appointed to look after a discloser or witness, the welfare manager will only be required to provide reasonable support and should discuss the reasonable expectations with the person(s) they are supporting.

9. Confidentiality

- 9.1 There are a number of confidentiality obligations which arise under the PID Act and other laws relating to the receipt and investigation of public interest disclosures. The Judicial Commission will only disclose information about a discloser or their disclosure in accordance with the law.
- 9.2 Part 7 of the PID Act contains two main restrictions on disclosing information:
- (a) a restriction on disclosing the content of an assessable disclosure; and
 - (b) a restriction on disclosing the identity of a person making an assessable disclosure.
- 9.3 A breach of either of these restrictions is a criminal offence.
- 9.4 Each of these restrictions is subject to a number of specific exceptions which allow a person to disclose these kinds of information in certain circumstances. The PID Act also provides a number of general exceptions which allow a person to disclose these kinds of information.

Content of an assessable disclosure must not be disclosed

- 9.5 The PID Act prohibits the disclosure of the content, or information about the content, of an assessable disclosure.
- 9.6 In general, this prohibition applies to a person or body who receives information in particular circumstances, including:
- (a) a person or body who receives an assessable disclosure in the performance of duties or functions under the PID Act; or
 - (b) a person or body to whom IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee provides information about the content of an assessable disclosure, in the course of assessing it to determine whether it is a public interest complaint.
- 9.7 For example, if a person makes a disclosure to the Judicial Commission, which the Judicial Commission then notifies to IBAC, the Judicial Commission must not disclose the content of that disclosure (other than as permitted under Part 7 of the PID Act).
- 9.8 This prohibition does not apply to the discloser.
- 9.9 This prohibition is subject to a number of specific exceptions. It does not apply in certain circumstances, including:
- (a) where a person or body discloses information in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure; and
 - (b) where the person or body discloses information to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of

the assessable disclosure (including a disciplinary process or action) (see 9.14).

Identity of a person making an assessable disclosure must not be disclosed

- 9.10 The PID Act prohibits a person or body from disclosing information that would be likely to lead to the identification of a person who has made an assessable disclosure.
- 9.11 This prohibition does not apply to the discloser.
- 9.12 This prohibition is subject to a number of specific exceptions. It does not apply in certain circumstances, including where the information is disclosed by an investigating entity or the Integrity and Oversight Committee after and in accordance with the discloser's written consent. (see 9.14 below).

Circumstances in which information may be disclosed

- 9.13 As noted above, the PID Act also provides a number of general exceptions from these two restrictions on the disclosure of information.
- 9.14 The circumstances in which a person may disclose information about a public interest disclosure that the Judicial Commission has notified to IBAC, or information which is likely to lead to the identification of the person who made that disclosure, include:
- (a) where the IBAC, the Victorian Inspectorate or the Integrity and Oversight Committee has determined that the disclosure is not a public interest complaint;
 - (b) where the Integrity and Oversight Committee or an investigating body has published a report to Parliament; or an investigating body has otherwise made public the content of the disclosure consistent with the confidentiality requirements of the PID Act;
 - (c) where necessary for the purpose of the exercise of functions under the PID Act;
 - (d) by an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the PID Act, or part of the PID Act under which the investigating entity is authorised to investigate a public interest complaint;
 - (e) to Victoria Police where an investigating entity has previously disclosed information to the Chief Commissioner of Police relating to potential criminal conduct that is relevant to an investigation;
 - (f) for the purpose of a proceeding for an offence against an integrity Act, or section 19 of the *Evidence (Miscellaneous Provisions) Act 1958* arising from an investigation by the Ombudsman;
 - (g) for the purpose of a disciplinary process or action in respect of conduct that would constitute an offence against an integrity Act, or section 19 of the *Evidence (Miscellaneous Provisions) Act 1958* arising from an investigation by the Ombudsman;
 - (h) for the purpose of obtaining legal advice or representation in relation to rights, liabilities, obligations or privileges under an integrity Act;

- (i) in limited circumstances, to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the PID Act; and
- (j) for the purpose of assisting the person who made the assessable disclosure, to a health practitioner, trade union, employee assistance program, Victorian WorkCover Authority, Fair Work Commission, for certain purposes; or a service prescribed in the Regulations.
- (k) for the purpose of a restorative engagement process with the written consent of the person participating in the process who alleges they are the victim of sexual discrimination or sexual harassment.

Procedures for protecting confidentiality

- 9.15 The Judicial Commission has internal procedures to ensure that confidential information, including the identity of the person who made the disclosure, is protected when a disclosure is made to it.
- 9.16 All hard and electronic files relating to a public interest disclosure will be stored securely. Only the Public Interest Disclosure Officer will be able to access these files.
- 9.17 Care will be taken when emailing information relevant to a public interest disclosure matter and all phone calls and meetings will be conducted in private. Additionally, hard copy documents will be placed in two successive windowless envelopes which are sealed and marked “private and confidential” and “to be opened by addressee only”, and personally delivered wherever possible.
- 9.18 Under section 78 of the PID Act, documents are not subject to the *Freedom of Information Act 1982* (the **FOI Act**) if they disclose information that relates to a public interest disclosure or is likely to identify a person who has made a public interest disclosure.
- 9.19 Section 143 of the Judicial Commission Act provides that the FOI Act does not apply to a document in the possession of the Judicial Commission to the extent that it discloses information that relates to a complaint or an investigation.
- 9.20 The Judicial Commission provides education for all officers about the PID Act and for senior officers about the receipt, handling, assessment and notification of disclosures.

10. Criminal offences

10.1 There are a number of offences set out in the PID Act relating to breaches of the requirements of the PID Act. The key offences to be aware of are:

- (a) it is an offence to take detrimental action against another person in reprisal for a public interest disclosure;
- (b) it is an offence to disclose the content, or information about the content, of a disclosure that the Judicial Commission has notified to IBAC or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the PID Act;
- (c) it is an offence for any person to:
 - (i) provide false or misleading information that the person knows to be false or misleading in a material particular, intending that the information be acted on as a public interest disclosure;
 - (ii) provide further information that relates to a public interest disclosure, that the person knows to be false or misleading in a material particular;
 - (iii) claim that a matter is the subject of a public interest disclosure knowing the claim to be false; or
 - (iv) claim that a matter is the subject of a disclosure that IBAC or the Victorian Inspectorate has determined to be a public interest complaint knowing the claim to be false.

11. Making a disclosure about the Judicial Commission or its officers

Who to make a disclosure to

11.1 The Judicial Commission is a public body, and Judicial Commission officers are public officers, for the purposes of the PID Act and the IBAC Act. Judicial Commission officers include:

- (a) members or acting members of the Board of the Judicial Commission;
- (b) the Director or Acting Director of the Judicial Commission;
- (c) employees referred to in section 36 of *Court Services Victoria Act 2014* who provide assistance to the Judicial Commission, an investigating panel or the Director; and
- (d) consultants engaged by the Judicial Commission.

11.2 In general, however, a disclosure about the Judicial Commission and its officers cannot be made to the Judicial Commission. To work out the appropriate body for making a disclosure about the Judicial Commission or its officers, see Table 2 below.

11.3 A person cannot make a disclosure under the PID Act regarding the conduct of, or actions taken by, an investigating panel or a member of an investigating panel. The Victorian Inspectorate is responsible for monitoring the use of the coercive powers of investigating panels.

Table 2: Disclosures about the Judicial Commission and its officers

| If the disclosure is about... | Report to... |
|--|--|
| Judicial Commission | IBAC or the Victorian Inspectorate, or the Ombudsman |
| A judicial member of the Board of the Judicial Commission | the Judicial Commission or IBAC |
| A non-judicial member of the Board of the Judicial Commission | IBAC or the Victorian Inspectorate |
| Director or Acting Director of the Judicial Commission | |
| Employees referred to in section 36 of the <i>Court Services Victoria Act 2014</i> who provide assistance to the Judicial Commission | |
| Consultants engaged under section 133 of the Judicial Commission Act | |

How to make a disclosure

11.4 IBAC, the Victorian Inspectorate, and the Ombudsman have their own procedures for the making of public interest disclosures. Those procedures will provide more specific guidance on how to make a disclosure to the relevant entity.

Making a disclosure to IBAC

11.5 An oral disclosure to IBAC must be made in private and may be made:

- (a) in person;
- (b) by telephone to 1300 735 135;
- (c) by leaving a voicemail message on the telephone number of one of the individuals specified below to whom an oral disclosure may be made;
- (d) by some other form of non-written electronic communication.

11.6 The oral disclosure must be made to one of the following persons:

- (a) the Commissioner of IBAC;
- (b) the Deputy Commissioner of IBAC;
- (c) the Chief Executive Officer of IBAC;
- (d) an employee referred to in section 35(1) of the IBAC Act;
- (e) any staff referred to in s 35(2) of the IBAC Act; or
- (f) a person engaged as a consultant under s 36 of the IBAC Act.

11.7 A written disclosure to IBAC must be:

- (a) delivered personally to the office of IBAC at Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000;
- (b) sent by post addressed to the office of IBAC at GPO Box 24234, Melbourne Vic 3001;
- (c) sent by email to info@ibac.vic.gov.au or to the official email address of a person specified above to whom an oral disclosure may be made; or
- (d) submitted by an online form available at <https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>.

How to make a disclosure to the Victorian Inspectorate

11.8 An oral disclosure to the Victorian Inspectorate must be made in private and may be made:

- (a) in person;
- (b) by telephone to (03) 8614 3232;
- (c) by leaving a voicemail message on the telephone number of one of the individuals specified below who is authorised to receive oral disclosures;
- (d) by some other form of non-written electronic communication.

11.9 The oral disclosure must be made to one of the following Victorian Inspectorate Officers (see section 3 of the *Victorian Inspectorate Act 2011*):

- (a) the Inspector;
- (b) a member of staff of the Victorian Inspectorate; or
- (c) a person engaged by the Victorian Inspectorate to provide the Inspectorate with services, information or advice..

11.10 A written disclosure to the Victorian Inspectorate must be:

- (a) delivered personally to the office of the Victorian Inspectorate after making arrangements to do so by contacting the Victorian Inspectorate on (03) 8614 3232;
- (b) sent by post addressed to the office of the Victorian Inspectorate at PO Box 617, Collins Street West, Melbourne Vic 8007; or
- (c) sent by email to info@vicinspectorate.vic.gov.au or to the official email address of a person specified above to whom an oral disclosure may be made.

How to make a disclosure to the Ombudsman

11.11 The first step in making a disclosure to the Ombudsman is to contact the Ombudsman's office by telephone on (03) 9613 6222 (Melbourne metro callers) or 1800 806 314 (regional Victorian callers only) and indicating that you wish to make a disclosure.

Protection against detrimental action

11.12 The Judicial Commission will take precautions to prevent its officers and agents from taking detrimental action in reprisal for a public interest disclosure. This includes:

- (a) securely storing all information in relation to public interest disclosures;

- (b) maintaining confidentiality around information relating to public interest disclosures, so far as possible consistently with the Judicial Commission's legal powers and obligations;
- (c) identifying, assessing, controlling and monitoring risks of reprisals faced by disclosers and witnesses.

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

Welfare management

11.14 The Judicial Commission recognises that officers against whom disclosures are made must also be supported during the handling and investigation of disclosures and will provide welfare support to officers during the handling and investigation of a disclosure as the circumstances require and in accordance with the confidentiality requirements imposed by the PID Act.

11.15 The Judicial Commission will only disclose information about the subject of a disclosure in accordance with the law.

11.16 Where a disclosure is dismissed or not substantiated, the Judicial Commission will ensure that there are not adverse consequences for the subject of the disclosure. The Judicial Commission will take all reasonable steps to ensure that the allegations, the fact of the investigation, the outcome and the identity of the subject remain confidential.

12. Review

- 12.1 These procedures are reviewed regularly to ensure they are consistent with the PID Act, the Regulations and the Guidelines.

Glossary of terms

assessable disclosure

a disclosure that must be made directly, or notified, to IBAC, the Victorian Inspectorate, or the Integrity and Oversight Committee and includes a police complaint disclosure. In the case of a disclosure notified to IBAC, it is a disclosure that the notifier considers may be a public interest disclosure

corrupt conduct

see Part 3 of these procedures

detrimental action

see Part 3 of these procedures

discloser

A person who makes a disclosure that may be a public interest disclosure

entity that can receive disclosures under the PID Act

means, an investigating entity; public service body; a Council under the *Local Government Act 1989*; a public body or a public officer; under section 6 of the PID Act; the Speaker of the Legislative Assembly; the President of the Legislative Council; or the Integrity and Oversight Committee

Guidelines

the guidelines issued by IBAC under section 57 of the PID Act

IBAC

the Independent Broad-based Anti-corruption Commission, established under the *Independent Broad-based Anti-corruption Commission Act 2011*

improper conduct

see Part 3 of these procedures

Integrity and Oversight Committee

the Integrity and Oversight Committee established under section 5(a) of the *Parliamentary Committees Act 2003*

investigating entity

IBAC, the Judicial Commission (or an investigating panel appointed by it), the Ombudsman, the Chief Commissioner of Police, the Victorian Inspectorate, the Chief Municipal Inspector, the Racing Integrity Commissioner, or the Information Commissioner. Only these entities can investigate a public interest complaint

Judicial Commission

the Judicial Commission of Victoria, established under the *Constitution Act 1975*

Judicial Commission officer

a Judicial Commission officer within the meaning of section 3(1) of the *Judicial Commission of Victoria Act 2016* (as to which, see Schedule 1 of these procedures)

judicial officer

a judicial officer within the meaning of section 3 of the PID Act (as to which, see Schedule 1 of these procedures)

misdirected disclosure

under s 18 of the PID Act, is where a disclosure is:

- (a) made to an entity to which a public interest disclosure may be made; and
- (b) the person who made the disclosure honestly believed that the entity was an appropriate entity to which to make the disclosure; and
- (c) the disclosure does not relate to a member of Parliament.

non-judicial VCAT member

a member of VCAT who is not a judicial officer

PID Act

the Public Interest Disclosures Act 2012

police complaint disclosure

a complaint made by a police officer or protective services officer about another police officer or protective services officer to IBAC, the Chief Commissioner of Police, or another more senior police officer or protective services officer who refers the complaint to the Chief Commissioner of Police under section 168 of the *Victoria Police Act 2013*.

public interest disclosure

a disclosure made in accordance with Part 2 of the Act or a complaint made in accordance with section 167(3) of the *Victoria Police Act 2013*

public interest complaint

a disclosure that IBAC (or the Integrity and Oversight Committee) has determined under section 26 of the PID Act, or by the Victorian Inspectorate under section 31 of the PID Act to be a public interest complaint

Public Interest Disclosure Officer

a person with a central clearinghouse and advisory role in the Judicial Commission's internal system for handling public interest disclosures (as to which, see the Judicial Commission's 'Handling and Notification of Public Interest Disclosures ' procedures)

public body

a public body within the meaning of section 6 of the PID Act (as to which, see Schedule 1 of these procedures)

public officer

a public officer within the meaning of section 6 of the PID Act (as to which, see Schedule 1 of these procedures)

public sector

the sector comprising all public bodies and public officers

public service body

means a Department; an Administrative Office; or the Victorian Public Sector Commission, as defined in the Public Administration Act 2004

Regulations

the *Public Interest Disclosures Regulations 2019*

Schedule 1 - Key terms

A Judicial Commission officer is:

- (a) a member or acting member of the Board of the Judicial Commission;
- (b) the Director or Acting Director of the Judicial Commission;
- (c) an employee referred to in section 36 of the *Court Services Victoria Act 2014* who provides assistance to the Judicial Commission, an investigating panel or the Director; or
- (d) a consultant engaged by the Judicial Commission under section 133 of the *Judicial Commission of Victoria Act 2016*.

A judicial officer is:

- (a) a Judge of the Supreme Court;
- (b) an Associate Judge of the Supreme Court;
- (c) a reserve Judge within the meaning of the *Constitution Act 1975*;
- (d) a reserve Associate Judge within the meaning of the *Supreme Court Act 1986*;
- (e) a Judge or a reserve Judge of the Supreme Court who is appointed or assigned to VCAT;
- (f) a judge of the County Court;
- (g) an associate judge of the County Court;
- (h) a reserve judge within the meaning of the *County Court Act 1958*;
- (i) a reserve associate judge within the meaning of the *County Court Act 1958*;
- (j) a judge or a reserve judge of the County Court who is appointed or assigned to VCAT;
- (k) a magistrate of the Magistrates' Court;
- (l) a reserve magistrate within the meaning of the *Magistrates' Court Act 1989*;
- (m) a magistrate or a reserve magistrate who is appointed or assigned to the Coroners Court, the Children's Court or VCAT;
- (n) a coroner;
- (o) a reserve coroner within the meaning of the *Coroners Act 2008*; or
- (p) a judicial registrar of the Supreme Court, the County Court, the Magistrates' Court, the Children's Court or the Coroners Courts.

A public body is:

- (a) a public sector body within the meaning of section 4(1) of the *Public Administration Act 2004*;
- (b) a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university;
- (c) the Electoral Boundaries Commission constituted under the *Electoral Boundaries Commission Act 1982*;
- (d) a Council;
- (e) a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise);
- (f) IBAC;
- (g) the Victorian Inspectorate; or
- (h) any other body or entity prescribed in the Regulations or the *Independent Broad-based Anti-corruption Commission Regulation 2013* to be a public body.

A public officer is:

- (a) a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the *Public Administration Act 2004*;
- (b) a person to whom a provision of the *Public Administration Act 2004* applies as a result of the application of Part 7 of that Act;
- (c) an ongoing employee or temporary employee in the teaching service under the *Education and Training Reform Act 2006*;
- (d) a judicial employee employed under Division 3 of Part 6 of the *Public Administration Act 2004*;
- (e) a Ministerial officer employed under Division 1 of Part 6 of the *Public Administration Act 2004*;
- (f) an electorate officer within the meaning of the *Parliamentary Administration Act 2005*;
- (g) a Parliamentary adviser employed under Division 2 of Part 6 of the *Public Administration Act 2004*;
- (h) a Parliamentary officer within the meaning of the *Parliamentary Administration Act 2005*;
- (i) a member of Victoria Police personnel;
- (j) a responsible Minister of the Crown;

- (k) a member of the Legislative Assembly or the Legislative Council;
- (l) a Councillor within the meaning of section 3(1) of the *Local Government Act 1989*;
- (m) a member of Council staff employed under the *Local Government Act 1989*;
- (n) a judge, a magistrate, a coroner or a member of VCAT;
- (o) an associate judge or a judicial registrar;
- (p) a Crown Prosecutor;
- (q) the Chief Crown Prosecutor;
- (r) the Director of Public Prosecutions;
- (s) the Governor, the Lieutenant-Governor or the Administrator of the State;
- (t) the Auditor-General;
- (u) the Ombudsman;
- (v) the Electoral Commissioner;
- (w) the holder of any other statutory office or any other prerogative office;
- (x) any other person in the service of the Crown or a public body;
- (y) a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);
- (z) a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition;
- (aa) an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer;
- (bb) an IBAC Officer as defined in section 3(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*;
- (cc) a Victorian Inspectorate Officer;
- (dd) a Public Interest Monitor; or
- (ee) any other person prescribed in the Regulations to be a public officer.

Schedule 2 - Where to report disclosures

| If the disclosure is about... | Report to... |
|---|---|
| A judicial officer, including a judicial member of the Board of the Judicial Commission | the Judicial Commission or IBAC |
| A member of VCAT who is not a judicial officer | |
| Chief Commissioner of Police | IBAC |
| Director of Public Prosecutions | |
| Chief Crown Prosecutor | |
| Solicitor-General | |
| Governor | |
| Lieutenant Governor or Administrator | |
| Director, Police Integrity | |
| Electoral Commissioner | |
| Commissioner or a member of a Board of Inquiry appointed under the <i>Inquiries Act 2014</i> | |
| A judicial employee | |
| A Ministerial officer | |
| A Parliamentary adviser | |
| An electorate officer | |
| A Parliamentary officer | |
| Minister of the Crown who is not a member of Parliament | |
| A Councillor | IBAC or the Ombudsman |
| Information Commissioner | |
| Health Complaints Commissioner | |
| The Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i> | IBAC or the Victorian Inspectorate |
| A Victorian Ombudsman officer | |
| A Victorian Auditor-General's Office officer | |
| A Judicial Commission officer other than a judicial member of the Board of the Judicial Commission | |
| A member of police personnel (other than the Chief Commissioner) | IBAC or a prescribed member of police personnel |

| | |
|---|---|
| A Member of Parliament (Legislative Council) | President of the Legislative Council |
| A Member of Parliament (Legislative Assembly) | Speaker of the Legislative Assembly |
| IBAC, an IBAC officer, or a Public Interest Monitor | Victorian Inspectorate |
| Victorian Inspectorate, or a Victorian Inspectorate officer | Integrity and Oversight Committee, Speaker of the Legislative Assembly, or the President of the Legislative Council |