

Making and Handling Protected Disclosures

Judicial Commission of Victoria Procedures

1. Background and purpose

- 1.1 The Judicial Commission of Victoria (the **Judicial Commission**) is an independent body responsible for investigating complaints and concerns about judicial officers and members of the Victorian Civil and Administrative Tribunal (**VCAT**). It is established under the *Judicial Commission of Victoria Act 2016* (the **Judicial Commission Act**).
- 1.2 The Judicial Commission encourages its officers and members of the public to report known or suspected incidences of improper conduct and detrimental action.
- 1.3 The Judicial Commission is required to establish and publish procedures under section 58 of the *Protected Disclosure Act 2012* (the **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**); 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 Act, the *Protected Disclosure Regulations 2013* (the **Regulations**) and the IBAC guidelines which are available on the IBAC website (www.ibac.vic.gov.au) (the **Guidelines**).

2. About the Act

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

2.2 The purposes of the 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; and
- (c) to provide for the confidentiality of disclosures and the identity of the people who make them.

3. What is a disclosure?

- 3.1 A disclosure is a report about the **improper conduct** of public bodies or public officers.
- 3.2 A disclosure can also be made about **detrimental action** that a public officer or public body takes against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected 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 protected disclosure - for example, if the matter has already been subject to media or other public commentary.
- 3.4 A disclosure can relate to conduct or action that:
- (a) may have already taken place (including conduct that occurred before the Act came into effect on 10 February 2013);
 - (b) may be occurring now; or
 - (c) may happen in the future.

Improper conduct

- 3.5 Improper conduct must, at its lowest threshold level, be either criminal conduct or conduct serious enough to result in a person's dismissal.
- 3.6 Improper conduct is either *corrupt conduct* or *specified conduct*.

Corrupt conduct

- 3.7 Corrupt conduct is conduct of a certain type that would constitute a relevant offence.
- 3.8 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;
 - (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;

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

3.9 Relevant offences are:

- (a) indictable offences against an Act; and
- (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.

Specified conduct

3.10 Specified conduct covers a broader range of conduct where that conduct would, if proved, constitute a criminal offence or reasonable grounds for dismissal.

3.11 The types of conduct that can be specified conduct are:

- (a) all types of corrupt conduct; and
- (b) 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

3.12 Detrimental action includes:

- (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.
- 3.13 Detrimental action must be taken against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected disclosure. The person must take or threaten the action (or incite or permit another person to take or threaten the action) because, or in the belief that:
- (a) the other person (or anyone else) has made, or intends to make, the disclosure; or
 - (b) the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.
- 3.14 The reason for the person taking action in reprisal must be a 'substantial' reason, or it is not considered to be detrimental action.
- 3.15 A disclosure under the Act can only be made about detrimental action by a public officer or public body.

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 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

- 3.16 Disclosures may be made about any of the public officers or public bodies defined in section 6 of the Act and section 6 of the *Independent Broad-based Anti-Corruption Commission Act 2011* (the **IBAC Act**). For a full definition of 'public officer' and 'public body', see Schedule 1 of these procedures.
- 3.17 A disclosure cannot be made about certain people and entities specified in the Act, namely:
- (a) a Public Interest Monitor;
 - (b) the Office of the Special Investigations Monitor;
 - (c) the Special Investigations Monitor;
 - (d) the Victorian Inspectorate;

- (e) a Victorian Inspectorate Officer;
- (f) a court; or
- (g) an investigating panel or a member of an investigating panel within the meaning of the Judicial Commission Act.

3.18 A person can still make a disclosure in circumstances where 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 protected 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 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 disclosure be made to?

- 5.1 This depends on the person or body to which the disclosure relates. Only certain persons and entities can receive protected disclosures. The Act requires 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 person makes a disclosure to a person or entity that cannot receive the disclosure, the disclosure will not be a protected disclosure and the first person will not be protected under the Act.
- 5.3 Where in doubt, a disclosure should be made to IBAC (unless the disclosure is about IBAC or an IBAC Officer, in which case it should be made to the Victorian Inspectorate). Disclosures can also generally be made to the other investigating entities under the Act (the Judicial Commission, Victoria Police, the Ombudsman and the Victorian Inspectorate) where the entity could investigate the disclosure if it was a protected disclosure complaint.

Disclosures about judicial officers and non-judicial VCAT members

- 5.4 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.

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 |

Disclosures about other officers or bodies

- 5.5 The Judicial Commission can only receive disclosures about judicial officers or non-judicial VCAT members.
- 5.6 If a person tries to make a 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 disclosure to the correct body. However, this may not be possible if the person has made the disclosure anonymously.
- 5.7 Any entity that can receive disclosures under the Act must establish and publish procedures to facilitate the making of those disclosures. Those procedures will provide more specific guidance on how to make a disclosure to that entity.
- 5.8 For information on making a disclosure **about** the Judicial Commission or a Judicial Commission officer, refer to Part 11 of these procedures.

6. Making a disclosure to the Judicial Commission

How to make a disclosure to the Judicial Commission

- 6.1 The Judicial Commission encourages persons considering making a disclosure to make contact by telephone in the first instance. A Protected Disclosure Officer from the Judicial Commission will then be in a position to:
- (a) receive an oral disclosure;
 - (b) make arrangements to meet with the person seeking to make a disclosure at an appropriate time and location to receive an oral disclosure; or
 - (c) make arrangements for an appropriate alternative mode of disclosure.
- 6.2 An oral disclosure to the Judicial Commission must be made by telephone to 9604 2420.
- 6.3 A written disclosure to the Judicial Commission must be sent by post addressed to the office of the Judicial Commission at GPO Box 4305, Melbourne VIC 3001.
- 6.4 A person may not make a protected disclosure by fax.
- 6.5 As discussed in Part 5 of these procedures, a disclosure must be made in accordance with Part 2 of the Act. One of the requirements in Part 2 is that the disclosure has been made to a body authorised under the Act to receive the disclosure. A disclosure to the Judicial Commission must relate to a judicial officer or a non-judicial VCAT member.
- 6.6 A person may make a disclosure anonymously. However, if a 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.
- 6.7 If a person is making a 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.
- 6.8 A person does not have to specifically refer to the Act or the protections in the Act for their disclosure to be a protected 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 Act. We also assess these disclosures under the Act.
- 6.9 However, it is helpful if a person making a disclosure provides the following information:
- (a) an indication as to whether they intend to make a protected disclosure and wish to receive the protections under the Act;
 - (b) a description of the alleged improper conduct or detrimental action;
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- (c) their grounds for believing the conduct occurred; and
 - (d) any supporting documentation.
- 6.10 A person may advise that they do not want their disclosure to be treated as a 'protected disclosure' by stating so in writing at the time 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.

What happens next

- 6.11 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

- 6.12 If the discloser has indicated that they intend to make a protected disclosure and wish to receive the protections under the 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

- 6.13 Upon receipt of a disclosure (even where the discloser does not refer specifically to the Act or the protections in the Act), the Judicial Commission will allocate the disclosure to one of its Protected Disclosure Officers to assess whether the disclosure complies with the requirements of the Act.
- 6.14 First, the Judicial Commission will assess whether the disclosure complies with the formal requirements in Part 2 of the 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?
 - (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 Act?

- 6.15 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 Act.
- 6.16 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 satisfied the 'elements' of either improper conduct or detrimental action, as defined in the Act, and whether any of the exceptions apply. This may require the Judicial Commission to:
- (a) seek further information;
 - (b) conduct a discreet initial enquiry; or
 - (c) seek further evidence from the discloser.
- 6.17 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.
- 6.18 The second test is: ***does the discloser believe on reasonable grounds that the information shows or tends to show there is improper conduct or detrimental action?*** This means that:
- (a) the discloser must actually 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'.
- 6.19 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.
- 6.20 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

- 6.21 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.

- 6.22 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.
- 6.23 This action may take place before the Judicial Commission has decided whether the disclosure meets all of the requirements in the Act, or while the Judicial Commission is awaiting IBAC's decision on a notified matter.
- 6.24 While the Act limits the release of information about 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

- 6.25 If the Judicial Commission considers that the disclosure may be a protected disclosure, the Judicial Commission must notify the disclosure to IBAC, in writing, within 28 days of the disclosure being made. The disclosure will then be known as an 'assessable disclosure'. The Judicial Commission will advise the discloser in writing within 28 days of the disclosure being made that:
- (a) the Judicial Commission considers that the disclosure may be a protected disclosure;
 - (b) the disclosure has been notified to IBAC for assessment; and
 - (c) it is an offence under the Act to inform anyone that the disclosure has been notified to IBAC.
- 6.26 The Judicial Commission may also provide to IBAC information that it has obtained while it was assessing whether the disclosure should be referred to IBAC.
- 6.27 If the Judicial Commission notifies the disclosure to IBAC, this does not necessarily prevent the Judicial Commission from continuing to handle the complaint or referral that constituted the disclosure. The Judicial Commission may refer, dismiss, or provide a report in relation to the matter. However, the confidentiality requirements imposed by the Act will apply to a complaint that is investigated by the Judicial Commission if the complaint is also a disclosure under the Act.
- 6.28 Where the discloser has indicated that they intend to make a protected disclosure and wish to receive the protections under the Act, and the Judicial Commission considers that the disclosure is not a protected 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 protected disclosure;
 - (b) the disclosure has not been notified to IBAC for assessment; and



- (c) regardless of whether a disclosure is notified to IBAC for assessment, the protections under Part 6 of the Act apply to a protected disclosure.

6.29 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/publications-0>.

Assessment by IBAC

- 6.30 IBAC is responsible for identifying, investigating, exposing and preventing serious corrupt conduct across the whole of the Victorian public sector.
- 6.31 Once the Judicial Commission notifies a disclosure to IBAC, IBAC will assess within a reasonable time whether (in its view) the disclosure is a protected disclosure. It may seek additional information from the discloser and/or the Judicial Commission to make its decision.
- 6.32 If IBAC determines that the disclosure is a protected disclosure complaint, it must decide to either:
 - (a) dismiss the disclosure;
 - (b) investigate the disclosure; or
 - (c) refer the disclosure to the Judicial Commission for investigation.
- 6.33 Regardless of whether IBAC determines the disclosure is a protected disclosure complaint or not, the discloser will still receive the protections under Part 6 of the Act. This includes protection from detrimental action taken in reprisal for the person making the disclosure.
- 6.34 However, if IBAC determines that the disclosure is not a protected disclosure complaint, the confidentiality requirements set out in Part 9 of these procedures no longer apply in relation to the disclosure.

Referral to the Judicial Commission for investigation

- 6.35 If IBAC determines that a disclosure is a protected disclosure complaint, it may refer the complaint to the Judicial Commission for investigation. IBAC will refer a protected disclosure complaint to the Judicial Commission if it considers that the subject matter is relevant to the Judicial Commission's duties, functions and powers, and that it would be more appropriate for the Judicial Commission to investigate the complaint.
- 6.36 If IBAC refers a protected disclosure complaint to the Judicial Commission in this way, the disclosure is taken to be a complaint made to the Judicial Commission under section 5 of the Judicial Commission Act. After considering the complaint, the Judicial Commission will:

- (a) dismiss the matter in whole or in part;
 - (b) refer the complaint to an investigating panel; 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).
- 6.37 The Judicial Commission will give the discloser written notice of the dismissal or referral of the complaint.
- 6.38 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.
- 6.39 If the Judicial Commission 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.
- 6.40 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.
- 6.41 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 assess whether the disclosure is a protected disclosure which should be notified to IBAC in accordance with these procedures.

7. Protections for people who make a disclosure

- 7.1 Part 6 of the Act sets out the protections provided to people who make a disclosure in accordance with Part 2 of the Act. These include:
- (a) immunity from civil or criminal liability as well as administrative action (including disciplinary action) for making the disclosure;
 - (b) immunity 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) immunity 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.
- 7.2 It is a criminal offence to take detrimental action against another person in reprisal for a protected disclosure. If a discloser believes that detrimental action has been or may be taken against them in reprisal for a protected 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.
- 7.3 If a discloser has sustained injury, loss or damage as a result of detrimental action taken in reprisal for a disclosure being made, the Act sets out remedies that are available to them. Disclosers may wish to obtain legal advice about this.
- 7.4 These protections apply to a disclosure from the time the discloser makes the disclosure, whether or not:
- (a) the Judicial Commission notifies the disclosure to IBAC; or
 - (b) IBAC determines that the disclosure is a protected disclosure complaint.
- 7.5 The protections will apply to further information relating to a protected disclosure that the discloser provides to:
- (a) the Judicial Commission;
 - (b) IBAC or the Victorian Inspectorate; or
 - (c) an investigating entity.
- 7.6 The protections in the Act do not apply if a discloser provides false or misleading information or claim that a matter is the subject of a protected 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.
- 7.7 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

- 7.8 Section 76 of the Act provides specific protections for public officers which allow them to provide information to another public officer 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 Act, the Regulations and the Guidelines, the 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 One of the Judicial Commission's Protected Disclosure Officers will consider appointing a welfare manager when a person has made a protected disclosure or is cooperating, or intending to cooperate, with an investigation of a protected disclosure.
- 8.3 A welfare manager is responsible for:
- (a) examining the discloser and/or witness' immediate welfare and protection needs and fostering a supportive work environment;
 - (b) providing practical advice and support;
 - (c) advising the discloser and/or witness of the protections available under the 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 protected disclosure.
- 8.4 In determining whether to appoint a welfare manager in any particular case, the Protected 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 Protected 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 Act and other laws relating to the receipt and investigation of protected 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 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 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 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 to whom an assessable disclosure has been made; or
 - (b) a person or body to whom IBAC or the Victorian Inspectorate provides information about the content of an assessable disclosure, in the course of assessing it to determine whether it is a protected disclosure.
- 9.7 For example, if a person make 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 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).

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

- 9.10 The 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 IBAC considers that 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 after and in accordance with the discloser's consent.

Circumstances in which information may be disclosed

- 9.13 As noted above, the 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 protected 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 or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure complaint;
 - (b) where an investigating body has published a report to Parliament or otherwise made public the content of the disclosure consistent with the confidentiality requirements of the Act;
 - (c) where necessary for the purpose of the exercise of functions under the Act;
 - (d) by an investigating body where necessary for the purpose of the exercise of functions under the IBAC Act, the Victorian Inspectorate Act, the *Ombudsman Act 1973*, the Judicial Commission Act, or Part 10 of the *Victoria Police Act 2013* (collectively, the **integrity Acts**);
 - (e) 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;
 - (f) 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;
 - (g) for the purpose of obtaining legal advice or representation in relation to rights, liabilities, obligations or privileges under an integrity Act; and
 - (h) in limited circumstances, to an interpreter, parent, guardian or independent person for the purpose of understanding the confidentiality obligations under the Act.

Confidentiality obligations of disclosers

9.15 A discloser has the following confidentiality obligations under the Act:

- (a) the person must not disclose that their disclosure has been notified to IBAC for assessment, or that it has been assessed as a protected disclosure complaint;
- (b) the person must not disclose that their disclosure is to be investigated by IBAC or referred to another investigating entity (including the Judicial Commission) for investigation.

9.16 Moreover, if a discloser repeats their disclosure to someone other than as permitted by the Act, the discloser may lose the protections provided for in the 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.

10. Criminal offences

10.1 There are a number of offences set out in the Act relating to breaches of the requirements of the 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 protected disclosure;
- (b) it is an offence to disclose the content, or information about the content, of an 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 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 protected disclosure;
 - (ii) provide further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular;
 - (iii) claim that a matter is the subject of a protected disclosure knowing the claim to be false;
 - (iv) claim that a matter is the subject of a disclosure that IBAC or the Victorian Inspectorate has determined to be a protected disclosure complaint knowing the claim to be false;
 - (v) disclose that a disclosure has been notified to IBAC for assessment unless permitted to do so by the Act; and
 - (vi) disclose that a disclosure has been determined to be a protected disclosure complaint unless permitted to do so by the Act.

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 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 of Court Services Victoria 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 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 |
| 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 of Court Services Victoria 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 and the Victorian Inspectorate have their own procedures for the making of protected 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; or
- (e) any staff referred to in s 35(2) of the IBAC Act.

11.7 A written disclosure to IBAC may 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 8614 3225;
 - (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 persons:
- (a) the Inspector appointed under section 18(1) of the *Victorian Inspectorate Act 2011*;
 - (b) an employee referred to in section 28(1) of the *Victorian Inspectorate Act 2011*; or
 - (c) any staff referred to in section 28(2) of the *Victorian Inspectorate Act 2011*.
- 11.10 A written disclosure to the Victorian Inspectorate must be:
- (a) delivered personally to the office of the Victorian Inspectorate at Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000;
 - (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.

Protection against detrimental action

- 11.11 The Judicial Commission will take precautions to prevent its officers and agents from taking detrimental action in reprisal for a protected disclosure. This includes:
- (a) securely storing all information in relation to protected disclosures;
 - (b) maintaining confidentiality around information relating to protected 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.
- 11.12 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

- 11.13 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.
- 11.14 The Judicial Commission will only disclose information about the subject of a disclosure in accordance with the law.

12. Review

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

Glossary of terms

Act

the *Protected Disclosure Act 2012*

assessable disclosure

a disclosure that must be made directly, or notified, to IBAC or the Victorian Inspectorate, 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 protected 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 protected disclosure

Guidelines

the guidelines issued by IBAC under section 57 of the *Protected Disclosure Act 2012*

IBAC

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

investigating entity

IBAC, the Judicial Commission, the Ombudsman, the Chief Commissioner of Police and the Victorian Inspectorate. Only these entities can investigate a protected disclosure complaint

Judicial Commission

the Judicial Commission of Victoria, established under the *Judicial Commission of Victoria Act 2016*

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 *Protected Disclosure Act 2012* (as to which, see Schedule 1 of these procedures)

non-judicial VCAT member

a member of VCAT who is not a judicial officer

protected disclosure

a disclosure made in accordance with Part 2 of the *Protected Disclosure Act 2012*

protected disclosure complaint

a disclosure that has been determined by IBAC under section 26 of the *Protected Disclosure Act 2012* to be a protected disclosure complaint

Protected Disclosure Officer

a person with a central clearinghouse and advisory role in the Judicial Commission's internal system for handling protected disclosures

public body

a public body within the meaning of section 6 of the *Protected Disclosure Act 2012* (as to which, see Schedule 1 of these procedures)

public officer

a public officer within the meaning of section 6 of the *Protected Disclosure Act 2012* (as to which, see Schedule 1 of these procedures)

public sector

the sector comprising all public bodies and public officers

Regulations

the *Protected Disclosure Regulations 2013*

specified conduct

see Part 3 of these procedures

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 of Court Services Victoria 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; or
- (g) any other body or entity prescribed for the purposes of this definition.

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*; or
- (cc) any other person prescribed for the purposes of this definition.

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 | IBAC or the Ombudsman |
| A Councillor | |
| Freedom of Information Commissioner | |
| Commissioner for Privacy and Data Protection | |
| Health Complaints Commissioner | IBAC or the Victorian Inspectorate |
| The Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i> | |
| An 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 or an IBAC officer | Victorian Inspectorate |