Authorised Version No. 010

Victorian Inspectorate Act 2011

No. 70 of 2011

Authorised Version incorporating amendments as at
11 February 2013

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Victorian Inspectorate Act 2011

No. 70 of 2011

Authorised Version incorporating amendments as at
11 February 2013

The Parliament of Victoria enacts:

PART 1—PRELIMINARY[1]

1 Purpose

S. 1 amended by Nos 19/2012 s. 3, 82/2012 s. 197.

The purpose of this Act is to establish the Victorian Inspectorate to provide oversight of other integrity, accountability or investigatory bodies or officers, including the Independent Broad-based Anti-corruption Commission and to monitor compliance by a Public Interest Monitor with the prescribed obligations.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 July 2012, it comes into operation on that day.

3 Definitions

S. 3 amended by No. 19/2012 s. 4(3) (ILA s. 39B(1)).

(1) In this Act—

S. 3(1) def. of *arrest warrant* inserted by No. 19/2012 s. 4(1).

arrest warrant means an arrest warrant issued under section 73(1)(b);

S. 3(1) def. of *assessable disclosure* inserted by No. 85/2012 s. 106.

assessable disclosure has the same meaning as in the **Protected Disclosure Act 2012**;

S. 3(1) def. of *audit* inserted by No. 82/2012 s. 198.

audit has the meaning given in section 3(1) of the **Audit Act 1994**;

S. 3(1) def. of *Auditor-General* inserted by No. 82/2012 s. 198.

Auditor-General has the meaning given in section 3(1) of the **Audit Act 1994**;

Australian legal practitioner has the same meaning as it has in the **Legal Profession Act 2004**;

S. 3(1) def. of *certificate of charge* inserted by No. 19/2012 s. 4(1).

certificate of charge means a certificate of charge issued under section 73(1)(a);

S. 3(1) def. of *Chief Commissioner of Police* inserted by No. 82/2012 s. 26(1).

Chief Commissioner of Police means the Chief Commissioner of Police appointed under Part I of the **Police Regulation Act 1958**;

S. 3(1) def. of *Chief Examiner* inserted by No. 82/2012 s. 26(1).

Chief Examiner means the Chief Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**;

S. 3(1) def. of *coercive power* inserted by No. 82/2012 s. 26(1).

coercive power means—

(a) in relation to a VAGO officer, any power of the Auditor-General or another VAGO officer under section 11 of the **Audit Act 1994**;

(b) in relation to an Ombudsman officer—

(i) any power of the Ombudsman under section 18 of the **Ombudsman Act 1973** (including any power under a provision of the **Evidence (Miscellaneous Provisions) Act 1958** referred to in that section); or

(ii) any power of the Ombudsman or a member of Ombudsman staff under section 21 of the **Ombudsman Act 1973**;

(c) in relation to the Chief Examiner or an Examiner—

(i) the power of the Chief Examiner to issue a witness summons under section 15 of the **Major Crime (Investigative Powers) Act 2004**;

(ii) the power of the Chief Examiner to make an order under section 18 of the **Major Crime (Investigative Powers) Act 2004**;

(iii) the power under section 35A of the **Major Crime (Investigative Powers) Act 2004**;

(iv) the power to require the production of documents or the giving of evidence at an examination under Part 4 of the **Major Crime (Investigative Powers) Act 2004**;

Commissioner has the same meaning as it has in section 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *confidentiality notice* inserted by No. 19/2012 s. 4(1).

confidentiality notice means a notice issued by the Victorian Inspectorate under section 38(1);

Deputy Commissioner has the same meaning as it has in section 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *disciplinary process or action* inserted by No. 19/2012 s. 4(1).

disciplinary process or action means in relation to a person's employment as a public sector employee or police personnel—

(a) any process undertaken for the purposes of determining what, if any, disciplinary action is warranted in relation to a breach or possible breach of the person's terms and conditions of employment;

(b) any action taken following a process specified in paragraph (a) that is permitted under legislation or the person's terms and conditions of employment;

(c) any review process or proceeding, including an appeal process or proceeding, in relation to a process specified in paragraph (a) or an action specified in paragraph (b);

(d) any administrative or judicial process or proceeding involving a claim for any remedy in relation to a process specified in paragraph (a) or an action specified in paragraph (b);

domestic partner of a person means—

(a) a person who is in a registered relationship with a person; or

Note

A registered relationship is defined in subsection (2).

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 19/2012 s. 4(1).

Examiner means an Examiner appointed under Part 3 of the **Major Crime (Investigative Powers) Act 2004**;

S. 3(1) def. of *Examiner* inserted by No. 82/2012 s. 26(1).

IBAC has the same meaning as it has in section 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

IBAC Committee means the Joint House Committee established under section 5(fa) of the **Parliamentary Committees Act 2003**;

IBAC Officer has the same meaning as it has in section 3 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

IBAC personnel means—

(a) an IBAC Officer;

(b) a person who was formerly an IBAC Officer;

S. 3(1) def. of *IBAC personnel* substituted by No. 19/2012 s. 4(2).

Inspector means the person appointed under section 18;

office of the Ombudsman has the meaning given in section 2(1) of the **Ombudsman Act 1973**;

S. 3(1) def. of *office of the Ombudsman* inserted by No. 82/2012 s. 261.

S. 3(1) def. of *Ombudsman officer* inserted by No. 82/2012 s. 261.

Ombudsman officer has the meaning given in section 2(1) of the **Ombudsman Act 1973**;

S. 3(1) def. of *Ombudsman premises* inserted by No. 82/2012 s. 261.

Ombudsman premises has the meaning given in section 2(1) of the **Ombudsman Act 1973**;

S. 3(1) def. of *police force* inserted by No. 19/2012 s. 4(1).

police force has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *police personnel* inserted by No. 19/2012 s. 4(1).

police personnel has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *police personnel misconduct* inserted by No. 19/2012 s. 4(1), amended by No. 82/2012 s. 320(a).

police personnel misconduct has the meaning given by section 5 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *police personnel premises* inserted by No. 19/2012 s. 4(1).

police personnel premises has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *premises of the Chief Examiner* inserted by No. 82/2012 s. 26(1).

premises of the Chief Examiner includes any premises of an Examiner but does not include any residential premises;

prescribed obligations means—

S. 3(1) def. of *prescribed obligations* inserted by No. 19/2012 s. 4(1).

(a) the requirement under section 3D(4) of the **Major Crime (Investigative Powers) Act 2004**;

(b) the requirement under section 12D(3) of the **Surveillance Devices Act 1999**;

(c) the requirement under section 4D(3) of the **Telecommunications (Interception) (State Provisions) Act 1988**;

(d) the requirement under section 4F(4) of the **Terrorism (Community Protection) Act 2003**;

(e) any requirement under the regulations made under the **Public Interest Monitor Act 2011** relating to the transmission, disposal and storage of documents or information that a Public Interest Monitor receives in performing his or her functions;

privilege means—

S. 3(1) def. of *privilege* inserted by No. 19/2012 s. 4(1), amended by No. 52/2012 s. 25.

(a) any privilege that a person is entitled to claim in any proceedings before a court or tribunal, other than the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**; and

(b) public interest immunity;

protected disclosure complaint means—

S. 3(1) def. of *protected disclosure complaint* inserted by No. 85/2012 s. 106.

(a) a disclosure that the Victorian Inspectorate has determined under section 31 of the **Protected Disclosure Act 2012** to be a protected disclosure complaint; or

(b) a disclosure that the IBAC has determined under section 26 of the **Protected Disclosure Act 2012** to be a protected disclosure complaint and that is referred to the Victorian Inspectorate by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3(1) def. of *public body* inserted by No. 19/2012 s. 4(1), amended by No. 82/2012 s. 320(b).

public body has the meaning given by section 6 of the **Independent Broad-based Anti-corruption Commission Act 2011** and includes the IBAC;

S. 3(1) def. of *Public Interest Monitor* inserted by No. 19/2012 s. 4(1).

Public Interest Monitor has the same meaning as it has in section 4 of the **Public Interest Monitor Act 2011**;

S. 3(1) def. of *public sector employee* inserted by No. 19/2012 s. 4(1).

public sector employee has the same meaning as it has in section 4(1) of the **Public Administration Act 2004**;

S. 3(1) def. of *relevant principal officer* inserted by No. 19/2012 s. 4(1).

relevant principal officer has the same meaning as it has in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** and, in the case of the IBAC, means the Commissioner of the IBAC;

S. 3(1) def. of *relevant records* inserted by No. 19/2012 s. 4(1).

relevant records means records in the possession of a Public Interest Monitor which are relevant for the purpose of enabling the Victorian Inspectorate to monitor compliance of the Public Interest Monitor with the prescribed obligations;

restricted matter means—

S. 3(1) def. of *restricted matter* inserted by No. 19/2012 s. 4(1), amended by No. 82/2012 s. 26(2).

(a) any evidence given to the Victorian Inspectorate;

(b) the contents of any document, or a description of any thing, produced to the Victorian Inspectorate;

(c) the contents of any document, or a description of any thing, which the Victorian Inspectorate has obtained, made a copy of or seized under section 47 or 63;

(d) the existence of, or any information about, a confidentiality notice or a witness summons;

(e) the subject matter of an investigation in relation to which a witness summons has been issued;

(f) any information that could enable a person who has been, or is proposed to be, examined by, or who has produced, or may produce any document or thing to, the Victorian Inspectorate, to be identified or located;

(g) the fact that a person has been, or is proposed to be, examined by, or who has produced, or may produce any document or thing to, the Victorian Inspectorate;

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 19/2012 s. 4(1).

VAGO officer has the meaning given in section 3(1) of the **Audit Act 1994**;

S. 3(1) def. of *VAGO officer* inserted by No. 82/2012 s. 198.

S. 3(1) def. of *VAGO premises* inserted by No. 82/2012 s. 198.

VAGO premises has the meaning given in section 3(1) of the **Audit Act 1994**;

S. 3(1) def. of *Victorian Auditor-General's Office* inserted by No. 82/2012 s. 198.

Victorian Auditor-General's Office has the meaning given in section 3(1) of the **Audit Act 1994**;

Victorian Inspectorate means the Victorian Inspectorate established under section 8;

Victorian Inspectorate Officer means—

(a) the Inspector;

(b) a member of staff of the Victorian Inspectorate;

(c) a person engaged by the Victorian Inspectorate to provide the Inspectorate with services, information or advice.

S. 3(1) def. of *witness summons* inserted by No. 19/2012 s. 4(1).

witness summons means a witness summons issued under section 53(1);

S. 3(2) inserted by No. 19/2012 s. 4(3).

(2) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) registered relationship has the same meaning as it has in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all of the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in

section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

4 Protected disclosure complaint taken to be complaint

S. 4 inserted by No. 85/2012 s. 107.

For the purposes of this Act—

(a) a protected disclosure complaint that would not otherwise constitute a complaint is taken to be a complaint under section 43; and

(b) the person who made the protected disclosure complaint is taken to be the complainant in relation to the complaint.

5 Objects of Act

S. 5 amended by Nos 19/2012 s. 5, 82/2012 ss 27, 199, 262.

The objects of this Act are to—

(a) enhance the compliance of the IBAC and IBAC personnel with the **Independent Broad-based Anti-corruption Commission Act 2011** and other laws; and

(b) assist in improving the capacity of the IBAC and IBAC personnel in the performance of their duties and functions and the exercise of their powers; and

(c) monitor compliance by a Public Interest Monitor with the prescribed obligations; and

(d) provide for the independent oversight of VAGO officers; and

(e) provide for the independent oversight of Ombudsman officers; and

(f) provide for the independent oversight of the Chief Examiner and Examiners.

6 Act binds the Crown

(1) This Act binds the Crown—

(a) in right of the State of Victoria; and

(b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

S. 7 inserted by No. 82/2012 s. 200, amended by No. 82/2012 s. 263.

7 Investigation of conduct occurring before the commencement of this section

This Act applies to and in respect of conduct all or part of which occurred at any time during the period of 12 months before the commencement of this section, if the conduct—

(a) is the conduct of any VAGO officer or any Ombudsman officer (whether or not still an officer) who would have been subject to this Act had this section been in force at the time the conduct occurred; and

(b) would have been conduct of a kind which the Victorian Inspectorate could have investigated had this section been in force at the time the conduct occurred, whether—

(i) on a complaint to the Victorian Inspectorate under section 43(3) or (5); or

(ii) on its own motion under section 46(2) or (3).

PART 2—THE VICTORIAN INSPECTORATE

Division 1—Constitution and Staff

Pt 2 Div. 1 (Heading) inserted by No. 19/2012 s. 6.

8 Establishment of the Victorian Inspectorate

(1) The Victorian Inspectorate is established.

(2) The Victorian Inspectorate does not represent the Crown.

9 The Victorian Inspectorate is a body corporate

(1) The Victorian Inspectorate—

(a) is a body corporate with perpetual succession;

(b) has an official seal;

(c) may sue and be sued;

(d) may acquire, hold and dispose of real and personal property;

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(2) All courts must take judicial notice of the official seal of the Victorian Inspectorate affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(3) The official seal of the Victorian Inspectorate must—

(a) be kept in such custody as the Victorian Inspectorate determines; and

(b) not be used except as authorised by the Victorian Inspectorate.

Note

The Victorian Inspectorate is a special body under section 6(1) of the **Public Administration Act 2004**.

10 Constitution of the Victorian Inspectorate

The Victorian Inspectorate consists of one Inspector appointed by the Governor in Council in accordance with section 18.

S. 11 amended by Nos 19/2012 s. 7, 82/2012 ss 28, 201, 264, 85/2012 s. 108.

11 Functions of the Victorian Inspectorate

(1) The Victorian Inspectorate has the functions conferred on the Victorian Inspectorate under this Act or any other Act.

(2) Without limiting the generality of subsection (1), the Victorian Inspectorate has the following functions—

(a) to monitor the compliance of the IBAC and IBAC personnel with the **Independent Broad-based Anti-corruption Commission Act 2011** and other laws;

(b) to oversee the performance by the IBAC of its functions under the **Protected Disclosure Act 2012**;

(c) to assess the effectiveness and appropriateness of the policies and procedures of the IBAC which relate to the legality and propriety of IBAC's activities;

(d) to receive complaints in accordance with this Act about the conduct of the IBAC and IBAC personnel;

(e) to investigate and assess the conduct of the IBAC and IBAC personnel in the performance or exercise or purported performance or purported exercise of their duties, functions and powers;

(f) to monitor the interaction between the IBAC and other integrity bodies to ensure compliance with relevant laws;

(g) to inspect and audit relevant records kept under the **Public Interest Monitor Act 2011** by the Public Interest Monitors for the purpose of monitoring compliance with the prescribed obligations;

(h) to report to the Minister and the Parliament on the results of the performance of its function under paragraph (g);

(i) to receive complaints in accordance with this Act about the conduct of the Chief Examiner or any Examiner;

Note

See also Part 5 of the **Major Crime (Investigative Powers) Act 2004**.

(j) to investigate and assess, in accordance with this Act, the conduct of the Chief Examiner or any Examiner;

(k) to report on, and make recommendations as a result of, the performance of its duties and functions.

(3) Without limiting the generality of subsection (1), the Victorian Inspectorate has the following functions in respect of VAGO officers—

(a) to monitor—

(i) the exercise of coercive powers by VAGO officers; and

(ii) compliance by VAGO officers with sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3) of the **Audit Act 1994**;

(b) to receive complaints in accordance with this Act about the conduct of VAGO officers;

(c) to investigate and assess, in accordance with this Act, the conduct of VAGO officers;

(d) to report on, and make recommendations as a result of, the performance of its functions under paragraphs (a) to (c).

(4) Without limiting the generality of subsection (1), the Victorian Inspectorate has the following functions in respect of Ombudsman officers—

(a) to monitor—

(i) the exercise of coercive powers by Ombudsman officers; and

(ii) compliance by Ombudsman officers with procedural fairness requirements in the performance of functions under the **Ombudsman Act 1973** or any other Act, including in the conduct of enquiries and investigations and the making of reports and recommendations under the **Ombudsman Act 1973** or any other Act;

(b) to receive complaints in accordance with this Act about the conduct of Ombudsman officers;

(c) to investigate and assess in accordance with this Act the conduct of Ombudsman officers;

(d) to report on, and make recommendations as a result of, the performance of its functions under paragraphs (a) to (c).

Note

See also Part 8 of the **Protected Disclosure Act 2012** which sets out the functions of the Victorian Inspectorate under that Act.

12 Powers of the Victorian Inspectorate

The Victorian Inspectorate has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions.

13 Specific powers in relation to the Public Interest Monitors

S. 13 inserted by No. 19/2012 s. 8.

(1) Without derogating from the generality of section 12, the Victorian Inspectorate has the duties and powers specified in this section for the purposes of performing the functions specified in section 11(2)(g) and (h).

(2) The Victorian Inspectorate must inspect relevant records of each Public Interest Monitor at least once each financial year in order to ascertain the extent to which each of the Public Interest Monitors has complied with the prescribed obligations.

(3) The Victorian Inspectorate may, after notifying in writing a Public Interest Monitor, inspect relevant records of the Public Interest Monitor in order to ascertain the extent to which the Public Interest Monitor has complied with the prescribed obligations.

(4) For the purposes of an inspection under this section, the Victorian Inspectorate—

(a) may, after notifying in writing a Public Interest Monitor, enter at any reasonable time of which the Victorian Inspectorate has given notice, premises occupied by the Public Interest Monitor in his or her capacity as a Public Interest Monitor; and

(b) is entitled to have full and free access to all relevant records of the Public Interest Monitor; and

(c) despite any other law, is entitled to make copies of, and to take extracts from, relevant records of the Public Interest Monitor; and

(d) may require the Public Interest Monitor to give the Victorian Inspectorate any information in the possession or control of the Public Interest Monitor that the Victorian Inspectorate considers on reasonable grounds is relevant to the inspection.

(5) A Public Interest Monitor must provide to the Victorian Inspectorate any assistance in connection with the exercise of the Victorian Inspectorate's functions under section 11(2)(g) and (h) that the Victorian Inspectorate reasonably requires.

(6) The Victorian Inspectorate may require in writing a Public Interest Monitor to attend at the office of the Victorian Inspectorate at a specified date and time for the purpose of giving any document or information required by the Victorian Inspectorate which the Victorian Inspectorate considers is relevant to the exercise of the Victorian Inspectorate's functions under section 11(2)(g) or (h).

(7) The Victorian Inspectorate must, as soon as practicable but not later than 3 months after conducting inspections for the purposes of subsection (2) or (3), report to the Minister on the results of the inspections.

(8) Subject to subsection (10), if, as a result of an inspection under this section of the relevant records of a Public Interest Monitor, the Victorian Inspectorate is of the opinion that the Public Interest Monitor has contravened a prescribed obligation, the Victorian Inspectorate may include in its report to the Minister under subsection (7)

or (9) on the inspection, a report on the contravention.

(9) The Victorian Inspectorate may provide a report to the Minister at any time on any matter relating to the performance of its function under section 11(2)(g).

(10) A report for the purposes of subsection (7) or (9) must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person involved in an investigation relating to a relevant application made by a law enforcement agency; or

(b) indicates that a particular investigation has been, is being, or is to be, conducted.

(11) The Victorian Inspectorate may—

(a) make a special report under section 87 on any matter relating to the performance of its function under section 11(2)(g);

(b) include in its annual report under section 91 information relating to the performance of its function under section 11(2)(g) in accordance with section 91(1)(a) and (b).

(12) In this section—

investigation means an investigation referred to in section 19(4) of the **Public Interest Monitor Act 2011**;

law enforcement agency means a law enforcement agency within the meaning of section 19(5) of the **Public Interest Monitor Act 2011**;

relevant application has the same meaning as it has in section 4 of the **Public Interest Monitor Act 2011**.

S. 14 inserted by No. 19/2012 s. 8.

14 Public Interest Monitor to give information and access despite other laws

(1) Despite any other law, a Public Interest Monitor is not excused from giving information, answering a question, or giving access to a document, as and when required by or under section 13, on the ground that giving the information, answering the question, or giving access to the document, as the case may be, would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty but—

(a) the information, the answer, or the fact that the person has so given access to the document, as the case may be; and

(b) any information or thing (including a document) obtained as a direct consequence of giving the first-mentioned information, answering the question or giving access to the first-mentioned document, as the case may be—

is not admissible in evidence against the person except in proceedings for an offence under this Act.

(2) Nothing in any other law prevents a Public Interest Monitor from—

(a) giving information to a Victorian Inspectorate Officer (whether orally or in writing and whether or not in answer to a question); or

(b) giving to a Victorian Inspectorate Officer access to a relevant record—

for the purposes of an inspection under section 13.

(3) Nothing in any other law prevents a Public Interest Monitor from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (2).

15 Delegation

(1) The Victorian Inspectorate by instrument may delegate to the Inspector any duty, function or power of the Victorian Inspectorate under this Act or any other Act or the regulations under this Act other than this power of delegation.

(2) A delegation under this section to a former judge of the Supreme Court or the County Court or a former Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.

16 Victorian Inspectorate not subject to direction or control

The Victorian Inspectorate is not subject to the direction or control of the Minister in respect of the performance of its duties and functions and the exercise of its powers.

17 Independence of the Inspector

(1) The Inspector is an independent officer of the Parliament.

(2) The functions, powers, immunities and obligations of the Inspector are as specified in this Act and other laws of the State.

(3) There are no implied functions, powers, rights, immunities or obligations arising from the Inspector being an independent officer of the Parliament.

(4) The powers of the Parliament to act in relation to the Inspector are as specified in or applying under this Act, the **Constitution Act 1975** and other laws of the State.

(5) There are no implied powers of the Parliament arising from the Inspector being an independent officer of the Parliament.

(6) Subject to this Act and other laws of the State, the Inspector has complete discretion in the performance or exercise of his or her duties, functions or powers.

(7) In particular and without limiting subsection (6), the Inspector is not subject to the direction or control of the Minister in respect of the performance or exercise of his or her duties, functions or powers.

18 Appointment of the Inspector

(1) Subject to section 19, the Governor in Council on the recommendation of the Minister may by instrument appoint an eligible person to be the Inspector.

(2) A person is an eligible person if he or she—

(a) is or has been, or is qualified for appointment as, a judge of—

(i) the High Court; or

(ii) the Federal Court; or

(iii) the Supreme Court of Victoria or another State or a Territory;

(b) is not a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory;

(c) is not, and has not been, a Commissioner, Acting Commissioner, Deputy Commissioner, or Acting Deputy Commissioner, of the IBAC.

(3) A person holding a judicial office immediately before being appointed to be the Inspector must cease to hold that judicial office upon being appointed to be the Inspector.

19 Veto of proposed Inspector

(1) Subject to subsection (4), the Minister must not make a recommendation under section 18 unless—

(a) the Minister has submitted details of the proposed recommendation to the IBAC Committee; and

(b) either—

(i) within the time specified in subsection (2) the IBAC Committee has informed the Minister that it has decided not to veto the recommendation; or

(ii) the time specified in subsection (2) has elapsed and the IBAC Committee has not vetoed the recommendation.

(2) The IBAC Committee must make a decision under this section within 30 days after the Minister has submitted details of the proposed recommendation to the IBAC Committee.

(3) The IBAC Committee—

(a) may decide to veto or not to veto the proposed recommendation;

(b) must notify the Minister in writing of its decision within the period specified in subsection (2).

(4) Subsections (1) to (3) do not apply to the appointment of the first Inspector under this Act and the Minister may make the recommendation for the appointment of the first Inspector after the Premier has consulted in relation to the proposed recommendation with the member of the Legislative Assembly who is for the time being the Leader of Her Majesty's Opposition.

20 Duties, functions and powers of the Inspector

The Inspector—

(a) constitutes the Victorian Inspectorate under section 10;

(b) is responsible for undertaking the strategic leadership of the Victorian Inspectorate for the purpose of achieving the objects of this Act;

(c) is the public service body Head of the Victorian Inspectorate for the purposes of section 16 of the **Public Administration Act 2004**.

(d) has the duties, functions and powers delegated to the Inspector by the Victorian Inspectorate;

(e) has any other duties, functions and powers conferred on the Inspector under this Act or any other Act.

21 Terms and conditions

(1) The Inspector holds office for the period not exceeding 5 years as is specified in the instrument of appointment.

(2) The Inspector is eligible to be re-appointed.

(3) Subject to this section, the Inspector is appointed on a full-time or part-time basis on the terms and conditions (including remuneration and

allowances) that are specified in the instrument of appointment.

(4) The remuneration of the Inspector cannot be reduced during his or her term of office unless he or she consents to the reduction.

(5) If a person who has been a judge of the Supreme Court or the County Court or has been the Chief Magistrate is appointed as the Inspector, the appointment does not affect any pension or other rights or privileges the person has as a former judge or Chief Magistrate.

(6) If the Inspector was immediately before his or her appointment a judge of the Supreme Court, his or her service as the Inspector shall count as service in the office of judge of the Supreme Court for the purposes of entitlement to a pension under section 83 of the **Constitution Act 1975**.

(7) If the Inspector was immediately before his or her appointment a judge of the County Court, his or her service as the Inspector shall count as service in the office of judge of the County Court for the purposes of entitlement to a pension under section 14 of the **County Court Act 1958**.

(8) If the Inspector was immediately before his or her appointment the Chief Magistrate, his or her service as the Inspector shall count as service in the office of Chief Magistrate for the purposes of entitlement to a pension under section 10A of the **Magistrates' Court Act 1989**.

(9) If the Inspector was immediately before his or her appointment an officer within the meaning of the **State Superannuation Act 1988**, he or she continues to be such an officer during his or her term of office as the Inspector.

(10) The Inspector must not engage in any employment, business or community activity outside the Victorian Inspectorate that may create an actual or perceived conflict of interest with his or her role as the Inspector.

(11) Without limiting the generality of subsection (10), the Inspector must not enter into a contract by which he or she is to provide services or provide services under any contract if the provision of services may create an actual or perceived conflict of interest with his or her role as the Inspector.

(12) In addition to subsection (10), the Inspector must not, without the approval of the Governor in Council—

(a) apply for, or hold, a licence or permit to conduct any trade, business or profession; or

Note

This includes a legal practising certificate under the **Legal Profession Act 2004**.

(b) conduct any trade, business or profession; or

(c) accept any other employment.

(13) The **Public Administration Act 2004** does not apply to the Inspector in respect of the office of Inspector as such except for the purposes of section 16 of that Act.

22 Vacancy and resignation

(1) The Inspector ceases to hold office if he or she—

(a) resigns by writing delivered to the Governor; or

(b) becomes an insolvent under administration; or

(c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or

(d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or

(e) is appointed to a judicial office; or

(f) is appointed as Commissioner, Acting Commissioner, Deputy Commissioner or Acting Deputy Commissioner, of the IBAC; or

(g) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.

(2) The Inspector ceases to hold office if he or she is removed from office under section 23.

23 Suspension and removal from office

(1) The Governor in Council may suspend the Inspector from office on any of the following grounds—

(a) misconduct;

(b) neglect of duty;

(c) inability to perform the duties of the office;

(d) any other ground on which the Governor in Council is satisfied that the Inspector is unfit to hold office.

(2) The Minister must cause a full statement of the grounds of suspension to be presented to each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the suspension.

(3) The Governor in Council must remove the Inspector from office if each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the statement of the grounds of suspension is presented to it, declares by resolution that the Inspector ought to be removed from office.

(4) The Governor in Council must remove the suspension and restore the Inspector to office unless each House of the Parliament makes a declaration of the kind specified in subsection (3) within the time specified in that subsection.

(5) The Inspector can only be removed from office in accordance with this section.

24 Declaration of inability to act

The Inspector may declare himself or herself unable to act in respect of a particular matter by reason of an actual or perceived conflict of interest.

25 Acting appointment

(1) The Governor in Council may on the recommendation of the Minister appoint a person to act in the office of Inspector during—

(a) any vacancy in the office of the Inspector; or

(b) any period when the person holding the office—

(i) is absent from duty; or

(ii) is for any other reason unable to perform the duties of the office.

(2) Subject to this section, a person appointed under subsection (1) can be appointed for a period not exceeding 6 months.

(3) An acting appointment or acting appointments in respect of each vacancy referred to in subsection (1)(a) or each period referred to in subsection (1)(b) must not exceed a total of 6 months in duration.

(4) A vacancy in the office of the Inspector must be filled by a person appointed in accordance with section 18 within the period of 6 months after the vacancy occurred.

(5) The Governor in Council may at any time remove a person acting in the office of the Inspector from the office.

(6) While a person is acting in the office of Inspector the person—

(a) has and may exercise all the powers, and must perform all the functions and duties, of that office; and

(b) is entitled to be paid the remuneration and allowances which the Inspector would have been entitled to.

26 Oath or affirmation of office

(1) Before a person appointed to be the Inspector or to act in the office of the Inspector assumes the office, he or she must have taken an oath or made an affirmation that he or she—

(a) will faithfully and impartially perform the duties and functions and exercise the powers of the office; and

(b) will not disclose, except as authorised or required by law, any information received in the performance of the duties and functions or the exercise of the powers of the office.

(2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

S. 27 amended by Nos 19/2012 s. 9, 82/2012 ss 29, 152(1)(2), 202, 265.

27 Delegation

(1) The Inspector by instrument may delegate to a member of staff employed or engaged under section 28 or a person engaged as a consultant under section 29 any duty, function or power of the Inspector under this Act (including any duty, function or power delegated to the Inspector under section 15(1)) or any other Act other than, unless subsection (2) applies, the following—

(a) this power of delegation; or

(b) the power to decide to inspect the relevant records of a Public Interest Monitor under section 13(3); or

(c) the power to issue a confidentiality notice under section 38(1); or

(d) the power to issue a notice cancelling a confidentiality notice under section 38(3), (4) or (5); or

(e) the power to apply for an order to extend a confidentiality notice under section 38(7); or

(f) the power to decide to hold an inquiry under section 49; or

(g) the power to direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner under section 58(2); or

(h) the power to direct a witness not to seek legal advice or representation in relation to a proposed report or draft or part of a proposed report or information contained in a report or a confidentiality notice from a specified Australian legal practitioner under section 58(8); or

(i) the power to authorise a Victorian Inspectorate Officer to enter IBAC premises under section 63(1); or

(j) the power to authorise a Victorian Inspectorate Officer to enter VAGO premises under section 63(3); or

(k) the power to authorise a Victorian Inspectorate Officer to enter Ombudsman premises under section 63(5); or

(l) the power to authorise a Victorian Inspectorate Officer to enter premises of the Chief Examiner under section 63(7); or

(m) the power to issue a certificate of charge and an arrest warrant under section 73(1); or

(n) the power to direct that a person be detained in a prison or a police gaol for the purpose of ensuring his or her appearance before the Supreme Court under section 75(1); or

(o) the duty or power to make a report under section 87 or 91; or

(p) the power to authorise the bringing of proceedings for an offence under this Act or the regulations under section 100.

(2) If the Inspector makes a declaration under section 24 in respect of any matter, the Inspector may delegate under subsection (1) to any Victorian Inspectorate Officer who would be qualified under section 18 to be appointed as the Inspector any duty, function or power of the Inspector under this Act (including any duty, function or power delegated to the Inspector under section 15(1)) or any other Act which is necessary to enable that matter to be dealt with.

(3) A delegation under this section to a former judge of the Supreme Court or the County Court or a former Chief Magistrate does not affect any pension or other rights or privileges that the person has as a former judge or Chief Magistrate.

Note

See also section 20C of **Telecommunications (Interception) (State Provisions) Act 1988** which provides that the Victorian Inspectorate may delegate certain functions under that Act to an inspecting officer.

28 Staff

(1) Any employees that are necessary for the purposes of this Act may be employed under Part 3 of the **Public Administration Act 2004**.

(2) The Victorian Inspectorate may enter into agreements or arrangements for the use of the services of any staff of a Department, statutory authority or other public body.

29 Consultants

(1) The Victorian Inspectorate may engage persons with suitable qualifications and experience as consultants.

(2) Without limiting the generality of subsection (1), the Victorian Inspectorate may appoint an Australian legal practitioner to assist the Victorian Inspectorate as counsel, either generally or in reference to a particular matter.

(3) An engagement under this section may be on any terms and conditions the Victorian Inspectorate considers appropriate.

30 Oath or affirmation by staff and consultants

(1) Before commencing employment with the Victorian Inspectorate, a person referred to in section 28 must take an oath or make an affirmation that he or she—

(a) will faithfully and impartially perform their duties and functions and exercise their powers; and

(b) will not disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers.

(2) The Victorian Inspectorate may require a person engaged under section 28(2) or 29 or an officer, sub-contractor, agent or employee of a person engaged under section 29 to take an oath or make an affirmation that he or she—

(a) will faithfully and impartially perform their duties and functions and exercise their powers in the course of the engagement; and

(b) will not disclose, except as authorised or required by law, any information received in the performance of their duties and functions or the exercise of their powers in the course of the engagement.

(3) The oath or affirmation is to be administered by the Inspector.

31 Obligation on persons employed or engaged under section 28 or engaged under section 29

S. 31 substituted by No. 82/2012 s. 30.

A person employed or engaged under section 28 or engaged under section 29 must not publicly comment on—

(a) the administration of this Act; or

(b) the performance of duties and functions or the exercise of powers by the Victorian Inspectorate.

32 Obligation to avoid actual or perceived conflicts of interest

A Victorian Inspectorate Officer must ensure that any actual or perceived conflicts of interest are avoided in the performance of their duties and functions and in the exercise of their powers as a Victorian Inspectorate Officer.

Pt 2 Div. 2 (Heading and ss 33–37) inserted by No. 19/2012 s. 10.

Division 2—Disclosure by Victorian Inspectorate and Victorian Inspectorate Officers

S. 33 inserted by No. 19/2012 s. 10, amended by Nos 82/2012 s. 31, 85/2012 s. 109.

33 Unauthorised disclosures or provision of information

(1) Subject to subsection (2), a person who is, or was, a Victorian Inspectorate Officer must not directly or indirectly provide or disclose any information acquired by the person or the Victorian Inspectorate by reason of, or in the course of, the performance of the duties and functions or the exercise of powers of the person or the Victorian Inspectorate under this Act or any other Act except—

(a) for the performance of the duties and functions or the exercise of the powers of the person or the Victorian Inspectorate in accordance with this Act or any other Act; or

(b) for the purposes of—

(i) proceedings for an offence; or

(ii) a disciplinary process or action—

brought as a result of an investigation conducted by the Victorian Inspectorate; or

(c) for the purposes of proceedings for an offence against this Act or the **Protected Disclosure Act 2012**; or

(d) as is otherwise authorised or required to be made by or under this Act or the **Protected Disclosure Act 2012**.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note

The person may be subject to further confidentiality obligations under Part 7 of the **Protected Disclosure Act 2012**.

(2) This section does not apply to the provision or disclosure of information to which section 34 applies.

34 Special provision applying in respect of function under section 11(2)(g)

S. 34 inserted by No. 19/2012 s. 10.

The Victorian Inspectorate or a person who is, or was, a Victorian Inspectorate Officer must not directly or indirectly provide or disclose information acquired by the Victorian Inspectorate or the Victorian Inspectorate Officer by reason of, or in the course of, the performance of the function specified in section 11(2)(g), except—

(a) in the performance of that function or for the purpose of performing the duties or exercising the powers conferred by section 13; or

(b) if the Victorian Inspectorate considers on reasonable grounds that a criminal offence may have been committed, to the Chief Commissioner of Police for the purpose of enabling the Chief Commissioner of Police to determine whether or not to take any investigatory or enforcement action.

Penalty: 240 penalty units or imprisonment for 2 years or both.

S. 35 inserted by No. 82/2012 s. 32.

35 Special provisions applying in respect of functions under section 11(2)(i) and (j) and Major Crime (Investigative Powers) Act 2004

The Victorian Inspectorate or a person who is, or was, a Victorian Inspectorate Officer must not, directly or indirectly, make a record of any information or divulge or communicate to any person any information acquired by the Victorian Inspectorate or the Victorian Inspectorate Officer by reason of, or in the course of, the performance the functions specified in section 11(2)(i) or (j) or a function under the **Major Crime (Investigative Powers) Act 2004** except—

(a) in the performance of those functions; or

(b) for the purpose of performing the duties or exercising the powers conferred by this Act or the **Major Crime (Investigative Powers) Act 2004**.

Penalty: Level 6 imprisonment (5 years maximum).

S. 36 inserted by No. 19/2012 s. 10, amended by Nos 82/2012 s. 33, 85/2012 s. 110.

36 Victorian Inspectorate may provide or disclose information for specified purposes

(1) Subject to section 34 and subsection (2), the Victorian Inspectorate may provide or disclose information acquired by the Victorian Inspectorate by reason of, or in the course of, the performance of the duties and functions or the exercise of its powers to a person to whom or body to which the Victorian Inspectorate may make a recommendation under Part 7 for the purpose of enabling that person or body to perform their duties and functions or exercise their powers.

(2) The Victorian Inspectorate must not provide or disclose information under subsection (1) to a person or body that is likely to lead to the identification of a person who has made an

assessable disclosure, if the person or body to whom the information is provided or disclosed is—

(a) the subject of the assessable disclosure; or

(b) the employer of the person who is the subject of the assessable disclosure.

(3) However, the Victorian Inspectorate may provide or disclose under subsection (1) information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

37 Restrictions on compelling production or disclosure

S. 37 inserted by No. 19/2012 s. 10, amended by Nos 82/2012 s. 34, 85/2012 s. 111.

(1) A person who is, or was, a Victorian Inspectorate Officer cannot be required or be compelled in a court to—

(a) produce any document or other thing that has come into his or her possession or control in the performance of the duties and functions or the exercise of powers of the person or the Victorian Inspectorate under this Act or the **Protected Disclosure Act 2012**; or

(b) produce any document or other thing that has come into his or her possession or control in, or disclose any matter or thing of which the person has knowledge as a result of, the performance of the duties and functions or the exercise of the powers of the person or the Victorian Inspectorate under the **Major Crime (Investigative Powers) Act 2004**; or

(c) disclose any matter or thing of which the person has knowledge as a result of the performance of the duties and functions or the exercise of powers of the person or the Victorian Inspectorate under this Act or the **Protected Disclosure Act 2012**—

except—

(d) for the purposes of proceedings for an offence or a disciplinary process or action brought as a result of an investigation conducted by the Victorian Inspectorate; or

(e) for the purposes of proceedings for an offence against this Act or the **Protected Disclosure Act 2012**; or

(f) in circumstances where the Victorian Inspectorate, or the Victorian Inspectorate Officer in his or her official capacity, is a party to the relevant proceeding.

(2) In this section—

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

produce includes permit access to.

Pt 2 Div. 3 (Heading and ss 38, 39) inserted by No. 19/2012 s. 10.

Division 3—Confidentiality Notices

S. 38 inserted by No. 19/2012 s. 10, amended by Nos 82/2012 s. 35(1), 85/2012 s. 112.

38 Confidentiality notice

(1) If during an investigation the Victorian Inspectorate considers on reasonable grounds that the disclosure of one or more restricted matters would be likely to prejudice—

(a) that investigation; or

(b) the safety or reputation of a person; or

(c) the fair trial of a person who has been, or may be, charged with an offence—

the Victorian Inspectorate may issue a confidentiality notice in respect of that investigation to a person (other than a Victorian

Inspectorate Officer) specifying the restricted matter or restricted matters in accordance with this section.

(2) A confidentiality notice must—

(a) be in the prescribed form;

(b) specify the restricted matter or restricted matters in respect of which the confidentiality notice is issued;

(c) include a copy of the provisions of subsections (3) to (8) and section 39 and an explanation of the effect of those provisions;

(d) include a statement—

(i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and

(ii) directing the person to the provisions of that Act which impose those obligations;

(e) if a restricted matter specified in the confidentiality notice is the fact that the person has been, or is proposed to be, examined by, or has produced, or may produce, any document or thing to, the Victorian Inspectorate, specify that the Victorian Inspectorate authorises the person to whom the confidentiality notice is issued to disclose the restricted matter to—

(i) the person's spouse or domestic partner; and

(ii) the person's employer or manager or both, for the purpose of enabling the person to whom the confidentiality

notice is issued to take the appropriate leave from their employment in order to comply with the witness summons—

except to the extent that the Victorian Inspectorate considers that the authorisation to make the disclosure to the person's spouse, domestic partner, employer or manager would be likely to prejudice any of the matters specified in subsection (1)(a), (b) or (c).

(3) If at any time the Victorian Inspectorate considers on reasonable grounds that it is necessary to restrict disclosure of a different restricted matter from any of those specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not likely to be prejudiced, the Victorian Inspectorate must issue to the person to whom the confidentiality notice was issued—

(a) a notice cancelling the previous confidentiality notice; and

(b) a new confidentiality notice in respect of that investigation under subsection (1).

(4) If at any time the Victorian Inspectorate considers on reasonable grounds that it is no longer necessary to restrict disclosure of a particular restricted matter specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not likely to be prejudiced, the Victorian Inspectorate must issue to the person to whom the confidentiality notice was issued—

(a) a notice cancelling the previous confidentiality notice; and

(b) a new confidentiality notice in respect of that investigation under subsection (1).

(5) If at any time the Victorian Inspectorate considers on reasonable grounds that it is no longer necessary to restrict disclosure of the restricted matter or restricted matters specified in a confidentiality notice in respect of a particular investigation to ensure that the matters specified in subsection (1) are not likely to be prejudiced, the Victorian Inspectorate must issue to the person to whom the confidentiality notice was issued a notice cancelling the confidentiality notice.

(6) A confidentiality notice in respect of a particular investigation ceases to have effect on whichever of the following occurs first—

(a) the date on which the Victorian Inspectorate issues a notice cancelling the confidentiality notice under subsection (3), (4) or (5);

(b) the date which is the expiry of the period of 5 years from the date on which the first confidentiality notice in respect of that investigation was issued to that person or, if an extension is granted under subsection (8), the date on which the period of extension expires.

(7) If the Victorian Inspectorate considers on reasonable grounds that it is necessary to extend the period of 5 years specified in subsection (6)(b) on any of the grounds specified in subsection (8), the Victorian Inspectorate may apply to the Supreme Court for an extension of the period.

(8) The Supreme Court, on the application of the Victorian Inspectorate, may by order extend the period of 5 years specified in subsection (6)(b), if the Supreme Court is satisfied that an extension is necessary to avoid prejudice to—

(a) the investigation being conducted by the Victorian Inspectorate; or

(b) the safety or reputation of a person; or

(c) the fair trial of a person who has been, or may be, charged with an offence; or

(d) any proceedings that are proposed to be commenced or which have not been finally determined.

(9) A confidentiality notice under subsection (1) or a notice cancelling a confidentiality notice under subsection (3), (4) or (5) may be issued to a person by serving a copy on the person in the same manner that a witness summons can be served under section 56(3), 56(4), 56(5) or 57.

S. 39 inserted by No. 19/2012 s. 10, amended by Nos 82/2012 s. 35(2)(3), 85/2012 s. 113.

39 Disclosure subject to confidentiality notice

(1) Subject to subsections (2) and (3), a person who—

(a) is duly served with a confidentiality notice by the Victorian Inspectorate under section 38(9), and if applicable, any order extending the confidentiality notice; or

(b) receives a copy of a confidentiality notice under subsection (3) or (4) and, if applicable, a copy of any order extending the confidentiality notice—

must not disclose a restricted matter specified in the confidentiality notice while it has effect.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Note

A person who is served with or receives a confidentiality notice may be subject to further confidentiality obligations under Part 7 of the **Protected Disclosure Act 2012**.

(2) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure is made in any of the following circumstances—

(a) in accordance with a direction or authorisation given by the Victorian Inspectorate;

(b) to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons, a confidentiality notice or an order extending a confidentiality notice under section 38, including if the person—

(i) does not have a sufficient knowledge of the English language to understand the nature of the witness summons, a confidentiality notice or an order extending a confidentiality notice under section 38, to an interpreter;

(ii) is a person under the age of 18 years, to a parent, guardian or independent person;

(iii) is a person who is illiterate or has a mental, physical or other impairment which prevents the person from understanding the witness summons, a confidentiality notice or an order extending a confidentiality notice under section 38 without assistance, to an independent person;

(c) subject to section 58(2) and (8), for the purposes of obtaining legal advice or representation in relation to—

(i) the witness summons, a confidentiality notice or an order extending a confidentiality notice under section 38;

(ii) the person's rights, liabilities, obligations and privileges under this Act or the **Protected Disclosure Act 2012**;

(d) by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (c), for the purposes of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;

(e) as is otherwise authorised or required to be made by or under this Act.

(3) Despite subsection (1), a restricted matter specified in a confidentiality notice may be disclosed if the disclosure made is of information that has been published by the Victorian Inspectorate in a report or has otherwise been made public in accordance with this Act.

(4) A person who makes a disclosure of information permitted by subsection (2) must when making the disclosure provide the person to whom the disclosure is made with a copy of the confidentiality notice and of any order extending the confidentiality notice under section 38, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(5) If in respect of a particular investigation a person who makes a disclosure of information permitted by subsection (2) receives a new confidentiality notice, a notice cancelling the confidentiality notice or an order extending the confidentiality notice under section 38, the person must as soon as reasonably practicable provide a copy of the

new confidentiality notice, notice cancelling the confidentiality notice or order extending the confidentiality notice to each person to whom the disclosure has been made, unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units or imprisonment for 12 months or both.

Pt 3 (Heading and s. 40) inserted by No. 28/2012 s. 32.

PART 3—MATTERS TO BE REPORTED TO THE VICTORIAN INSPECTORATE BY THE IBAC

S. 40 inserted by No. 28/2012 s. 32, amended by No. 82/2012 s. 36.

40 Coercive questioning

(1) The Victorian Inspectorate may require the IBAC to provide a written report specifying, in relation to an examination of a person by the IBAC—

(a) the name of the person who attended;

(b) the name of any other person who was present during the attendance in an official capacity under any Act;

(c) the reasons for the attendance of the person being examined;

(d) the place and time of each attendance by the person for examination;

(e) the relevance of the attendance to the purpose of the investigation in relation to which the attendance occurred;

(f) any other prescribed matter.

(2) The IBAC must comply with a requirement under subsection (1) as soon as possible after it is made.

PART 4—MATTERS TO BE REPORTED TO THE VICTORIAN INSPECTORATE BY THE AUDITOR-GENERAL

Pt 4 (Heading and s. 41) inserted by No. 82/2012 s. 203.

41 Coercive questioning

S. 41 inserted by No. 82/2012 s. 203.

(1) The Victorian Inspectorate may require the Auditor-General to provide a written report specifying, in relation to the appearance of a person at a compulsory appearance within the meaning of the **Audit Act 1994**—

(a) the name of the person who appeared;

(b) the reasons for the person's appearance;

(c) the place and time of the appearance;

(d) the relevance of the appearance to the purpose of the audit in relation to which the appearance occurred;

(e) the name of any other person who was present during the appearance in an official capacity under any Act;

(f) any other prescribed matter.

(2) The Auditor-General must comply with a requirement under subsection (1) as soon as possible after it is made.

Pt 5 (Heading and s. 42) inserted by No. 82/2012 s. 266.

PART 5—MATTERS TO BE REPORTED TO THE VICTORIAN INSPECTORATE BY THE OMBUDSMAN

S. 42 inserted by No. 82/2012 s. 266.

42 Coercive questioning

(1) The Victorian Inspectorate may require the Ombudsman to provide a written report specifying, in relation to an appearance by a person before the Ombudsman in an investigation under the **Ombudsman Act 1973** or any other Act (whether in response to a witness summons or otherwise)—

(a) the name of the person who appeared;

(b) the reasons for the person's appearance;

(c) the place and time of the person's appearance;

(d) the relevance of the appearance to the purpose of the investigation;

(e) the name of any other person who was present during the appearance in an official capacity under any Act;

(f) any other prescribed matter.

(2) The Ombudsman must comply with a requirement under subsection (1) as soon as possible after it is made.

PART 6—INVESTIGATIONS AND INQUIRIES

Pt 6 (Heading) amended by No. 19/2012 s. 11(1).

Division 1—Investigations

Pt 6 Div. 1 (Heading) inserted by No. 19/2012 s. 11(2).

43 Complaints

S. 43 amended by No. 82/2012 ss 37, 204, 267.

(1) A person may make a complaint to the Victorian Inspectorate about the conduct of the IBAC or IBAC personnel in respect of the—

(a) performance or exercise; or

(b) failure to perform or exercise; or

(c) purported performance or purported exercise—

by the IBAC or IBAC personnel of the duties, functions or powers conferred on the IBAC or IBAC personnel in relation to any matter.

(2) Without limiting the generality of subsection (1), a complaint may be made on the basis that specified conduct of the IBAC or IBAC personnel was—

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory; or

(c) based on improper motives; or

(d) an abuse of power; or

(e) otherwise improper.

(3) A person may make a complaint to the Victorian Inspectorate about the conduct of a VAGO officer in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) the compliance with sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3) of the **Audit Act 1994**.

(4) Without limiting the generality of subsection (3), a complaint may be made on the basis that specified conduct was—

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory; or

(c) based on improper motives; or

(d) an abuse of power; or

(e) otherwise improper.

(5) A person may make a complaint to the Victorian Inspectorate about the conduct of an Ombudsman officer in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) the compliance with procedural fairness requirements in the performance of functions under the **Ombudsman Act 1973** or any other Act, including in the conduct of enquiries and investigations and the making of reports and recommendations under the **Ombudsman Act 1973** or any other Act.

(6) Without limiting the generality of subsection (5), a complaint may be made on the basis that specified conduct was—

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory; or

(c) based on improper motives; or

(d) an abuse of power; or

(e) otherwise improper.

(7) A person may make a complaint to the Victorian Inspectorate about the conduct of the Chief Examiner or an Examiner in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) compliance with the **Major Crime (Investigative Powers) Act 2004**.

(8) Without limiting the generality of subsection (7), a complaint may be made on the basis that specified conduct was—

(a) contrary to law; or

(b) unreasonable, unjust, oppressive or improperly discriminatory; or

(c) based on improper motives; or

(d) an abuse of power; or

(e) otherwise improper.

44 Investigation of complaint

S. 44 amended by Nos 82/2012 ss 38, 205, 268, 85/2012 s. 114.

(1) The Victorian Inspectorate may investigate a complaint made under section 43 in order to assess the conduct in respect of which the complaint is made or any other conduct relevant to the matter.

(2) The Victorian Inspectorate must investigate a protected disclosure complaint.

(3) If the Victorian Inspectorate decides to investigate a complaint referred to in section 43(1), the Victorian Inspectorate must notify the IBAC in writing unless the Victorian Inspectorate reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.

(4) If the Victorian Inspectorate decides to investigate a complaint referred to in section 43(3), the Victorian Inspectorate must notify the Auditor-General in writing unless the Victorian Inspectorate reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.

(5) If the Victorian Inspectorate decides to investigate a complaint referred to in section 43(5), the Victorian Inspectorate must notify the Ombudsman in writing unless the Victorian Inspectorate reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.

(6) If the Victorian Inspectorate decides to investigate a complaint referred to in section 43(7), the Victorian Inspectorate must notify the Chief Examiner or the Examiner, as the case requires, in writing unless the Victorian Inspectorate reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.

(7) Despite subsections (3), (4), (5) and 6) but subject to subsection (8), the Victorian Inspectorate must not in any notice under those subsections include any information likely to lead to the identification of a person who has made an assessable disclosure.

(8) However, the Victorian Inspectorate may in a notice referred to in subsection (7) include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

45 Advice to person who made protected disclosure complaint

S. 45 inserted by No. 85/2012 s. 115.

(1) Subject to subsection (3), the Victorian Inspectorate must advise a person who made a protected disclosure complaint that the protected disclosure complaint will be investigated.

(2) Advice provided under subsection (1) must be provided in writing and within a reasonable time after—

(a) in the case of a protected disclosure complaint referred to in paragraph (a) of the definition of ***protected disclosure complaint***—the Victorian Inspectorate has determined that the disclosure is a protected disclosure complaint; or

(b) in the case of a protected disclosure complaint referred to in paragraph (b) of the definition of ***protected disclosure complaint***—the protected disclosure complaint is received by the Victorian Inspectorate on referral by the IBAC.

(3) The Victorian Inspectorate must not provide advice under subsection (1) if the Victorian Inspectorate considers on reasonable grounds that to do so would—

(a) not be in the public interest or in the interests of justice; or

(b) put a person's safety at risk; or

(c) cause unreasonable damage to a person's reputation; or

(d) prejudice an investigation by members of the police force, the Victorian Inspectorate or the IBAC; or

(e) otherwise contravene any applicable statutory secrecy obligations; or

(f) involve the unreasonable disclosure of information relating to the personal affairs of any person.

S. 46 amended by No. 82/2012 ss 39, 206, 269.

46 Own motion investigation

(1) The Victorian Inspectorate may on its own motion in the course of performing its functions investigate the conduct of the IBAC or IBAC personnel in respect of the—

(a) performance or exercise; or

(b) failure to perform or exercise; or

(c) purported performance or purported exercise—

by the IBAC or IBAC personnel of the duties, functions or powers conferred on the IBAC or IBAC personnel in relation to any matter.

(2) The Victorian Inspectorate may on its own motion in the course of performing its functions investigate the conduct of a VAGO officer in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) the compliance with sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3) of the **Audit Act 1994**.

(3) The Victorian Inspectorate may on its own motion in the course of performing its functions investigate the conduct of an Ombudsman officer in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) the compliance with procedural fairness requirements in the performance of functions under the **Ombudsman Act 1973** or any other Act, including in the conduct of

enquiries and investigations and the making of reports and recommendations under the **Ombudsman Act 1973** or any other Act.

(4) The Victorian Inspectorate, on its own motion, may investigate the conduct of the Chief Examiner or an Examiner in respect of—

(a) the exercise or purported exercise of coercive powers in relation to any matter; or

(b) compliance with the **Major Crime (Investigative Powers) Act 2004**.

47 Conduct of investigation

S. 47 amended by No. 82/2012 ss 40, 207, 270.

(1) For the purposes of conducting an investigation in relation to the IBAC or IBAC personnel, the Victorian Inspectorate—

(a) may investigate any aspect of the IBAC's operations or any conduct of IBAC personnel;

(b) has full and free access to all the records of the IBAC and may copy any record or part of any record of the IBAC;

(c) may require the IBAC or any IBAC personnel to give the Victorian Inspectorate any information in its or that person's possession which the Victorian Inspectorate considers is relevant to the investigation;

(d) may require any IBAC personnel to attend before the Victorian Inspectorate to answer questions or to produce documents or other things relating to any aspect of the IBAC's operations or the conduct of IBAC personnel.

(2) For the purposes of conducting an investigation in relation to a VAGO officer, the Victorian Inspectorate—

(a) may investigate any aspect of the operations of the Auditor-General or any conduct of a VAGO officer;

(b) has full and free access to all the records of the Auditor-General and may copy any record or part of any record of the Auditor-General;

(c) may require a VAGO officer to give the Victorian Inspectorate any information in the VAGO officer's possession which the Victorian Inspectorate considers is relevant to the investigation;

(d) may require a VAGO officer to attend before the Victorian Inspectorate to answer questions or to produce documents or other things relating to operations of the Auditor-General or the conduct of any VAGO officer.

(3) For the purposes of conducting an investigation in relation to an Ombudsman officer, the Victorian Inspectorate—

(a) may investigate any aspect of the operations of the Ombudsman or any conduct of an Ombudsman officer;

(b) has full and free access to all the records of the Ombudsman and may copy any record or part of any record of the Ombudsman;

(c) may require an Ombudsman officer to give the Victorian Inspectorate any information in the Ombudsman officer's possession which the Victorian Inspectorate considers is relevant to the investigation;

(d) may require an Ombudsman officer to attend before the Victorian Inspectorate to answer questions or to produce documents or other things relating to operations of the Ombudsman or any conduct of an Ombudsman officer.

(4) For the purposes of conducting an investigation in relation to the Chief Examiner or an Examiner, the Victorian Inspectorate—

(a) may investigate any aspect of—

(i) the Chief Examiner's conduct or the carrying out of his or her functions; or

(ii) any conduct of an Examiner or the carrying out of his or her functions;

(b) has full and free access to all the records of the Chief Examiner and any Examiner and may copy any record, or part of any record, of the Chief Examiner or an Examiner;

(c) may require the Chief Examiner or any Examiner to give the Victorian Inspectorate any information in that person's possession which the Victorian Inspectorate considers is relevant to the investigation;

(d) may require the Chief Examiner or any Examiner to attend before the Victorian Inspectorate to answer questions or to produce documents or other things relating to—

(i) the Chief Examiner's conduct or the carrying out of his or her functions; or

(ii) the conduct of an Examiner or the carrying out of his or her functions.

(5) The Victorian Inspectorate may commence or continue an investigation despite the fact that any proceedings are on foot, or are instituted, in any court or tribunal that relate to or are otherwise connected with the subject-matter of the investigation.

(6) If the Victorian Inspectorate is or becomes aware that proceedings referred to in subsection (5) are on foot or have been instituted, the Victorian Inspectorate must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

(7) The Victorian Inspectorate may adjourn or suspend the conduct of an investigation if the Victorian Inspectorate considers that it is in the interests of justice to do so.

(8) If the Victorian Inspectorate considers that it is necessary to do so, the Victorian Inspectorate—

(a) may conduct an investigation in relation to the IBAC or IBAC personnel even though the IBAC is investigating a related matter; and

(b) may conduct an investigation in relation to an Ombudsman officer even though the Ombudsman is investigating a related matter; and

(c) may conduct an investigation in relation to a VAGO officer even though the Auditor-General is conducting an audit into a related matter.

(9) If the Victorian Inspectorate considers that it is necessary to do so, the Victorian Inspectorate may conduct an investigation under this Division even though the Chief Examiner or an Examiner is investigating a related matter.

48 Requirement to provide assistance

S. 48 amended by No. 82/2012 ss 41, 208, 271.

(1) The IBAC must—

(a) give any assistance; and

(b) ensure that IBAC personnel give any assistance—

to the Victorian Inspectorate which the Victorian Inspectorate reasonably requires to enable the Victorian Inspectorate to conduct any investigation in relation to the IBAC or IBAC personnel under this Part.

(2) The Auditor-General must—

(a) give any assistance; and

(b) ensure that VAGO officers give any assistance—

to the Victorian Inspectorate which the Victorian Inspectorate reasonably requires to enable the Victorian Inspectorate to conduct any investigation in relation to a VAGO officer under this Part.

(3) The Ombudsman must—

(a) give any assistance; and

(b) ensure that Ombudsman officers give any assistance—

to the Victorian Inspectorate which the Victorian Inspectorate reasonably requires to enable the Victorian Inspectorate to conduct any investigation in relation to an Ombudsman officer under this Part.

(4) The Chief Examiner and Examiners must give any assistance to the Victorian Inspectorate which the Victorian Inspectorate reasonably requires to enable the Victorian Inspectorate to conduct any investigation under this Part.

Pt 6 Div. 2 (Heading and ss 49–67) inserted by No. 19/2012 s. 12.

Division 2—Inquiries

S. 49 inserted by No. 19/2012 s. 12.

49 Power to hold inquiry

For the purpose of conducting investigations, the Victorian Inspectorate may hold an inquiry into any matter arising out of the investigation.

S. 50 inserted by No. 19/2012 s. 12, amended by No. 82/2012 ss 42, 209, 272(1).

50 Conduct of inquiry

In conducting an inquiry, the Victorian Inspectorate—

(a) may hold an examination;

(b) is not bound by the rules of evidence;

(c) may regulate the procedure of the inquiry as the Victorian Inspectorate considers appropriate;

(d) may enter and search Ombudsman premises, IBAC premises or VAGO premises and inspect, copy and seize any document or thing in accordance with section 63;

(e) may, after notifying the Chief Examiner, enter and search premises of the Chief Examiner and inspect, copy and seize any document or thing in accordance with section 63.

S. 51 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 272(2).

51 Examination must be held in private

(1) An examination must be held in private.

(2) A person (other than a Victorian Inspectorate Officer) must not be present at the examination unless he or she is—

(a) attending in accordance with a witness summons duly served under section 56 or 57; or

(b) subject to section 58(2) and (8), an Australian legal practitioner representing a person who is attending in accordance with a witness summons; or

(c) entitled to be present by reason of a direction given by the Victorian Inspectorate under section 52; or

(d) an Australian legal practitioner, or other person, engaged by the Victorian Inspectorate to assist the Victorian Inspectorate in the inquiry; or

(e) any other person who is authorised to be present by the Victorian Inspectorate or who is otherwise authorised to be present under this Act or any other law.

Penalty: 120 penalty units or imprisonment for 12 months or both.

52 The Victorian Inspectorate may give directions or order

S. 52 inserted by No. 19/2012 s. 12.

(1) The Victorian Inspectorate may give directions as to the persons who—

(a) may be present during an examination or part of an examination;

(b) must not be present during an examination or part of an examination.

(2) A direction under subsection (1) must not prevent the presence, when evidence is being taken at an examination, of—

(a) subject to section 58(2) and (8), an Australian legal practitioner representing a person attending in accordance with a witness summons; or

(b) a Victorian Inspectorate Officer; or

(c) any other person authorised to be present by the Victorian Inspectorate under this Act.

S. 53 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 43.

53 Witness summons

(1) For the purposes of an inquiry, the Victorian Inspectorate may issue the following witness summonses to a person—

(a) a summons to attend the Victorian Inspectorate to give evidence at an examination at a specified time and place on a specified date;

(b) a summons to attend at a specified time and place on a specified date to produce documents or other things to the Victorian Inspectorate;

(c) a summons to attend an examination at a specified time and place on a specified date before the Victorian Inspectorate to give evidence and produce documents or other things.

(2) The Victorian Inspectorate may, under subsection (1), issue a witness summons directed to a person if satisfied that it is reasonable to do so, having regard to—

(a) the evidentiary or intelligence value of the information, document or thing sought to be obtained from the person; and

(b) the age of the person and any mental impairment to which the person is known or believed to be subject.

(3) The Victorian Inspectorate must not issue a witness summons to a person who is under the age of 18 years unless the Victorian Inspectorate considers on reasonable grounds that—

(a) the information, document or thing that the person could provide may be compelling and probative evidence; and

(b) it is not practicable to obtain the information, document or thing by any other means.

(4) If a person is issued with a witness summons referred to in subsection (1)(b), the Victorian Inspectorate may excuse that person from attendance if the person produces the required documents or things to the Victorian Inspectorate before the time and date for production specified in the witness summons in accordance with any directions given by the Victorian Inspectorate.

(5) A person to whom a witness summons is directed must, in accordance with the summons, attend from day to day unless excused from further attendance.

54 Content and form of witness summons

S. 54 inserted by No. 19/2012 s. 12, amended by No. 82/2012 ss 44, 210, 273.

(1) A witness summons must require the person to whom it is directed to attend at a specified time and place on a specified date—

(a) to give evidence before the Victorian Inspectorate; or

(b) to produce to the Victorian Inspectorate any documents or other things described in the witness summons that are in the person's possession or control; or

(c) to both give evidence and produce any documents or other things described in the witness summons that are in the person's possession or control.

(2) A witness summons referred to in subsection (1)(a) or (c) must state the nature of the matters about which the person to whom it is directed is to be questioned, except to the extent to which the Victorian Inspectorate considers on reasonable grounds that this would be likely to prejudice the conduct of the inquiry to which the witness summons relates or would be contrary to the public interest.

(3) A witness summons must be—

(a) in the prescribed form; and

(b) accompanied by a copy of any relevant confidentiality notice; and

(c) accompanied by a statement setting out the matters specified in subsection (4).

(4) A statement referred to in subsection (3)(c) must include the following—

(a) that failure to comply with the witness summons may be an offence and penalties may apply;

(b) that if the person summoned is under the age of 16 years at the date of issue of the witness summons, the person need not comply with the witness summons, subject to the requirements of section 55; and

(c) that the person is entitled to seek legal advice in relation to the witness summons and the inquiry generally;

(d) that the person has a right to legal representation at an examination;

(e) that, if applicable, the person has a right to have an interpreter present at the examination;

(f) that, if applicable, the person is required to have a parent, a guardian or an independent person present at the examination;

(g) that a person may claim a privilege but—

(i) a person is not excused from answering a question or giving information or from producing a document or other thing on the ground that the answer, information, document or other thing may tend to incriminate the person or make the person liable to a penalty;

(ii) if the person is an IBAC personnel, the IBAC is not entitled to assert any privilege;

(iii) if the person is a VAGO officer, neither the Auditor-General nor the Victorian Auditor-General's Office is entitled to assert any privilege;

(iv) if the person is an Ombudsman officer, neither the Ombudsman nor the office of the Ombudsman is entitled to assert any privilege;

(v) if the person is the Chief Examiner or an Examiner, neither the Chief Examiner nor the Examiner is entitled to assert any privilege;

(vi) if the person is a member of police personnel, the Crown is not entitled to assert any privilege;

(h) if a person gives any answer, information, document or other thing that might tend to incriminate the person, an immunity as to the use of that evidence may apply;

(i) that, with limited exceptions in relation to a person who is an IBAC personnel, a VAGO officer, an Ombudsman officer, the Chief Examiner or an Examiner or a member of police personnel, statutory secrecy provisions may apply which prevent the person from answering a question or giving information or producing documents or other things;

(j) any other prescribed matter.

S. 55 inserted by No. 19/2012 s. 12.

55 Witness summons directed to person under 16 years

(1) A witness summons directed to a person under the age of 16 years at the date of issue of the witness summons has no effect.

(2) A person who claims to be under the age of 16 years at the date of issue of a witness summons directed to the person must provide proof of age in accordance with the regulations to the Victorian Inspectorate.

S. 56 inserted by No. 19/2012 s. 12.

56 Service of witness summons

(1) Subject to subsection (2), a witness summons must be served at a reasonable time, being not less than 7 days, before the date on which the person is required to attend or otherwise comply with the witness summons.

(2) The Victorian Inspectorate may issue a witness summons requiring immediate attendance by a person before the Victorian Inspectorate if the Victorian Inspectorate considers on reasonable grounds that a delay in the person's attendance is likely to result in—

(a) evidence being lost or destroyed; or

(b) the commission of an offence; or

(c) the escape of the person who is summoned; or

(d) serious prejudice to the conduct of the investigation to which the witness summons relates.

(3) A witness summons directed to a natural person must be served by serving a copy of the witness summons on the person personally.

(4) A witness summons directed to a body corporate must be served by leaving a copy of the witness summons at the registered office or principal place of business of the body corporate with a person apparently employed at that office or place and who is apparently at least 16 years of age.

(5) Subsection (4) is in addition to, and not in derogation of, section 109X and 601CX of the Corporations Act.

57 Supreme Court may order service by other means

S. 57 inserted by No. 19/2012 s. 12.

(1) If it appears that it is not reasonably practicable to serve a witness summons in accordance with section 56, the Victorian Inspectorate may apply to the Supreme Court for an order that the witness summons be served by another means.

(2) On an application under subsection (1), if the Supreme Court is satisfied that it is not reasonably practicable to serve a witness summons in accordance with section 56, the Supreme Court may—

(a) order the witness summons to be served by any other means the Supreme Court considers appropriate; or

(b) make an order for substituted service.

S. 58 inserted by No. 19/2012 s. 12, amended by No. 82/2012 ss 45, 211, 274.

58 Legal representation of witnesses and other persons

(1) Subject to this section, a witness may be represented at an examination by an Australian legal practitioner.

(2) The Victorian Inspectorate may direct a witness not to seek legal advice or representation in relation to a witness summons from a specified Australian legal practitioner if the Victorian Inspectorate considers on reasonable grounds that the inquiry would be prejudiced because the Australian legal practitioner is—

(a) a witness in the inquiry or another inquiry; or

(b) the representative of another witness in the inquiry or another inquiry; or

(c) a person involved, or suspected of being involved, in a complaint or matter being investigated by the Ombudsman, the Chief Examiner or an Examiner, the Chief Examiner or an Examiner, the IBAC or the Victorian Inspectorate or a matter that is the subject of an audit by the Auditor-General; or

(d) the representative of a person involved, or suspected of being involved, in a complaint or matter being investigated by the Ombudsman, the Chief Examiner or an Examiner, the IBAC or the Victorian Inspectorate or a matter that is the subject of an audit by the Auditor-General.

(3) A direction under subsection (2) may be made at any time, whether before, at or after the time for complying with the witness summons.

(4) The Victorian Inspectorate must advise the person bound by the direction that a direction has been made under subsection (2).

(5) A person is bound by a direction under subsection (2) from the time when the Victorian Inspectorate gives the advice to that person under subsection (4).

(6) If the Victorian Inspectorate gives a direction under subsection (2), the Victorian Inspectorate must, unless section 56(2) applies, allow the person bound by the direction at least 3 days from the date of receipt of the direction to obtain legal advice or representation by another Australian legal practitioner before the person is required to attend for the purpose of complying with the witness summons.

(7) If the Victorian Inspectorate considers that there are special circumstances, the Victorian Inspectorate may allow a person who is not a witness to be represented by an Australian legal practitioner during the examination of a witness.

(8) The Victorian Inspectorate may direct a person who has received a proposed report, or draft or part of a proposed report or information contained in a report or to whom a confidentiality notice is directed not to seek legal advice or representation in relation to the report or confidentiality notice from a specified Australian legal practitioner if the Victorian Inspectorate considers on reasonable grounds that the inquiry would be prejudiced because the Australian legal practitioner is—

(a) a witness in the inquiry or another inquiry; or

(b) the representative of another witness in the inquiry or another inquiry; or

(c) a person involved, or suspected of being involved, in a complaint or matter being investigated by the Ombudsman, the Chief Examiner or an Examiner, the IBAC or the Victorian Inspectorate or a matter that is the

subject of an audit by the Auditor-General; or

(d) the representative of a person involved, or suspected of being involved, in a complaint or matter being investigated by the Ombudsman, the Chief Examiner or an Examiner, the IBAC or the Victorian Inspectorate or a matter that is the subject of an audit by the Auditor-General.

(9) The Victorian Inspectorate must advise the person bound by the direction that a direction has been made under subsection (8).

(10) A person is bound by a direction under subsection (8) from the time when the Victorian Inspectorate gives the advice to that person under subsection (9).

S. 59 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 46.

59 Specific provisions relating to witnesses

(1) At any time during an examination, if the Victorian Inspectorate becomes aware that a witness is under the age of 16 years, the Victorian Inspectorate must immediately release the person from compliance with any witness summons applying to that person.

(2) If a witness does not have knowledge of the English language that is sufficient to enable the witness to understand questions asked of him or her or to answer those questions, before the examination commences, or during the examination, as the case requires, the Victorian Inspectorate must provide for a competent interpreter to be present for the examination.

(3) If a witness is under the age of 18 years, the witness must be accompanied by a parent or guardian or an independent person.

(4) The Victorian Inspectorate must direct that an independent person be present during the examination of a witness if—

(a) the Victorian Inspectorate believes the witness has a mental impairment; or

(b) the witness provides the Victorian Inspectorate with reasonably satisfactory medical evidence that the witness has a mental impairment.

60 Actions to be taken before questioning of a witness or requiring production of a document or other thing

S. 60 inserted by No. 19/2012 s. 12, amended by Nos 82/2012 s. 47, 85/2012 s. 116.

(1) Before a witness summoned to attend at an examination and not excused from attendance under section 53(4) is asked any questions or required to produce a document or thing, the Victorian Inspectorate must—

(a) confirm the age of a witness if the Victorian Inspectorate considers that a witness may be under the age of 18 years;

(b) release any witness under the age of 16 years from compliance with any witness summons;

(c) inform the witness orally and in writing of the person's rights and obligations as specified in section 54(4) unless—

(i) the witness is represented by an Australian legal practitioner; and

(ii) the witness informs the Victorian Inspectorate that, prior to the examination, an Australian legal practitioner has explained the statement referred to in section 54(3)(c) to the witness;

(d) inform an Australian legal practitioner who is representing a witness or other person at the examination of any confidentiality notices that apply under the Act and, in the case of an investigation of a protected disclosure complaint, the confidentiality requirements under the **Protected Disclosure Act 2012**;

(e) take any other actions prescribed for the purposes of this subsection.

(2) Before a witness summoned to attend at an examination is asked any questions, the Victorian Inspectorate must advise the witness of the nature of the matters in respect of which the witness is to be asked questions, except to the extent to which the Victorian Inspectorate forms the opinion on reasonable grounds that this would prejudice the investigation or would be contrary to the public interest.

(3) For the avoidance of doubt, the Victorian Inspectorate is not required to give reasons for forming the opinion referred to in subsection (2).

S. 61 inserted by No. 85/2012 s. 117.

61 Witness attending examination in relation to investigation of protected disclosure complaint to be informed of confidentiality obligations

Before a person attending as a witness at an examination (whether voluntarily or in response to a summons) is asked any questions or required to produce a document or thing, the Victorian Inspectorate must—

(a) advise the person that obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and

(b) inform the person of the nature of those obligations.

62 Power to examine on oath or affirmation

S. 62 inserted by No. 19/2012 s. 12.

(1) A Victorian Inspectorate Officer who is authorised to do so by the Inspector may administer an oath or affirmation to a person.

(2) A Victorian Inspectorate Officer who is authorised to do so by the Inspector may, in relation to a person summoned to attend at an examination—

(a) require the person to either take an oath or make an affirmation;

(b) administer an oath or affirmation to the person;

(c) examine the person and require the person to answer questions or provide information in accordance with the witness summons;

(d) require the person to produce documents or things in accordance with the witness summons.

(3) A Victorian Inspectorate Officer may take a statutory declaration from any witness or other person.

63 Powers of entry, inspection and seizure

S. 63 inserted by No. 19/2012 s. 12, amended by No. 82/2012 ss 48, 212, 275.

(1) Subject to subsection (2), if the Victorian Inspectorate considers on reasonable grounds there are documents or other things that are relevant to an inquiry in relation to the IBAC or IBAC personnel which are on IBAC premises, the Victorian Inspectorate may authorise a Victorian Inspectorate Officer, with such assistance as the Victorian Inspectorate Officer thinks fit, to—

(a) enter those premises at any time; and

(b) search those premises for documents or other things that are relevant to the inquiry; and

(c) inspect or copy any document or other thing found at those premises; and

(d) seize any document or other thing found at those premises that is relevant to the inquiry and keep it until the Victorian Inspectorate has completed its inquiry.

(2) The Victorian Inspectorate must not exercise the power conferred by subsection (1) in respect of the IBAC unless the Victorian Inspectorate considers on reasonable grounds that the IBAC, or any IBAC personnel, has wilfully failed to give assistance in accordance with section 48(1).

(3) Subject to subsection (4), if the Victorian Inspectorate considers on reasonable grounds there are documents or other things that are relevant to an inquiry in relation to a VAGO officer which are on VAGO premises, the Victorian Inspectorate may authorise a Victorian Inspectorate Officer, with such assistance as the Victorian Inspectorate Officer thinks fit, to—

(a) enter those premises at any time; and

(b) search those premises for documents or other things that are relevant to the inquiry; and

(c) inspect or copy any document or other thing found at those premises; and

(d) seize any document or other thing found at those premises that is relevant to the inquiry and keep it until the Victorian Inspectorate has completed its inquiry.

(4) The Victorian Inspectorate must not exercise the power conferred by subsection (3) unless the Victorian Inspectorate considers on reasonable grounds that the Auditor-General or any VAGO officer has wilfully failed to give assistance in accordance with section 48(2).

(5) Subject to subsection (6), if the Victorian Inspectorate considers on reasonable grounds there are documents or other things that are relevant to an inquiry in relation to an Ombudsman officer which are on Ombudsman premises, the Victorian Inspectorate may authorise a Victorian Inspectorate Officer, with such assistance as the Victorian Inspectorate Officer thinks fit, to—

(a) enter those premises at any time; and

(b) search those premises for documents or other things that are relevant to the inquiry; and

(c) inspect or copy any document or other thing found at those premises; and

(d) seize any document or other thing found at those premises that is relevant to the inquiry and keep it until the Victorian Inspectorate has completed its inquiry.

(6) The Victorian Inspectorate must not exercise the power conferred by subsection (5) unless the Victorian Inspectorate considers on reasonable grounds that the Ombudsman or any Ombudsman officer has wilfully failed to give assistance in accordance with section 48(3).

(7) Subject to subsection (8), if the Victorian Inspectorate considers on reasonable grounds there are documents or other things that are relevant to an inquiry in relation to the Chief Examiner or an Examiner which are on the premises of the Chief Examiner, the Victorian Inspectorate may authorise a Victorian Inspectorate Officer, with such assistance as the Victorian Inspectorate Officer thinks fit, and after notifying the Chief Examiner to—

(a) enter those premises at any time; and

(b) search those premises for documents or other things that are relevant to the inquiry; and

(c) inspect or copy any document or other thing found at those premises; and

(d) seize any document or other thing found at those premises that is relevant to the inquiry and keep it until the Victorian Inspectorate has completed its inquiry.

(8) The Victorian Inspectorate must not exercise the power conferred by subsection (7) unless the Victorian Inspectorate considers on reasonable grounds that the Chief Examiner or an Examiner has wilfully failed to give assistance in accordance with section 48(4).

S. 64 inserted by No. 19/2012 s. 12.

64 Offence for summoned witness to fail to attend examination

(1) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the Victorian Inspectorate must not, without reasonable excuse, fail to attend in accordance with the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years or both.

(2) A person who is duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the Victorian Inspectorate must not, without reasonable excuse, fail to attend from day to day unless—

(a) excused by the Victorian Inspectorate; or

(b) released from further attendance by the Victorian Inspectorate.

Penalty: 240 penalty units or imprisonment for 2 years or both.

65 Offence for summoned witness to refuse or fail to answer question

S. 65 inserted by No. 19/2012 s. 12.

A person who is duly served with a witness summons to attend as a witness to give evidence at an examination before the Victorian Inspectorate, must not, without reasonable excuse, refuse or fail to answer a question that he or she is required to answer by the Victorian Inspectorate.

Penalty: 240 penalty units or imprisonment for 2 years or both.

66 Offence for summoned witness to fail to produce document or other thing

S. 66 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 49.

A person who is duly served with a witness summons to attend as a witness before the Victorian Inspectorate, must not, without reasonable excuse, refuse or fail to produce a document or other thing that he or she was required to produce by the witness summons.

Penalty: 240 penalty units or imprisonment for 2 years or both.

67 Offence to fail to take oath or make affirmation

S. 67 inserted by No. 19/2012 s. 12.

A person who is duly served with a witness summons to attend as a witness at an examination before the Victorian Inspectorate, must not, without reasonable excuse, refuse or fail to take an oath or make an affirmation when required to do so.

Penalty: 240 penalty units or imprisonment for 2 years or both.

Pt 6 Div. 3 (Heading and ss 68–71) inserted by No. 19/2012 s. 12.

Division 3—Privileges and secrecy provisions applying to inquiries

S. 68 inserted by No. 19/2012 s. 12, amended by No. 82/2012 ss 50, 213, 276.

68 Privileges and secrecy generally

(1) If a person is a member of police personnel, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as a member of police personnel imposed by any enactment or any rule of law—

(a) is overridden; and

(b) does not apply to the disclosure of information under this Part.

(2) If a person is a member of police personnel—

(a) the Crown is not entitled to assert any privilege in relation to any requirement for that person to produce a document or other thing or give information under this Part; and

(b) any privilege referred to in paragraph (a) is abrogated.

(3) If a person is an IBAC personnel, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as an IBAC Officer imposed by any enactment or any rule of law—

(a) is overridden; and

(b) does not apply to the disclosure of information under this Part.

(4) If a person is an IBAC personnel—

(a) the IBAC is not entitled to assert any privilege in relation to any requirement for that person to provide information under Part 6; and

(b) any privilege referred to in paragraph (a) is abrogated.

(5) If a person is a VAGO officer, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as a VAGO officer imposed by any enactment or any rule of law—

(a) is overridden; and

(b) does not apply to the disclosure of information under this Part.

(6) If a person is a VAGO officer—

(a) neither the Auditor-General nor the Victorian Auditor-General's Office is entitled to assert any privilege in relation to any requirement for that person to produce a document or other thing or give information under this Part; and

(b) any privilege referred to in paragraph (a) is abrogated.

(7) If a person is an Ombudsman officer, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as an Ombudsman officer imposed by any enactment or any rule of law—

(a) is overridden; and

(b) does not apply to the disclosure of information under this Part.

(8) If a person is an Ombudsman officer—

(a) neither the Ombudsman nor the office of the Ombudsman is entitled to assert any privilege in relation to any requirement for that person to produce a document or other thing or give information under this Part; and

(b) any privilege referred to in paragraph (a) is abrogated.

(9) If a person is the Chief Examiner or an Examiner, any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or provided to the person in his or her service as the Chief Examiner or an Examiner imposed by any enactment or any rule of law—

(a) is overridden; and

(b) does not apply to the disclosure of information under this Part.

(10) If a person is the Chief Examiner or an Examiner—

(a) neither the Chief Examiner nor an Examiner is entitled to assert any privilege in relation to any requirement for that person to produce a document or other thing or give information under this Part; and

(b) any privilege referred to in paragraph (a) is abrogated.

S. 69 inserted by No. 52/2012 s. 26.

69 Journalist privilege does not apply

A person is not, in relation to the exercise of a power under this Part, entitled to the privilege provided for in Division 1C of Part 3.10 of the **Evidence Act 2008**.

70 Privilege against self-incrimination abrogated—witness summons

S. 70 inserted by No. 19/2012 s. 12, amended by Nos 82/2012 ss 51, 214, 277, 85/2012 s. 118.

(1) A person is not excused from answering a question or giving information or from producing a document or other thing in accordance with a witness summons on the ground that the answer to the question, the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.

(2) Any answer, information, document or thing given or produced by a person in accordance with a witness summons that might tend to incriminate the person or make the person liable to a penalty is not admissible in evidence against the person before any court or person acting judicially, except in proceedings for—

(a) perjury or giving false information; or

(b) an offence against this Act; or

(c) an offence against the **Audit Act 1994**; or

(d) an offence against the **Ombudsman Act 1973**; or

(e) an offence against the **Independent Broad-based Anti-corruption Commission Act 2011**; or

(f) contempt of the Victorian Inspectorate under this Act; or

(g) an offence against the **Major Crime (Investigative Powers) Act 2004**; or

(h) an offence against section 72 or 73 of the **Protected Disclosure Act 2012**; or

(i) a disciplinary process or action.

(3) Section 30 of the **Evidence (Miscellaneous Provisions) Act 1958** does not apply in respect of any statement made by any person in answer to any question in accordance with a witness summons under this Act.

S. 71 inserted by No. 19/2012 s. 12.

71 Protection of legal practitioners and witnesses

(1) An Australian legal practitioner representing a person at an examination has the same protection and immunity as a legal practitioner has in representing a party in a proceeding in the Supreme Court.

(2) Subject to sections 68 and 70, a person appearing as a witness at an examination has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

Pt 6 Div. 4 (Heading and ss 72–77) inserted by No. 19/2012 s. 12.

Division 4—Contempt

S. 72 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 52.

72 Contempt of the Victorian Inspectorate

(1) A person duly served with a witness summons to attend as a witness to give evidence or to produce documents or other things at an examination before the Victorian Inspectorate who, without reasonable excuse—

(a) fails to attend in accordance with the witness summons; or

(b) fails to attend from day to day unless excused by the Victorian Inspectorate or released from further attendance by the Victorian Inspectorate; or

(c) while attending as a witness at the examination before the Victorian Inspectorate, refuses or fails to answer a

question that he or she is required to answer by the Victorian Inspectorate; or

(d) while attending as a witness at the examination before the Victorian Inspectorate, refuses or fails to produce a document or other thing that he or she was required to produce by the witness summons; or

(e) while attending as a witness at the examination before the Victorian Inspectorate, refuses or fails to take an oath or make an affirmation when required to do so; or

(f) engages in threatening or obstructive behaviour before the Victorian Inspectorate; or

(g) engages in any other conduct that would, if the Victorian Inspectorate were the Supreme Court, constitute a contempt of that Court—

is guilty of contempt of the Victorian Inspectorate.

(2) A person who, without reasonable excuse, hinders or obstructs a Victorian Inspectorate Officer who is exercising a power under section 13 or this Part is guilty of contempt of the Victorian Inspectorate.

73 Charging and arresting a person for contempt

S. 73 inserted by No. 19/2012 s. 12.

(1) If it appears to the Victorian Inspectorate that a person is guilty of contempt, the Victorian Inspectorate may—

(a) issue a certificate of charge—

(i) charging the person with contempt; and

(ii) setting out or attaching details of the alleged contempt; and

(b) issue an arrest warrant in the prescribed form to arrest the person.

(2) An arrest warrant—

(a) may be directed to a named member, or all members, of the police force; and

(b) authorises the member or members to whom it is directed to arrest the person named in the warrant.

(3) A person who is arrested under an arrest warrant—

(a) is to be brought before the Supreme Court without delay to be dealt with according to law; and

(b) may be detained in police custody in the meantime.

S. 74 inserted by No. 19/2012 s. 12, amended by No. 82/2012 s. 53.

74 Bail pending court appearance for contempt

(1) If it is not practicable for a person who is arrested under an arrest warrant to be brought before the Supreme Court without delay after he or she is arrested—

(a) the person for the time being in charge of the place where he or she is detained must—

(i) advise the person that he or she is entitled to apply to a bail justice for discharge from custody; and

(ii) give the person a written statement, in the prescribed form (if any), of his or her right to apply for discharge from custody; and

(b) if the person elects to apply for discharge from custody, the person for the time being in charge of the place where he or she is detained must—

(i) give written notice to the Victorian Inspectorate of the person's election to apply; and

(ii) cause the person to be brought before a bail justice as soon as practicable; and

(iii) cause to be produced before the bail justice the arrest warrant and the certificate of charge for the person; and

(iv) abide by the decision of the bail justice in relation to the person.

(2) When a person is brought before a bail justice under subsection (1), the bail justice may, subject to this section, discharge the person from custody on bail in accordance with the **Bail Act 1977** as if the person had been accused of an offence.

(3) A bail justice must not determine a bail application under this section unless satisfied that the Victorian Inspectorate has had sufficient time after receiving notice under subsection (1)(b)(i) to determine whether to oppose the grant of bail and if so to state that opposition to the bail justice.

75 Custody pending court appearance for contempt

S. 75 inserted by No. 19/2012 s. 12.

(1) If the Victorian Inspectorate considers on reasonable grounds that it is necessary to prevent a person who is arrested under an arrest warrant from escaping from police custody or to ensure the safety of the person, the Victorian Inspectorate may direct that the person be detained in a prison or a police gaol for the purpose of ensuring his or her appearance before the Supreme Court.

(2) If a person detained in police custody under this Division, other than a person detained in accordance with a direction under subsection (1), is required to be detained overnight, the Chief Commissioner of Police must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

(3) If a person is detained in a prison in accordance with a direction under subsection (1), the Victorian Inspectorate may give a written direction for the person to be delivered into the custody of a member of the police force for the purpose of bringing the person before the Supreme Court.

S. 76 inserted by No. 19/2012 s. 12.

76 Supreme Court to deal with contempt

(1) Contempt of the Victorian Inspectorate is to be dealt with by the Supreme Court as if—

(a) the contempt were contempt of an inferior court; and

(b) the certificate of charge were an application to the Supreme Court for punishment for the contempt.

(2) A certificate of charge is evidence of the matters set out in or attached to it.

S. 77 inserted by No. 19/2012 s. 12.

77 Act or omission constituting both an offence and contempt

If an act or omission by an offender constitutes both an offence against this Act and contempt of the Victorian Inspectorate, the offender is liable to be proceeded against for the offence against this Act or for contempt of the Victorian Inspectorate or both, but is not liable to be punished more than once for the same act or omission.

PART 7—RECOMMENDATIONS AND REPORTS

78 Recommendation to IBAC

(1) The Victorian Inspectorate may at any time make recommendations to the IBAC in relation to any action that the Victorian Inspectorate considers should be taken.

(2) Without limiting subsection (1), the Victorian Inspectorate may recommend taking action—

(a) to prevent specified conduct from continuing or occurring in the future;

(b) to remedy any harm or loss arising from the conduct of the IBAC or any IBAC personnel.

(3) A recommendation to IBAC which is not contained in a report must be made in private.

(4) Subsection (3) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the IBAC has failed to take appropriate action in relation to the recommendation.

(5) The Victorian Inspectorate may require the IBAC to give a report to the Victorian Inspectorate, within a reasonable specified time, stating—

(a) whether or not the IBAC has taken, or intends to take, action recommended by the Victorian Inspectorate; and

(b) if the IBAC has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.

(6) The IBAC must comply with a requirement of the Victorian Inspectorate under subsection (5).

S. 79 amended by Nos 19/2012 s. 13, 82/2012 s. 215.

79 Recommendation for further action in respect of IBAC personnel

(1) The Victorian Inspectorate may at any time recommend in private to the IBAC the undertaking of a disciplinary process or action against any IBAC personnel other than the Commissioner.

(2) Subsection (1) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the IBAC has failed to take appropriate action in relation to the recommendation.

(3) If the Victorian Inspectorate is satisfied that any conduct of any IBAC personnel which has been the subject of a complaint, investigation or other finding should be the subject of any further investigatory or enforcement action, the Victorian Inspectorate may make a recommendation to that effect to any or all of the following—

(a) the Chief Commissioner of Police;

(b) the Director of Public Prosecutions;

(c) the Australian Federal Police;

(d) the Auditor-General;

(e) the Victorian WorkCover Authority;

(f) any other person or body prescribed for the purposes of this subsection.

S. 80 inserted by No. 82/2012 s. 216.

80 Recommendation to the Auditor-General

(1) The Victorian Inspectorate may at any time make recommendations to the Auditor-General in relation to any action that the Victorian Inspectorate considers should be taken.

(2) Without limiting subsection (1), the Victorian Inspectorate may recommend taking action—

(a) to prevent specified conduct from continuing or occurring in the future;

(b) to remedy any harm or loss arising from the conduct of any VAGO officer.

(3) A recommendation to the Auditor-General which is not contained in a report must be made in private.

(4) Subsection (3) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the Auditor-General has failed to take appropriate action in relation to the recommendation.

(5) The Victorian Inspectorate may require the Auditor-General to give a report to the Victorian Inspectorate, within a reasonable specified time, stating—

(a) whether or not the Auditor-General has taken, or intends to take, action recommended by the Victorian Inspectorate; and

(b) if the Auditor-General has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.

(6) The Auditor-General must comply with a requirement of the Victorian Inspectorate under subsection (5).

S. 81 inserted by No. 82/2012 s. 216.

81 Recommendation for further action in respect of VAGO officers

(1) The Victorian Inspectorate may at any time recommend in private to the Auditor-General the undertaking of a disciplinary process or action against any VAGO officer other than the Auditor-General.

(2) Subsection (1) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the Auditor-General has failed to take appropriate action in relation to the recommendation.

(3) If the Victorian Inspectorate is satisfied that any conduct of any VAGO officer which has been the subject of a complaint, investigation or other finding should be the subject of any further investigatory or enforcement action, the Victorian Inspectorate may make a recommendation to that effect to any or all of the following—

(a) the Chief Commissioner of Police;

(b) the Director of Public Prosecutions;

(c) the Australian Federal Police;

(d) the IBAC;

(e) the Victorian WorkCover Authority;

(f) any other person or body prescribed for the purposes of this subsection.

S. 82 inserted by No. 82/2012 s. 278.

82 Recommendation to the Ombudsman

(1) The Victorian Inspectorate may at any time make recommendations to the Ombudsman in relation to any action that the Victorian Inspectorate considers should be taken.

(2) Without limiting subsection (1), the Victorian Inspectorate may recommend taking action—

(a) to prevent specified conduct from continuing or occurring in the future;

(b) to remedy any harm or loss arising from the conduct of any Ombudsman officer.

(3) A recommendation to the Ombudsman which is not contained in a report must be made in private.

(4) Subsection (3) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the Ombudsman has failed to take appropriate action in relation to the recommendation.

(5) The Victorian Inspectorate may require the Ombudsman to give a report to the Victorian Inspectorate, within a reasonable specified time, stating—

(a) whether or not the Ombudsman has taken, or intends to take, action recommended by the Victorian Inspectorate; and

(b) if the Ombudsman has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.

(6) The Ombudsman must comply with a requirement of the Victorian Inspectorate under subsection (5).

83 Recommendation for further action in respect of Ombudsman officers

S. 83 inserted by No. 82/2012 s. 278.

(1) The Victorian Inspectorate may at any time recommend in private to the Ombudsman the undertaking of a disciplinary process or action against any Ombudsman officer other than the Ombudsman.

(2) Subsection (1) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the Ombudsman has failed to take appropriate action in relation to the recommendation.

(3) If the Victorian Inspectorate is satisfied that any conduct of any Ombudsman officer which has been the subject of a complaint, investigation or other finding should be the subject of any further investigatory or enforcement action, the Victorian Inspectorate may make a recommendation to that effect to any or all of the following—

(a) the Chief Commissioner of Police;

(b) the Director of Public Prosecutions;

(c) the Australian Federal Police;

(d) the IBAC;

(e) the Victorian WorkCover Authority;

(f) any other person or body prescribed for the purposes of this subsection.

S. 84 inserted by No. 82/2012 s. 54.

84 Recommendation to the Chief Examiner

(1) The Victorian Inspectorate may at any time make recommendations to the Chief Examiner in relation to any action that the Victorian Inspectorate considers should be taken.

(2) Without limiting subsection (1), the Victorian Inspectorate may recommend taking action—

(a) to prevent specified conduct from continuing or occurring in the future;

(b) to remedy any harm or loss arising from any conduct.

(3) A recommendation to the Chief Examiner which is not contained in a report must be made in private.

(4) Subsection (3) does not limit the power of the Victorian Inspectorate to make a public recommendation if the Victorian Inspectorate considers that the Chief Examiner has failed to take appropriate action in relation to the recommendation.

(5) The Victorian Inspectorate may require the Chief Examiner to give a report to the Victorian Inspectorate, within a reasonable specified time, stating—

(a) whether or not the Chief Examiner has taken, or intends to take, action recommended by the Victorian Inspectorate; and

(b) if the Chief Examiner has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.

(6) The Chief Examiner must comply with a requirement of the Victorian Inspectorate under subsection (5).

85 Recommendation for further action

S. 85 inserted by No. 82/2012 s. 54.

If the Victorian Inspectorate is satisfied that any conduct of the Chief Examiner or an Examiner which has been the subject of a complaint, investigation or other finding should be the subject of any further investigatory or enforcement action, the Victorian Inspectorate may make a recommendation to that effect to any or all of the following—

(a) the Chief Commissioner of Police;

(b) the Director of Public Prosecutions;

(c) the Australian Federal Police;

(d) the IBAC;

(e) the Victorian WorkCover Authority;

(f) any other person or body prescribed for the purposes of this section.

S. 86 inserted by No. 85/2012 s. 119.

86 Recommendations must not include information likely to identify person who makes an assessable disclosure

(1) The Victorian Inspectorate must not include in a recommendation made to an entity under section 78, 79, 80, 81, 82, 83, 84 or 85 any information that is likely to lead to the identification of a person who made an assessable disclosure, if the entity is—

(a) the subject of the assessable disclosure; or

(b) the employer of the person who is the subject of the assessable disclosure.

(2) However, a recommendation under a section referred to in subsection (1) may include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

S. 87 amended by Nos 19/2012 s. 14, 82/2012 ss 55, 320(c), 85/2012 s. 120.

87 Special reports

(1) The Victorian Inspectorate may at any time cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions.

(2) If the Victorian Inspectorate intends to include in a report under this section adverse findings about a public body, the Victorian Inspectorate must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.

(3) If the Victorian Inspectorate intends to include in a report under this section a comment or an opinion which is adverse to any person, the Victorian Inspectorate must first provide the person a reasonable opportunity to respond to the adverse material and fairly set out each element of the response in its report.

(4) If the Victorian Inspectorate intends to include in a report under this section a comment or an opinion about any person which is not adverse to the person, the Victorian Inspectorate must first provide that person with the relevant material in relation to which the Victorian Inspectorate intends to name that person.

(5) If the Victorian Inspectorate is aware of a criminal investigation or criminal proceedings in relation to a matter or person to be included in a report under this section the Victorian Inspectorate must not include in the report any information which would prejudice the criminal investigation or criminal proceedings.

(6) If the Victorian Inspectorate is aware of an IBAC investigation in relation to a matter or person to be included in a report under this section the Victorian Inspectorate must not include in the report any information which would prejudice the IBAC investigation.

(7) The Victorian Inspectorate must not include in a report under this section a statement as to—

(a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or

(b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.

(8) The Victorian Inspectorate must not include in a report under this section any information that would identify any person who is not the subject of any adverse comment or opinion unless the Victorian Inspectorate—

(a) is satisfied that it is necessary or desirable to do so in the public interest; and

(b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and

(c) states in the report that the person is not the subject of any adverse comment or opinion.

(9) The Victorian Inspectorate must not include in a report under this section any information that—

(a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—

(i) Division 1 of Part 9 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

(ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

(b) is likely to lead to the identification of a person who has made an assessable disclosure.

(10) However, the Victorian Inspectorate may in a report under this section include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

(11) The Victorian Inspectorate must not include in a report under this section any information that—

(a) identifies, or is likely to identify, any person who is being, or has been, examined under the **Major Crime (Investigative Powers) Act 2004**; or

(b) the nature of any ongoing investigation of an organised crime offence within the meaning of the **Major Crime (Investigative Powers) Act 2004**.

(12) Subject to subsection (13), if as a result of the inspection of the relevant records of Public Interest Monitors, the Victorian Inspectorate is of the opinion that there has been a contravention of the prescribed obligations, the Victorian Inspectorate may include in a report under this section a report on the contravention.

(13) A report for the purposes of subsection (12) must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person involved in an investigation relating to a relevant application made by a law enforcement agency within the meaning of section 19(5) of the **Public Interest Monitor Act 2011**; or

(b) indicates that a particular investigation has been, is being, or is to be, conducted.

(14) For the purposes of subsection (13), ***investigation***, ***law enforcement agency*** and ***relevant application*** have the meaning given by section 13(12).

(15) The clerk of each House of the Parliament must cause the report to be laid before the House of the Parliament on the day on which it is received or on the next sitting day of that House of the Parliament.

(16) If the Victorian Inspectorate proposes to transmit a report to the Parliament on a day on which neither House of the Parliament is actually sitting, the Victorian Inspectorate must—

(a) give one business day's notice of intention to do so to the clerk of each House of the Parliament; and

(b) give the report to the clerk of each House of the Parliament on the day indicated in the notice; and

(c) publish the report on the Victorian Inspectorate's Internet website as soon as practicable after giving it to the clerks.

(17) The clerk of each House of the Parliament must—

(a) notify each member of the House of the Parliament of the receipt of the notice under subsection (16)(a) on the same day that the clerk receives that notice; and

(b) give a copy of the report to each member of the House of the Parliament as soon as practicable after the report is received under subsection (16)(b); and

(c) cause the report to be laid before the House of the Parliament on the next sitting day of the House of the Parliament.

(18) A report that is given to the clerks under subsection (16)(b) is taken to have been published by order, or under the authority, of the Houses of the Parliament.

(19) The publication of a report by the Victorian Inspectorate under subsection (16)(c) is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975** and any other enactment or rule of law relating to the publication of the proceedings of the Parliament

apply to and in relation to the publication of the report as if it were a document to which those sections applied and had been published by the Government Printer under the authority of the Parliament.

88 Advice to a complainant

S. 88 inserted by No. 19/2012 s. 15, amended by Nos 82/2012 ss 56, 217, 279, 85/2012 s. 121.

(1) Subject to subsection (3), the Victorian Inspectorate may provide a complainant with information about the results of an investigation or inquiry including—

(a) any action taken by the Victorian Inspectorate; and

(b) any recommendation by the Victorian Inspectorate under section 79(1) or (3) that any action or further action be taken by a person or body referred to in that section.

(2) Subject to subsection (3), the Victorian Inspectorate must provide a complainant with the information referred to in subsection (1) if the investigation or inquiry relates to a protected disclosure complaint.

(3) The Victorian Inspectorate must not provide any information under this section if the Victorian Inspectorate considers that the provision of the information would—

(a) not be in the public interest or in the interests of justice; or

(b) put a person's safety at risk; or

(c) cause unreasonable damage to a person's reputation; or

(d) prejudice an investigation under this Act or an investigation by the IBAC or the police force; or

(e) prejudice an audit by the Auditor-General; or

(f) prejudice an examination by the Chief Examiner or an Examiner; or

(g) prejudice an investigation by Victoria Police of an organised crime offence within the meaning of the **Major Crime (Investigative Powers) Act 2004**; or

(h) be likely to lead to the disclosure of protected information within the meaning of section 12A(5) of the **Major Crime (Investigative Powers) Act 2004**; or

(i) prejudice an investigation by the Ombudsman; or

(j) be likely to lead to the disclosure of any secret investigative method used by the Victorian Inspectorate, the IBAC or the police force; or

(k) otherwise contravene any applicable statutory secrecy obligations or which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

S. 89 amended by Nos 19/2012 s. 16, 28/2012 s. 33, 82/2012 ss 57, 218, 280.

89 Outcome of investigation

(1) After conducting an investigation in relation to the IBAC or IBAC personnel, the Victorian Inspectorate may—

(a) make a recommendation to the IBAC in accordance with section 78;

(b) make a recommendation to the IBAC in accordance with section 79;

(c) make a recommendation to the Chief Commissioner of Police in accordance with section 79;

(d) make a recommendation to the Director of Public Prosecutions in accordance with section 79;

(e) make a recommendation to the Australian Federal Police in accordance with section 79;

(f) make a recommendation to the Auditor-General in accordance with section 79;

(g) make a recommendation to the Victorian WorkCover Authority in accordance with section 79;

(h) make a recommendation to a person or body prescribed for the purposes of section 79(3)(f) in accordance with section 79;

(i) transmit a report under section 87;

(j) provide advice to a complainant in accordance with section 88;

(k) do any combination or all of the matters referred to in paragraphs (a) to (j);

(l) determine to make no finding or take no action following the investigation.

* * * * *

* * * * *

(2) After conducting an investigation in relation to a VAGO officer, the Victorian Inspectorate may—

(a) make a recommendation to the Auditor-General in accordance with section 80;

(b) make a recommendation to the Auditor-General in accordance with section 81;

(c) make a recommendation to the Chief Commissioner of Police in accordance with section 81;

(d) make a recommendation to the Director of Public Prosecutions in accordance with section 81;

(e) make a recommendation to the Australian Federal Police in accordance with section 81;

(f) make a recommendation to the IBAC in accordance with section 81;

(g) make a recommendation to the Victorian WorkCover Authority in accordance with section 81;

(h) make a recommendation in accordance with section 81 to a person or body prescribed for the purposes of section 81(3)(f);

(i) transmit a report under section 87;

(j) provide advice to a complainant in accordance with section 88;

(k) do any combination or all of the matters referred to in paragraphs (a) to (j);

(l) determine to make no findings or take no action following the investigation.

(3) After conducting an investigation in relation to an Ombudsman officer, the Victorian Inspectorate may—

(a) make a recommendation to the Ombudsman in accordance with section 82;

(b) make a recommendation to the Ombudsman in accordance with section 83;

(c) make a recommendation to the Chief Commissioner of Police in accordance with section 83;

(d) make a recommendation to the Director of Public Prosecutions in accordance with section 83;

(e) make a recommendation to the Australian Federal Police in accordance with section 83;

(f) make a recommendation to the IBAC in accordance with section 83;

(g) make a recommendation to the Victorian WorkCover Authority in accordance with section 83;

(h) make a recommendation in accordance with section 83 to a person or body prescribed for the purposes of section 83(3)(f);

(i) transmit a report under section 87;

(j) provide advice to a complainant in accordance with section 88;

(k) do any combination or all of the matters referred to in paragraphs (a) to (j);

(l) determine to make no findings or take no action following the investigation.

(4) After conducting an investigation in relation to the Chief Examiner or an Examiner the Victorian Inspectorate may—

(a) make a recommendation to the Chief Examiner in accordance with section 84;

(b) make a recommendation to the Chief Commissioner of Police in accordance with section 85;

(c) make a recommendation to the Director of Public Prosecutions in accordance with section 85;

(d) make a recommendation to the Australian Federal Police in accordance with section 85;

(e) make a recommendation to the IBAC in accordance with section 85;

(f) make a recommendation to the Victorian WorkCover Authority in accordance with section 85;

(g) make a recommendation in accordance with section 85 to a person or body prescribed for the purposes of section 85(f);

(h) transmit a report under section 87;

(i) provide advice to a complainant in accordance with section 88;

(j) do any combination or all of the matters referred to in paragraphs (a) to (i);

(k) determine to make no findings or take no action following the investigation.

S. 90 inserted by No. 82/2012 s. 58.

90 Powers of Victorian Inspectorate after investigation

Without limiting anything in section 89, after conducting an investigation, the Victorian Inspectorate may do any other thing that the Victorian Inspectorate is permitted to do under this Act or any other Act.

S. 91 amended by Nos 19/2012 s. 17, 82/2012 ss 59, 219, 281, 320(c), 85/2012 s. 122.

91 Matters to be included in annual report

(1) The Victorian Inspectorate in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include—

(a) the prescribed information relating to the performance of its duties and functions;

(b) a description of its activities in relation to the performance of its duties and functions;

(c) details of the IBAC's compliance with this Act and the **Independent Broad-based Anti-corruption Commission Act 2011**;

(d) details of the compliance by the IBAC with the **Protected Disclosure Act 2012** during the financial year;

(e) details of the comprehensiveness and adequacy of reports made to the Victorian Inspectorate by the IBAC under this Act;

(f) details of the extent to which action recommended by the Victorian Inspectorate to be taken by the IBAC has been taken;

(g) details of the results of the Victorian Inspectorate's monitoring of—

(i) the exercise of coercive powers by VAGO officers; and

(ii) compliance by VAGO officers with sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3) of the **Audit Act 1994**;

(h) details of the comprehensiveness and adequacy of reports made to the Victorian Inspectorate by the Auditor-General under this Act;

(i) details of the extent to which action recommended by the Victorian Inspectorate to be taken by the Auditor-General has been taken;

(j) details of the results of the Victorian Inspectorate's monitoring of—

(i) the exercise of coercive powers by Ombudsman officers; and

(ii) compliance by Ombudsman officers with procedural fairness requirements in the performance of functions under the **Ombudsman Act 1973** or any other Act, including in the conduct of enquiries and investigations and the making of reports and recommendations under the

Ombudsman Act 1973 or any other Act;

(k) details of the comprehensiveness and adequacy of reports made to the Victorian Inspectorate by the Ombudsman under this Act;

(l) details of the extent to which action recommended by the Victorian Inspectorate to be taken by the Ombudsman has been taken;

(m) details of the compliance with this Act by the Chief Examiner or an Examiner;

(n) details of the comprehensiveness and adequacy of reports made to the Victorian Inspectorate by the Chief Examiner under this Act;

(o) details of the extent to which action recommended by the Victorian Inspectorate to be taken by the Chief Examiner has been taken;

(p) a statement of the results of inspections by the Victorian Inspectorate of the relevant records of Public Interest Monitors.

(2) If the Victorian Inspectorate intends to include in its annual report adverse findings about a public body, the Victorian Inspectorate must give the relevant principal officer of that public body an opportunity to respond to the adverse material and fairly set out each element of the response in its report.

(3) If the Victorian Inspectorate intends to include in its annual report a comment or an opinion which is adverse to any person, the Victorian Inspectorate must first provide the person a reasonable opportunity to respond to the adverse

material and fairly set out each element of the response in its report.

(4) If the Victorian Inspectorate intends to include in its annual report a comment or an opinion about any person which is not adverse to the person, the Victorian Inspectorate must first provide that person with the relevant material in relation to which the Victorian Inspectorate intends to name the person.

(5) If the Victorian Inspectorate is aware of a criminal investigation or criminal proceedings in relation to a matter or person to be included in its annual report the Victorian Inspectorate must not include in the annual report any information which would prejudice the criminal investigation or criminal proceedings.

(6) If the Victorian Inspectorate is aware of an IBAC investigation in relation to a matter or person to be included in its annual report the Victorian Inspectorate must not include in the annual report any information which would prejudice the IBAC investigation.

(7) If the Victorian Inspectorate is aware of an audit that is being or has been conducted by the Auditor-General in relation to a matter or person to be included in its annual report, the Victorian Inspectorate must not include in the annual report any information which would prejudice the audit.

(8) If the Victorian Inspectorate is aware of an investigation that is being or has been conducted by the Ombudsman in relation to a matter or person to be included in its annual report, the Victorian Inspectorate must not include in the annual report any information which would prejudice the investigation.

(9) If the Victorian Inspectorate is aware of an investigation that is being or has been conducted by the Chief Examiner or an Examiner in relation to a matter or person to be included in its annual report, the Victorian Inspectorate must not include in the annual report any information which would—

(a) prejudice the investigation; or

(b) identify, or be likely to identify, any person who is being, or has been, examined under the **Major Crime (Investigative Powers) Act 2004**; or

(c) identify the nature of any ongoing investigation of an organised crime offence within the meaning of the **Major Crime (Investigative Powers) Act 2004**.

(10) The Victorian Inspectorate must not include in its annual report a statement as to—

(a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit, any criminal offence or disciplinary offence; or

(b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.

(11) The Victorian Inspectorate must not include in its annual report any information that would identify any person who is not the subject of any adverse comment or opinion unless the Victorian Inspectorate—

(a) is satisfied that it is necessary or desirable to do so in the public interest; and

(b) is satisfied that it will not cause unreasonable damage to a person's reputation, safety or wellbeing; and

(c) states in the report that the person is not the subject of any adverse comment or opinion.

(12) The Victorian Inspectorate must not include in its annual report any information that—

(a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—

(i) Division 1 of Part 9 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

(ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

(b) is likely to lead to the identification of a person who has made an assessable disclosure.

(13) However, the Victorian Inspectorate may in an annual report include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

(14) Subject to subsection (15), if as a result of the inspection of the relevant records of Public Interest Monitors, the Victorian Inspectorate is of the opinion that there has been a contravention of the prescribed obligations, the Victorian Inspectorate may include in the annual report a report on the contravention.

(15) A report for the purposes of subsection (14) must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person involved in an investigation relating to a relevant application made by a law enforcement

agency within the meaning of section 19(5) of the **Public Interest Monitor Act 2011**; or

(b) indicates that a particular investigation has been, is being, or is to be, conducted.

(16) For the purposes of subsection (15), ***investigation***, ***law enforcement agency*** and ***relevant application*** have the meaning given by section 13(12).

Note

See also section 68 of the **Protected Disclosure Act 2012** for additional matters that are to be included in the Victorian Inspectorate's annual report.

S. 92 inserted by No. 19/2012 s. 18.

92 Persons who receive reports or information prior to publication

(1) Subject to subsection (3), a person who receives a proposed report, or a draft or part of a proposed report or information contained in a proposed report or draft or part of a proposed report, before the report is published by the Victorian Inspectorate in accordance with section 87 or 91 must not disclose any information contained in the proposed report or draft or part of the proposed report unless—

(a) the disclosure is permitted under subsection (2); and

(b) the advice required by subsection (4) is given at the same time the disclosure is made.

Penalty: 120 penalty units or imprisonment for 12 months or both.

(2) For the purposes of subsection (1), a disclosure is permitted if the disclosure—

(a) is made in accordance with a direction or authorisation given by the Victorian Inspectorate; or

(b) is made by an officer of an entity to other officers of the entity for the purposes of enabling the entity to respond to the proposed report or draft or part of the proposed report; or

(c) subject to section 58(2) and (8), is made for the purposes of obtaining legal advice or representation in relation to the proposed report or draft or part of the proposed report; or

(d) is otherwise authorised or required to be made by or under this Act.

(3) Despite subsection (1), a disclosure is permitted if the disclosure is made after the information is published by the Victorian Inspectorate in a report or has otherwise been made public in accordance with this Act.

(4) A person who makes a disclosure of information permitted by subsection (2) must advise any person to whom the disclosure is made that this section applies in relation to the subsequent disclosure of that information by the person to whom the disclosure is made.

PART 8—GENERAL

Division 1—Miscellaneous

93 Immunity

(1) The Victorian Inspectorate or a Victorian Inspectorate Officer is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—

(a) in the performance of a function or the exercise of a power under this Act; or

(b) in the reasonable belief that the act or omission was in the course of the performance of a function or the exercise of a power under this Act.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Victorian Inspectorate or a Victorian Inspectorate Officer attaches instead to the State.

S. 94 inserted by No. 19/2012 s. 19.

94 Offence to impersonate a Victorian Inspectorate Officer

A person who is not a Victorian Inspectorate Officer must not, in any way, hold himself or herself out to be a Victorian Inspectorate Officer.

Penalty: 120 penalty units or imprisonment for 12 months or both.

S. 95 inserted by No. 19/2012 s. 19.

95 Offence to hinder or obstruct a Victorian Inspectorate Officer

A person must not, without reasonable excuse, hinder or obstruct a Victorian Inspectorate Officer who is exercising a power under section 13 or Part 6.

Penalty: 120 penalty units or imprisonment for 12 months or both.

96 Compliance with direction or requirement

S. 96 inserted by No. 19/2012 s. 19.

A person must not, without reasonable excuse, refuse or fail to comply with a direction or requirement made of the person in the exercise of a power by a Victorian Inspectorate Officer under this Act or the regulations.

Penalty: 120 penalty units or imprisonment for 12 months or both.

97 Statement which is false or misleading

S. 97 inserted by No. 19/2012 s. 19.

A person must not wilfully make a statement to the Victorian Inspectorate that the person knows to be false or misleading in a material particular or mislead or attempt to mislead the Victorian Inspectorate or a Victorian Inspectorate Officer in the exercise of its, his or her powers under this Act or the regulations.

Penalty: 120 penalty units or imprisonment for 12 months or both.

98 Responsible agency for the Crown

S. 98 inserted by No. 19/2012 s. 19.

(1) If proceedings are brought against the Crown for an offence against this Act or the regulations, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.

(2) In this section, the responsible agency in respect of an offence is the agency of the Crown—

(a) whose acts or omissions are alleged to constitute the offence; or

(b) if that agency has ceased to exist, that is the successor of that agency; or

(c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

(3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.

(4) The person bringing the proceedings may change the responsible agency during the proceedings with the leave of the court.

S. 99 inserted by No. 19/2012 s. 19.

99 Proceedings against successors to public bodies

Proceedings for an offence against this Act or the regulations that were commenced against a public body before its dissolution, or that could have been commenced against a public body if not for its dissolution, may be continued or commenced against its successor if the successor is a public body.

S. 100 inserted by No. 19/2012 s. 19.

100 Power to bring proceedings

Proceedings for an offence under this Act or the regulations may be brought by—

(a) the Victorian Inspectorate;

(b) a Victorian Inspectorate Officer authorised by the Inspector;

(c) a member of the police force authorised by the Inspector.

S. 101 inserted by No. 19/2012 s. 19.

101 Validity and effect of notices, orders and other documents and deemed service

The validity of any notice, order or other document given or made under this Act, other than under Divisions 2 and 3 of Part 2 and Part 6, or of the service of the notice, order or other document is not affected by any error, misdescription or irregularity which in the opinion of a court is not likely to mislead or which in fact does not mislead.

102 Exemption from Freedom of Information Act 1982

S. 102 amended by Nos 19/2012 s. 20, 82/2012 ss 60, 220, 282.

(1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of a relevant person or body to the extent to which the document discloses information that relates to—

(a) a complaint made under this Act; or

(b) an inspection made under this Act; or

(c) an investigation conducted under this Act; or

(d) a recommendation made by the Victorian Inspectorate under this Act; or

(e) a report, including a progress report, on an investigation conducted under this Act.

(2) In this section—

document has the same meaning as in the **Freedom of Information Act 1982**;

relevant person or body means—

(a) the Victorian Inspectorate;

(b) a Victorian Inspectorate Officer;

(c) the IBAC;

(d) a Public Interest Monitor;

(e) the Victorian WorkCover Authority;

(f) the Chief Commissioner of Police;

(g) any other person prescribed for the purposes of section 79(3)(f) or 81(3)(f) or 83(3)(f) or 85(f);

(h) the Director of Public Prosecutions;

(i) the Australian Federal Police;

(j) a VAGO officer;

(k) the office of the Ombudsman;

(l) an Ombudsman officer;

(m) the Chief Examiner and any Examiner.

103 Regulations

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or specially limited application;

(b) may differ according to differences in time, place or circumstance;

(c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or class of persons;

(d) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified;

(e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;

(f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time;

(g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

104 Regulations—specific matters

S. 104 amended by Nos 19/2012 s. 21, 28/2012 s. 34.

Without limiting the generality of section 103, the regulations may prescribe—

(a) security checks for Victorian Inspectorate Officers;

(b) requirements relating to the issue of identity cards to Victorian Inspectorate Officers and the use of the identity cards;

(c) requirements for the disclosure and reporting of pecuniary interests by Victorian Inspectorate Officers, including providing for the manner of disclosure (whether by statutory declaration or otherwise) and the compilation, maintenance and publication of registers of pecuniary interests;

(d) actions which the Victorian Inspectorate must take before the Victorian Inspectorate questions a witness at an examination or requires a witness to produce a document or other thing;

(e) the content and form of a witness summons;

(f) the content and form of a confidentiality notice;

(g) matters which constitute proof of age;

(h) fees and allowances payable to witnesses;

(i) the content and form of an arrest warrant;

(j) persons or bodies for the purposes of section 79(3)(f);

(k) matters to be included in a report about coercive questioning;

(l) the information to be included by the Victorian Inspectorate in its annual report.

S. 105 inserted by No. 82/2012 s. 61.

105 Regulations dealing with transitional matters

(1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act or the **Integrity and Accountability Legislation Amendment Act 2012**.

(2) Regulations made under this section may—

(a) have a retrospective effect to a day on or from 29 November 2011, being the day on which this Act received the Royal Assent; and

(b) be of limited or general application; and

(c) leave any matter or thing to be decided by a specified person or class of person; and

(d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this section.

(3) Regulations under this section have effect despite anything to the contrary—

(a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or

(b) in any subordinate instrument.

(4) This section is repealed on the second anniversary of the day on which it comes into operation.

106 Schedule

S. 106 inserted by No. 82/2012 s. 61.

The Schedule has effect.

* * * * *

Pt 5 Div. 2 (Heading and ss 43–49) repealed by No. 82/2012 s. 152(3).[2]

Sch. inserted by No. 82/2012 s. 62.

SCHEDULE

SAVINGS AND TRANSITIONAL PROVISIONS

1 Definitions

In this Schedule—

commencement day means the day on which section 147 of the **Integrity and Accountability Legislation Amendment Act 2012** comes into operation;

Director means the Director, Police Integrity under section 7 of the PIA as in force immediately before its repeal;

MC (SIM) Act means the **Major Crime (Special Investigations Monitor) Act 2004**;

OPI means the Office of Police Integrity continued by section 5 of the PIA as in force immediately before its repeal;

PIA means the **Police Integrity Act 2008** as in force immediately before its repeal;

property means any legal or equitable estate or interest (whether present or future or whether vested or contingent) in real or personal property of any description;

rights means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

SIM means the Special Investigations Monitor appointed under section 5 of the MC (SIM) Act as in force immediately before its repeal.

2 General transitional provisions

(1) Unless the contrary intention appears, this Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

(2) If a repealed provision of the MC (SIM) Act continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—

(a) any other repealed provisions of the MC (SIM) Act necessary to give effect to that continued provision; and

(b) any regulations made under the MC (SIM) Act for the purposes of that continued provision.

(3) If a repealed provision of the PIA continues to apply by force of this Schedule, the following provisions also continue to apply in relation to the provision—

(a) any other repealed provisions of the PIA necessary to give effect to that continued provision; and

(b) any regulations made under the PIA for the purposes of that continued provision.

3 SIM and office of SIM abolished

On the commencement day, the office of SIM is abolished and the SIM goes out of office.

4 Victorian Inspectorate succeeds SIM

On the commencement day—

(a) all rights, property and assets that, immediately before the commencement day, were vested in the SIM are, by force of this clause, vested in the Victorian Inspectorate;

(b) all debts, liabilities and obligations of the SIM existing immediately before that day become, by force of this clause, debts, liabilities and obligations of the Victorian Inspectorate;

(c) the Victorian Inspectorate is, by force of this clause, substituted as a party to any proceeding pending in any court or tribunal to which the SIM was a party immediately before that day;

(d) the Victorian Inspectorate is, by force of this clause, substituted as a party to any arrangement or contract entered into by or on behalf of the SIM as a party and in force immediately before that day.

5 Superseded references to SIM

A reference in any Act (other than this Act), subordinate instrument, agreement, deed or other document to the SIM must be construed as a reference to the Victorian Inspectorate—

(a) so far as the reference relates to any period on or after the commencement day; and

(b) if not inconsistent with the subject matter.

6 Transfer of records, information and documents

All information, documents, reports, records and equipment in the possession or control of the SIM immediately before the commencement day, whether held under the MC (SIM) Act, any other Act or otherwise (including any information, document or other thing obtained in the course of an investigation)—

(a) are transferred to the custody of the Victorian Inspectorate on the commencement day; and

(b) are taken to be information, documents, reports, records and equipment in the possession or control of the Victorian Inspectorate on and from that commencement day.

7 Reports to the Victorian Inspectorate

(1) Section 122 of the **Independent Broad-based Anti-corruption Commission Act 2011** applies, on and from the commencement day, in relation to a witness summons issued by the Director under the PIA unless the Director has given a written report on the summons under section 115 of the PIA before that commencement day.

Sch. cl. 7(1) amended by No. 82/2012 s. 321(a).

(2) Section 142 of the **Independent Broad-based Anti-corruption Commission Act 2011** applies, on and from the commencement day, in relation to an arrest warrant issued under section 84 of the PIA unless the Director has given a written report on the warrant under section 116 of the PIA before that commencement day.

Sch. cl. 7(2) amended by No. 82/2012 s. 321(b).

(3) Section 154 of the **Independent Broad-based Anti-corruption Commission Act 2011** applies, on and from the commencement day, in relation to an arrest warrant issued by the Director under section 79 of the PIA unless the Director has given a written report on the warrant under section 116 of the PIA before that commencement day.

Sch. cl. 7(3) amended by No. 82/2012 s. 321(c).

(4) Section 82S of the **Independent Broad-based Anti-corruption Commission Act 2011** applies, on and from the commencement day, in relation to the video recording and any transcript of an examination conducted by the Director under the PIA unless the Director has given a written report on the examination and a copy video recording and any transcript of an examination to the SIM under section 117 of the PIA before that commencement day.

(5) On and from the commencement day, the IBAC must comply with a requirement of the Victorian Inspectorate under section 40 in relation to an examination conducted by the Director under the

PIA before the commencement day as if that examination were an examination of a person by the IBAC unless the Director, before that commencement day, has given a written report on the examination and a copy video recording and any transcript of an examination to the SIM under section 117 of the PIA.

8 Complaints to the Victorian Inspectorate—PIA

(1) If before the commencement day the SIM had—

(a) received a complaint under section 118 of the PIA but not commenced an investigation into the complaint; or

(b) commenced but not completed an investigation into a complaint made to the SIM under section 118 of the PIA—

the Victorian Inspectorate may investigate or complete the investigation of that complaint on and after the commencement day under section 43.

(2) In an investigation referred to in subclause (1), the Victorian Inspectorate is entitled to have regard to any evidence given or document or other thing produced in relation to that investigation before the commencement day.

(3) A person referred to in section 118(1) of the PIA who, immediately before the commencement day, could have made a complaint to the SIM under section 118 of the PIA may instead, on and from the commencement day, make a complaint to the Victorian Inspectorate under section 43.

(4) A complaint referred to in subclause (1) or (3)—

(a) must be limited to a complaint about the matter set out in section 118(2) of the PIA as in force immediately before its repeal; and

(b) must be made within 90 days after the day on which the person was excused from attendance under the PIA.

(5) For the purposes of this clause—

(a) section 47 (except subsection (1)(a)) applies as if—

(i) a reference to an investigation in relation to the IBAC or IBAC personnel were a reference to an investigation under this clause; and

(ii) a reference to IBAC's operations or the conduct of IBAC personnel were a reference to the conduct of the Director which is the subject of the investigation;

(b) section 48(1) applies as if a reference to an investigation in relation to the IBAC or IBAC personnel under Part 6 were a reference to an investigation under this clause;

(c) Division 2 of Part 6 applies as if a reference to an inquiry in relation to the IBAC or IBAC personnel were a reference to an inquiry for the purposes of an investigation under this clause;

(d) Divisions 3 and 4 of Part 6 apply;

(e) section 78 applies as if a reference to the conduct of the IBAC or IBAC personnel were a reference to the conduct of the Director which is the subject of the investigation;

(f) section 79(3) applies as if a reference to conduct of any IBAC personnel were a reference to the conduct of the Director which is the subject of the investigation;

(g) sections 87 and 88 apply;

(h) section 89(1) (except paragraph (b)) applies as if a reference to an investigation in relation to the IBAC or IBAC personnel were a reference to an investigation under this clause;

(i) section 90 applies.

9 Complaints and investigations about administrative action taken in the OPI

(1) This clause applies to any administrative action taken in the OPI before the commencement day that could have been the subject of a complaint to the Ombudsman, or an investigation on the Ombudsman's own motion, under the **Ombudsman Act 1973** before that day, whether or not such a complaint or investigation had been made or conducted.

(2) A person may make a complaint to the Victorian Inspectorate about any administrative action to which this clause applies.

(3) The Victorian Inspectorate may investigate a complaint made under subclause (2).

(4) If the Victorian Inspectorate decides to investigate a complaint made under subclause (2), the Victorian Inspectorate must notify the IBAC in writing unless the Victorian Inspectorate reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.

(5) The Victorian Inspectorate may on its own motion in the course of performing its functions investigate any administrative action to which this clause applies.

(6) For the purposes of this clause—

(a) section 47 (except subsection (1)(a)) applies as if—

(i) a reference to an investigation in relation to the IBAC or IBAC personnel were a reference to an investigation under this clause; and

(ii) a reference to IBAC's operations or the conduct of IBAC personnel were a reference to the administrative action which is the subject of the investigation;

(b) section 48(1) applies as if a reference to an investigation in relation to the IBAC or IBAC personnel under Part 6 were a reference to an investigation under this clause;

(c) Division 2 of Part 6 applies as if a reference to an inquiry in relation to the IBAC or IBAC personnel were a reference to an inquiry for the purposes of an investigation under this clause;

(d) Divisions 3 and 4 of Part 6 apply;

(e) section 78 applies as if a reference to the conduct of the IBAC or IBAC personnel were a reference to the administrative action which is the subject of the investigation;

(f) section 79(3) applies as if a reference to conduct of any IBAC personnel were a reference to the administrative action which is the subject of the investigation;

(g) sections 87 and 88 apply;

(h) section 89(1) (except paragraph (b)) applies as if a reference to an investigation in relation to the IBAC or IBAC personnel

were a reference to an investigation under this clause;

(i) section 90 applies.

10 Other powers of the Victorian Inspectorate

A written notice given by the SIM under section 124 of the PIA before the commencement day that was in force immediately before that commencement day is taken, on and from that commencement day, to be a requirement made by the Victorian Inspectorate under section 47.

11 Annual report

(1) For the purposes of the first annual report of the Victorian Inspectorate under Part 7 of the **Financial Management Act 1994**, a reference in section 91(1)(b) to activities in relation to the performance of the Victorian Inspectorate's duties and functions includes a reference to activities in relation to the performance of the SIM's duties and functions under the PIA during the financial year to which that report relates.

(2) If, before the commencement day, the SIM had not prepared any report required by section 126(1) of the PIA for the financial year ending before the commencement day, the Victorian Inspectorate must prepare that report.

(3) If, before the commencement day, the SIM had prepared any report required by section 126(1) of the PIA for the financial year ending before the commencement day but that report has not been presented to each House of the Parliament under section 126 of the PIA, the Victorian Inspectorate must present that report to each House of the Parliament in accordance with the applicable requirements of section 126 of the PIA as in force immediately before its repeal.

(4) For the purposes of subclause (2) or (3)—

(a) if the report relates to a whole financial year completed before the repeal of the PIA, the Victorian Inspectorate may prepare a report referred to in those subclauses as a separate report and present the report to each House of the Parliament in accordance with section 126 of the PIA as in force immediately before its repeal; or

(b) if the report relates to a partial financial year completed before the repeal of the PIA, the Victorian Inspectorate may prepare a report referred to in those subclauses as part of its own annual report under section 91.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 October 2011

Legislative Council: 10 November 2011

The long title for the Bill for this Act was "A Bill for an Act to establish the Victorian Inspectorate to provide oversight of the Independent Broad-based Anti-corruption Commission, to amend certain Acts and for other purposes."

The **Victorian Inspectorate Act 2011** was assented to on 29 November 2011 and came into operation on 1 July 2012: section 2(2).

2. Table of Amendments

This Version incorporates amendments made to the **Victorian Inspectorate Act 2011** by Acts and subordinate instruments.

Victorian Inspectorate Amendment Act 2012, No. 19/2012

Assent Date:	24.4.12
Commencement Date:	Ss 3–21 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State:	This information relates only to the provision/s amending the **Victorian Inspectorate Act 2011**

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012, No. 28/2012

Assent Date:	29.5.12
Commencement Date:	Ss 32–34 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 1
Current State:	This information relates only to the provision/s amending the **Victorian Inspectorate Act 2011**

Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012

Assent Date:	18.9.12
Commencement Date:	Ss 25, 26 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 3
Current State:	This information relates only to the provision/s amending the **Victorian Inspectorate Act 2011**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date:	18.12.12
Commencement Date:	S. 152 on 19.12.12: s. 2(1); ss 26–62, 197–220, 261–282 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; ss 301, 302, 320, 321 on 11.2.13: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Victorian Inspectorate Act 2011**

Protected Disclosure Act 2012, No. 85/2012

Assent Date:	18.12.12
Commencement Date:	Ss 106–123 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2
Current State:	This information relates only to the provision/s amending the **Victorian Inspectorate Act 2011**

Endnotes

3. Explanatory Details

[1] The provisions of this Act have been renumbered and relettered according to sections 301 and 302 of the **Integrity and Accountability Legislation Amendment Act 2012**, No. 82/2012.

S. 301 reads as follows:

301 Renumbering of sections of the Victorian Inspectorate Act 2011

The sections of the **Victorian Inspectorate Act 2011** set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

Table

Column 1 *Section number*	*Column 2* *Renumbered section number*
1	1
2	2
3	3
3A	4
4	5
5	6
5A	7
6	8
7	9
8	10
9	11
10	12
10A	13
10B	14
11	15
12	16
13	17

Column 1 *Section number*	*Column 2* *Renumbered section number*
14	18
15	19
16	20
17	21
18	22
19	23
20	24
21	25
22	26
23	27
24	28
25	29
26	30
27	31
28	32
28A	33
28B	34
28BA	35
28C	36
28D	37
28E	38
28F	39
28G	40
28H	41
28I	42
29	43
30	44
30A	45

Column 1 *Section number*	*Column 2* *Renumbered section number*
31	46
32	47
33	48
33A	49
33B	50
33C	51
33D	52
33E	53
33F	54
33G	55
33H	56
33I	57
33J	58
33K	59
33L	60
33LA	61
33M	62
33N	63
33O	64
33P	65
33Q	66
33R	67
33S	68
33SA **Note** This section inserted by the **Evidence Amendment (Journalist Privilege) Act 2012**	69

Column 1 *Section number*	*Column 2* *Renumbered section number*
33T	70
33U	71
33V	72
33W	73
33X	74
33Y	75
33Z	76
33ZA	77
34	78
35	79
35A	80
35B	81
35C	82
35D	83
35E	84
35F	85
35G	86
36	87
36A	88
37	89
37A	90
38	91
38A	92
39	93
39A	94
39B	95
39C	96
39D	97

Column 1 *Section number*	*Column 2* *Renumbered section number*
39E	98
39F	99
39G	100
39H	101
40	102
41	103
42	104
42A	105
42B	106

S. 302 reads as follows:

302 Renumbering of other provisions of the Victorian Inspectorate Act 2011

(1) The Parts of the **Victorian Inspectorate Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".

(2) The Divisions of each Part of the **Victorian Inspectorate Act 2011** are renumbered so that they bear consecutive Arabic numerals starting with "1".

(3) The subsections of each section of the **Victorian Inspectorate Act 2011** are renumbered so that they bear consecutive Arabic numerals enclosed in parentheses starting with "(1)".

(4) The paragraphs of each section or subsection, or of each definition, of the **Victorian Inspectorate Act 2011** are relettered so that they bear lower-case letters in alphabetical order enclosed in parentheses starting with "(a)".

(5) The subparagraphs of each paragraph of each section or subsection, or of each paragraph of each definition, of the **Victorian Inspectorate Act**

2011 are renumbered so that they bear consecutive lower-case Roman numerals enclosed in parentheses starting with "(i)".

(6) The sub-subparagraphs of each subparagraph of each paragraph of each section or subsection, or of each subparagraph of each paragraph of each definition, of the **Victorian Inspectorate Act 2011** are relettered so that they bear upper-case letters in alphabetical order in parentheses starting with "(A)".

(7) Each provision of the **Victorian Inspectorate Act 2011** that refers to a provision that has been renumbered or relettered under section 301 or this section is amended by omitting the reference and substituting a reference to the last-mentioned provision as renumbered or relettered.

(8) In this section, ***provision*** includes paragraph, subparagraph and sub-subparagraph.

[2] Pt 5 Div. 2 (*repealed*): The proposed repeal of section 48 by section 123 of the **Protected Disclosure Act 2012**, No. 85/2012 is not included in this publication due to the earlier repeal of section 48 by section 152(3) of the **Integrity and Accountability Legislation Amendment Act 2012**, No. 82/2012.