

Authorised Version No. 020
Protected Disclosure Act 2012
No. 85 of 2012

Authorised Version incorporating amendments as at
1 September 2017

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	1
3 Definitions	2
4 Meaning of <i>improper conduct</i>	8
5 Meaning of <i>police complaint disclosure</i>	12
6 Definitions of <i>public body</i> , <i>public officer</i> and <i>public sector</i>	12
7 Other protections preserved	13
8 Act binds the Crown	13
Part 2—Disclosures	14
Division 1—Information that may be disclosed in accordance with this Part	14
9 Disclosure of improper conduct or detrimental action	14
10 Not necessary to identify person or body to whom disclosure relates	15
11 Complaints, notifications and disclosures under other Acts may be disclosures	15
Division 2—How and to whom a disclosure may be made under this Part	16
12 How a disclosure may be made	16
13 Entities to which disclosures must be made	16
14 Disclosures that must be made to the IBAC	17
15 Disclosures that must be made to the IBAC or the Victorian Inspectorate	19
16 Disclosures that must be made to the IBAC or the Ombudsman	19
16A Disclosures that must be made to the IBAC or the Judicial Commission	20
17 Disclosures relating to the IBAC or an IBAC Officer	20

<i>Section</i>	<i>Page</i>
18 Disclosures relating to a member of Victoria Police personnel (other than the Chief Commissioner of Police)	20
19 Disclosures relating to members of Parliament or Ministers of the Crown	21
Division 3—Disclosures to which protected disclosure scheme does not apply	21
20 Disclosures not made in accordance with Division 2	21
Part 3—Notification and assessment of disclosures	23
Division 1—Notifications	23
21 Notification of disclosure to the IBAC by other entities	23
22 Chief Commissioner of Police must notify police complaint disclosures to the IBAC	23
23 Provision of other information to the IBAC	24
24 Advice to person making disclosure to entity other than a Presiding Officer	24
25 Advice to person making disclosure to a Presiding Officer	25
Division 2—Assessment of disclosure and determination of whether disclosure is a protected disclosure complaint	26
26 Assessment of disclosure and determination by the IBAC	26
27 Advice to notifying entity	27
28 Disclosure determined to be a protected disclosure complaint—advice to person who made disclosure	27
29 Disclosure determined not to be a protected disclosure complaint—advice to person who made disclosure	28
30 Advice regarding alternative procedures for dealing with disclosure	29
31 Assessment of disclosure and determination by the Victorian Inspectorate	30
Part 4—Disclosures determined to be protected disclosure complaints	31
32 Disclosure determined by the IBAC to be a protected disclosure complaint	31
33 Disclosure determined by the Victorian Inspectorate to be a protected disclosure complaint	31
Part 5—Notification of related disclosures made in course of investigation	32
34 Related disclosures	32
35 Related disclosure made by person who made protected disclosure complaint	33
36 Related disclosure made by other person	33
37 Related disclosure notified to the IBAC	34

<i>Section</i>	<i>Page</i>
Part 6—Protection of person making protected disclosure	35
38 Application of Part	35
39 Immunity from liability	35
40 Confidentiality provisions do not apply	36
41 Protection from defamation action	36
42 Liability for own conduct	37
43 Detrimental action in reprisal for protected disclosure	37
44 Management action not prevented	38
45 Protection from reprisal	38
46 Order for damages or reinstatement	39
47 Proceedings for damages for reprisal	39
48 Vicarious liability of public body	40
49 Injunction or order	41
50 Application for injunction or order	41
51 Transfer of employee	42
Part 7—Confidentiality of disclosures	44
52 Content of assessable disclosure must not be disclosed	44
53 Identity of person making assessable disclosure must not be disclosed	46
54 Circumstances in which information may be disclosed	47
Part 8—Functions and powers of the IBAC and Victorian Inspectorate	51
55 Functions and powers of the IBAC	51
56 Functions and powers of the Victorian Inspectorate	52
Part 9—Guidelines, procedures and education	54
Division 1—Guidelines and procedures	54
57 Guidelines	54
58 Procedures—entities required to establish procedures	55
59 Procedures—requirements	56
60 Review of procedures	57
61 Recommendation following review by the IBAC	58
62 Review of procedures established by the IBAC, the Judicial Commission and the Ombudsman	58
63 Recommendation following review by the Victorian Inspectorate	59
Division 2—Guidelines and procedures relating to the Presiding Officers	59
64 Guidelines	59
65 Presiding Officer may establish procedures	60
Division 3—Advisory role	61
66 The IBAC may give advice to the public sector	61

<i>Section</i>	<i>Page</i>
Part 10—Reports	62
67 Annual report by the IBAC	62
68 Annual report by the Victorian Inspectorate	63
69 Annual report by other investigating entities	64
70 Annual report by public bodies that are not investigating entities	65
71 Information likely to lead to identification of person who has made assessable disclosure	66
Part 11—General	67
Division 1—Offences and proceedings	67
72 Offence to make false disclosure or provide false further information	67
73 Offence to falsely claim disclosure is a protected disclosure or is a protected disclosure complaint	67
74 Offence to disclose certain advice	68
75 Power to bring proceedings	72
Division 2—Miscellaneous	73
76 Protection of public officers	73
77 Immunity of the IBAC and Victorian Inspectorate and officers	75
78 Exemption from Freedom of Information Act 1982	75
79 Regulations	76
Part 12—Transitional and savings provisions	77
81 Offence to reveal confidential information obtained or received under the Whistleblowers Protection Act 2001	77
82 Transitional and savings provisions	79
Schedule 1—Transitional and savings provisions	80
1 Definitions	80
2 General transitional provisions	80
3 WPA continues to apply to disclosures made before commencement day	81
4 Disclosure assessed by the Ombudsman to be public interest disclosure	81
5 Disclosure made to the Director but not notified to Ombudsman	82
6 Report by Ombudsman on investigation by Director	83
7 Investigation of disclosure referred to the Director	83
8 Witness summons issued by the Director	84
9 Pending application for search warrant	85
10 Search warrant	85
11 Pending application for warrant to arrest a person	86
12 Warrant to arrest a person	87
13 Document and other things in possession of the Director	88

<i>Section</i>	<i>Page</i>
14 Request for copy of thing or information seized	89
15 Application for return of document or thing seized	89
16 Claim of legal professional privilege made before commencement day	90
17 Claim of legal professional privilege made on or after commencement day	90
18 Direction given by the Director	91
19 Transmission of report to Parliament	91
20 Disclosure made to the Chief Commissioner of Police but not notified to Ombudsman	91
21 Investigation completed by Chief Commissioner of Police	92
22 Investigation commenced but not completed by Chief Commissioner of Police	92
23 Investigation by Chief Commissioner of Police taken over by the Ombudsman	93
24 Disclosure made to a public body before the commencement day	93
25 Investigation by public body	94
26 Investigation by public body taken over by the Ombudsman	94
27 Disclosure made to a Presiding Officer	95
28 Disclosure referred by a Presiding Officer to the Ombudsman	95
29 Disclosure made after the commencement day	96
30 Exemptions from Freedom of Information Act 1982	96
31 Reference to Director's functions in annual report of the IBAC	96
32 Investigations by the Special Investigations Monitor	97
33 Complaint regarding examination under the WPA	97
34 Actions taken by the Victorian Inspectorate under clause 32 or 33	98
35 Reports to the Victorian Inspectorate	99
36 Annual report of Victorian Inspectorate	100
<hr style="border-top: 3px double #000;"/>	
Endnotes	102
1 General information	102
2 Table of Amendments	104
3 Amendments Not in Operation	106
4 Explanatory details	107

Section

Page

Authorised Version No. 020
Protected Disclosure Act 2012

No. 85 of 2012

Authorised Version incorporating amendments as at
1 September 2017

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to encourage and facilitate disclosures of—
 - (i) improper conduct by public officers, public bodies and other persons; and
 - (ii) detrimental action taken in reprisal for a person making a disclosure under this Act; and
- (b) to provide protection for—
 - (i) persons who make those disclosures; and
 - (ii) persons who may suffer detrimental action in reprisal for those disclosures; and
- (c) to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

In this Act—

S. 3 def. of
*acting
coroner*
amended by
No. 5/2013
s. 64(1),
repealed by
No. 63/2013
s. 95(1).

* * * * *

assessable disclosure means—

- (a) a disclosure that, under section 21(2), must be notified to the IBAC; or
- (b) a disclosure that, under section 21(3), may be notified to the IBAC; or
- (c) a disclosure that, under section 36(2), must be notified to the IBAC; or
- (d) a disclosure made in accordance with Division 2 of Part 2 directly to the IBAC; or
- (e) a disclosure made in accordance with Division 2 of Part 2 to the Victorian Inspectorate under section 17; or
- (f) a police complaint disclosure that, under section 22, must be notified to the IBAC; or
- (g) a police complaint disclosure made directly to the IBAC;

S. 3 def. of
*Australian
legal
practitioner*
repealed by
No. 17/2014
s. 160(Sch. 2
item 77).

* * * * *

Chief Commissioner of Police means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;

S. 3 def. of ***Chief Commissioner of Police*** amended by No. 37/2014 s. 10(Sch. item 134.1(b)).

corrupt conduct has the meaning given by section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3 def. of ***corrupt conduct*** amended by No. 82/2012 s. 315(a)(i).

Council has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

Councillor has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

detrimental action includes—

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

IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

S. 3 def. of ***IBAC*** amended by No. 82/2012 s. 315(a)(ii).

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

improper conduct has the meaning given by section 4;

S. 3 def. of *investigating entity* amended by Nos 37/2014 s. 10(Sch. item 134.1(c)), 16/2016 s. 167(b).

investigating entity means—

- (a) the IBAC;
- (b) Victoria Police;
- (c) the Ombudsman;
- (d) the Victorian Inspectorate;
- (e) the Judicial Commission and if the Judicial Commission has appointed an investigating panel to investigate a complaint that is, or includes, a protected disclosure complaint, the investigating panel;

S. 3 def. of *investigating panel* inserted by No. 16/2016 s. 167(a).

investigating panel has the same meaning as in Part IIIAA of the **Constitution Act 1975**;

S. 3 def. of *Judicial Commission* inserted by No. 16/2016 s. 167(a).

Judicial Commission has the same meaning as it has in Part IIIAA of the **Constitution Act 1975**;

S. 3 def. of *Judicial Commission officer* inserted by No. 16/2016 s. 167(a).

Judicial Commission officer has the same meaning as in the **Judicial Commission of Victoria Act 2016**;

S. 3 def. of *judicial officer* amended by Nos 5/2013 s. 64(2), 63/2013 s. 95(2).

judicial officer means the following—

- (a) a Judge of the Supreme Court;
- (b) an Associate Judge of the Supreme Court;

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

judicial registrar means a judicial registrar of the Supreme Court, the County Court, the Magistrates' Court, the Children's Court or the Coroners Court;

S. 3 def. of
*member of
Victoria Police
personnel*
inserted by
No. 37/2014
s. 10(Sch.
item 134.1(a)).

member of Victoria Police personnel has the
same meaning as it has in the **Victoria
Police Act 2013**;

Ombudsman means the person appointed as the
Ombudsman under section 3 of the
Ombudsman Act 1973;

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

police complaint disclosure has the meaning
given by section 5;

S. 3 def. of
police force
repealed by
No. 37/2014
s. 10(Sch.
item 134.1(d)).

* * * * *

S. 3 def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 134.1(a)).

police officer has the same meaning as it has in
the **Victoria Police Act 2013**;

Note

Police officers include police reservists (see
section 45(w) of the **Victoria Police Act 2013**) and
special constables (see section 193(1) of that Act).

S. 3 def. of
*police
personnel*
repealed by
No. 37/2014
s. 10(Sch.
item 134.1(d)).

* * * * *

Presiding Officer means—

- (a) the Speaker of the Legislative
Assembly; or

- (b) the President of the Legislative Council;

protected disclosure means—

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

S. 3 def. of *protected disclosure* amended by No. 37/2014 s. 10(Sch. item 134.1(e)).

protected disclosure complaint means—

- (a) a disclosure that has been determined under section 26 to be a protected disclosure complaint; or
(b) a disclosure that has been determined under section 31 to be a protected disclosure complaint;

protective services officer has the same meaning as it has in the **Victoria Police Act 2013**;

S. 3 def. of *protective services officer* inserted by No. 37/2014 s. 10(Sch. item 134.1(a)).

public body has the meaning given by section 6;

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

public officer has the meaning given by section 6;

public sector has the meaning given by section 6;

Special Investigations Monitor means the Special Investigations Monitor appointed under section 5 of the **Major Crime (Special Investigations Monitor) Act 2004**;

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

S. 3 def. of
Victoria Police
inserted by
No. 37/2014
s. 10(Sch.
item 134.1(a)).

Victoria Police has the same meaning as it has in
the **Victoria Police Act 2013**;

S. 3 def. of
Victoria Police
employee
inserted by
No. 37/2014
s. 10(Sch.
item 134.1(a)).

Victoria Police employee has the same meaning
as it has in the **Victoria Police Act 2013**;

Victorian Inspectorate has the same meaning as it
has in section 3(1) of the **Victorian
Inspectorate Act 2011**;

Victorian Inspectorate Officer has the same
meaning as it has in section 3(1) of the
Victorian Inspectorate Act 2011.

4 Meaning of *improper conduct*

- (1) For the purposes of this Act, *improper conduct*
means—
 - (a) corrupt conduct; or
 - (b) conduct specified in subsection (2) that is not
corrupt conduct but that, if proved, would
constitute—
 - (i) a criminal offence; or
 - (ii) reasonable grounds for dismissing or
dispensing with, or otherwise
terminating, the services of the officer
who was, or is, engaged in that conduct.
- (2) For the purposes of subsection (1)(b), *specified
conduct* is conduct—
 - (a) of any person that adversely affects the
honest performance by a public officer or
public body of his or her or its functions as a
public officer or public body; or

- (b) of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or
- (c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or
- (d) of a public officer or public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or
- (da) of a person (the *first person*) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining—
 - (i) a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
 - (ii) an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
 - (iii) a financial benefit or real or personal property; or
 - (iv) any other direct or indirect monetary or proprietary gain—that they would not have otherwise obtained;
or

S. 4(2)(da)
inserted by
No. 30/2016
s. 84(1).

S. 4(2)(e)
amended by
No. 30/2016
s. 84(2).

- (e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c), (d) or (da); or
- (f) of a public officer or public body in his or her capacity as a public officer or its capacity as a public body that—
 - (i) involves substantial mismanagement of public resources; or
 - (ii) involves substantial risk to public health or safety; or
 - (iii) involves substantial risk to the environment.

S. 4(2A)
inserted by
No. 30/2016
s. 84(3).

(2A) For the purposes of section 4(2)(da), the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body may be adversely affected notwithstanding that the public officer or public body does not engage in any corrupt conduct or other misconduct in performing or exercising those functions or powers.

S. 4(2B)
inserted by
No. 30/2016
s. 84(3).

(2B) For the purposes of section 4(2)(da), an *associate* of a first person is—

- (a) a person or entity who has an agreement, arrangement or understanding with the first person or holds any relevant financial interest in any business of the first person;
- (b) if the first person is a natural person, a person who is a relative of the first person;
- (c) if the first person is a body corporate—
 - (i) an entity of whom the first person is an associate within the meaning of section 11 of the Corporations Act; or

- (ii) an employee or officer of a related body corporate within the meaning of the Corporations Act to the first person.

(2C) For the purposes of subsection (2B)—

relative means—

- (a) the spouse or domestic partner of the first person;
- (b) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the first person;
- (c) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the first person;
- (d) a parent, son, daughter, brother, sister, aunt, uncle, grandparent, cousin, nephew or niece of the spouse or domestic partner of the first person;
- (e) a step-father, step-mother, legal guardian, step-son, step-daughter, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law of the spouse or domestic partner of the first person;

relevant financial interest includes any share in the capital of a business of the first person or any entitlement to receive any income or payment from a business of the first person.

S. 4(2C)
inserted by
No. 30/2016
s. 84(3).

- (3) This Act does not apply to any conduct of any person that can be considered by the Court of Disputed Returns in proceedings in relation to a petition under Part 8 of the **Electoral Act 2002**.

5 Meaning of *police complaint disclosure*

S. 5(1)
amended by
No. 37/2014
s. 10(Sch.
item
134.2(a)(i)).

- (1) For the purposes of this Act, a *police complaint disclosure* is a complaint made by a police officer or protective services officer about another police officer or protective services officer to—

- (a) the Chief Commissioner of Police; or
(b) the IBAC; or

S. 5(1)(c)
amended by
No. 37/2014
s. 10(Sch.
item 134.2(a)).

- (c) another police officer or protective services officer of more senior rank who is not the Chief Commissioner of Police that is referred by that police officer or protective services officer to the Chief Commissioner under section 168 of the **Victoria Police Act 2013**.

- (2) A complaint referred to in subsection (1) is taken to be a disclosure for the purposes of this Act.

S. 5(3)
repealed by
No. 37/2014
s. 10(Sch.
item 134.2(b)).

* * * * *

6 Definitions of *public body*, *public officer* and *public sector*

For the purposes of this Act—

S. 6 def. of
public body
amended by
No. 82/2012
s. 315(b).

public body means—

- (a) a *public body* within the meaning of section 6 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
(b) the IBAC; or

- (c) any other body or entity prescribed for the purposes of this definition;

public officer means—

- (a) a *public officer* within the meaning of section 6 of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) an IBAC Officer; or
- (c) any other person prescribed for the purposes of this definition;

S. 6 def. of
public officer
amended by
No. 82/2012
s. 315(b).

public sector means the sector comprising all public bodies and public officers.

7 Other protections preserved

This Act does not limit the protection given by any other Act or law to a person who makes a disclosure of any kind.

8 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 made under this Act.

Part 2—Disclosures

Division 1—Information that may be disclosed in accordance with this Part

9 Disclosure of improper conduct or detrimental action

- (1) Subject to subsection (3), a natural person may disclose in accordance with this Part—
 - (a) information that shows or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45; or
 - (b) information that the person believes on reasonable grounds shows, or tends to show—
 - (i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or
 - (ii) a public officer or public body has taken, is taking or proposes to take detrimental action against a person in contravention of section 45.
- (2) A disclosure may be about conduct that has occurred before the commencement of this section.
- (3) A disclosure may not be made in accordance with this Part regarding the conduct of, or actions taken by, any of the following—
 - (a) a Public Interest Monitor;

(b) the Office of the Special Investigations Monitor;

(c) the Special Investigations Monitor;

(d) the Victorian Inspectorate;

(e) a Victorian Inspectorate Officer;

(f) a court;

S. 9(3)(f)
substituted by
No. 16/2016
s. 168.

(g) an investigating panel;

S. 9(3)(g)
inserted by
No. 16/2016
s. 168.

(h) a member of an investigating panel.

S. 9(3)(h)
inserted by
No. 16/2016
s. 168.

10 Not necessary to identify person or body to whom disclosure relates

A disclosure may be made even if the person making the disclosure cannot identify the person or the body to whom or to which the disclosure relates.

11 Complaints, notifications and disclosures under other Acts may be disclosures

A disclosure may be a disclosure made in accordance with this Part even if it is a complaint, notification or disclosure (however described) made under another Act.

Division 2—How and to whom a disclosure may be made under this Part

12 How a disclosure may be made

- (1) A disclosure under this Part must be made in accordance with the prescribed procedure.
- (2) Despite any contrary provision in any other Act (other than the **Charter of Human Rights and Responsibilities Act 2006**), a disclosure under this Part—
 - (a) may be made orally or in writing; and
 - (b) may be made anonymously.
- (3) A provision of this or any other Act requiring an entity to notify, advise or otherwise communicate with a person who has made a disclosure under this Part does not apply if the person makes the disclosure anonymously.

13 Entities to which disclosures must be made

- (1) Unless required to be made to another entity under sections 14 to 19, a disclosure under this Part must be made in accordance with this section.
- (2) A disclosure may be made to—
 - (a) the IBAC; or
 - (b) an investigating entity that, if the disclosure were to be determined to be a protected disclosure complaint, would be authorised under another Act to investigate the subject matter of the disclosure.
- (3) A disclosure that relates to any of the following bodies or a member, officer or employee of any of the following bodies—
 - (a) a public service body within the meaning of section 4(1) of the **Public Administration Act 2004**;

- (b) a Council;
- (c) a public body prescribed for the purposes of this section—
may be made to that body.
- (4) A disclosure that relates to an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public officer prescribed for the purposes of this section may be made to that public officer.
- (5) A disclosure by a person who is a member, officer or employee of a body referred to in subsection (3) or of a public officer referred to in subsection (4) may be made to that body or that public officer.

14 Disclosures that must be made to the IBAC

A disclosure under this Part that relates to any of the following must be made to the IBAC—

- (a) the Chief Commissioner of Police;
- (b) the Director of Public Prosecutions appointed under the **Constitution Act 1975**;
- (c) the Chief Crown Prosecutor appointed under the **Public Prosecutions Act 1994**;
- (d) the Solicitor-General appointed under the **Attorney-General and Solicitor-General Act 1972**;
- (e) the Governor appointed under the **Constitution Act 1975**;
- (f) the Lieutenant-Governor or Administrator appointed under the **Constitution Act 1975**;
- (g) the Director, Police Integrity, appointed under the **Police Integrity Act 2008**;
- (h) the Electoral Commissioner appointed under the **Electoral Act 2002**;

Protected Disclosure Act 2012
No. 85 of 2012
Part 2—Disclosures

S. 14(i)
substituted by
No. 67/2014
s. 147(Sch. 2
item 29).

(i) a commissioner within the meaning of the
Inquiries Act 2014;

S. 14(j)
substituted by
No. 67/2014
s. 147(Sch. 2
item 29).

(j) a member of a Board of Inquiry within the
meaning of the **Inquiries Act 2014;**

S. 14(k)
repealed by
No. 16/2016
s. 169.

* * * * *

S. 14(l)
repealed by
No. 16/2016
s. 169.

* * * * *

- (m) a judicial employee employed under
Division 3 of Part 6 of the **Public
Administration Act 2004;**
- (n) a Ministerial officer employed under
Division 1 of Part 6 of the **Public
Administration Act 2004;**
- (o) a Parliamentary adviser employed under
Division 2 of Part 6 of the **Public
Administration Act 2004;**
- (p) an electorate officer employed under Part 4
of the **Parliamentary Administration
Act 2005;**
- (q) a Parliamentary officer within the meaning
of section 4(1) of the **Parliamentary
Administration Act 2005.**

15 Disclosures that must be made to the IBAC or the Victorian Inspectorate

A disclosure under this Part that relates to any of the following must be made to the IBAC or the Victorian Inspectorate—

- (a) the Chief Examiner or an Examiner appointed under section 21 of the **Major Crimes (Investigative Powers) Act 2004**;
- (b) an Ombudsman officer;
- (c) a VAGO officer;

S. 15(c)
amended by
No. 16/2016
s. 170(a).

- (d) a Judicial Commission officer other than a judicial member of the Board of the Judicial Commission.

S. 15(d)
inserted by
No. 16/2016
s. 170(b).

16 Disclosures that must be made to the IBAC or the Ombudsman

A disclosure under this Part that relates to any of the following must be made to the IBAC or the Ombudsman—

- (a) a Councillor;
- (b) the Information Commissioner appointed under the **Freedom of Information Act 1982**;

S. 16(b)
substituted by
No. 20/2017
s. 134(Sch. 1
item 14(a)).

* * * * *

S. 16(c)
substituted by
No. 60/2014
s. 140(Sch. 3
item 37.1(a)),
repealed by
No. 20/2017
s. 134(Sch. 1
item 14(b)).

S. 16(d)
amended by
No. 60/2014
s. 140(Sch. 3
item 37.1(b)),
substituted by
No. 22/2016
s. 241.

(d) the Health Complaints Commissioner
appointed under the **Health Complaints
Act 2016**.

S. 16(e)
repealed by
No. 60/2014
s. 140(Sch. 3
item 37.1(c)).

* * * * *

S. 16A
inserted by
No. 16/2016
s. 171.

16A Disclosures that must be made to the IBAC or the Judicial Commission

A disclosure under this Part that relates to any of
the following must be made to the IBAC or the
Judicial Commission—

- (a) a judicial officer;
- (b) a member of VCAT who is not a judicial
officer.

17 Disclosures relating to the IBAC or an IBAC Officer

A disclosure under this Part that relates to the
IBAC or an IBAC Officer must be made to the
Victorian Inspectorate.

S. 18
(Heading)
amended by
No. 37/2014
s. 10(Sch.
item 134.3).

18 Disclosures relating to a member of Victoria Police personnel (other than the Chief Commissioner of Police)

S. 18
amended by
No. 37/2014
s. 10(Sch.
item 134.4).

A disclosure under this Part that relates to a
member of Victoria Police personnel, other than
the Chief Commissioner of Police, must be made
to—

S. 18(a)
amended by
No. 37/2014
s. 10(Sch.
item 134.4).

- (a) a prescribed member of Victoria Police
personnel; or
- (b) the IBAC.

19 Disclosures relating to members of Parliament or Ministers of the Crown

- (1) A disclosure under this Part that relates to a member of the Legislative Assembly (whether in the member's capacity as a member of Parliament or as a Minister of the Crown) must be made to the Speaker of the Legislative Assembly.
- (2) A disclosure under this Part that relates to a member of the Legislative Council (whether in the member's capacity as a member of Parliament or as a Minister of the Crown) must be made to the President of the Legislative Council.
- (3) A disclosure under this Part that relates to a Minister of the Crown who is not a member of Parliament must be made to the IBAC.

Division 3—Disclosures to which protected disclosure scheme does not apply

20 Disclosures not made in accordance with Division 2

- (1) A disclosure is not a disclosure made in accordance with Division 2 if, at the time the disclosure is made, the person making the disclosure expressly states in writing that the disclosure is not a disclosure for the purposes of this Act.
- (2) A disclosure that is made by an officer or employee of an investigating entity in the performance of his or her functions or duties under the Act under which the investigating entity is authorised to investigate protected disclosure complaints is not a disclosure made in accordance with Division 2 unless—
 - (a) at the time the disclosure is made, the person making the disclosure expressly states in writing that the disclosure is a disclosure for the purposes of this Act; and

- (b) the disclosure is otherwise made in accordance with Division 2.

Part 3—Notification and assessment of disclosures

Division 1—Notifications

21 Notification of disclosure to the IBAC by other entities

- (1) This section applies if—
- (a) a disclosure is made to an entity other than to—
 - (i) the IBAC; or
 - (ii) the Victorian Inspectorate under section 17; and
 - (b) the entity considers that the disclosure may be a protected disclosure.

- (2) If the disclosure is made to an entity under section 13, 15, 16, 16A or 18, the entity must, no later than 28 days after the disclosure is made, notify the disclosure to the IBAC for assessment under this Part.

- (3) If the disclosure is made to a Presiding Officer under section 19, the Presiding Officer may notify the disclosure to the IBAC for assessment under this Part.

S. 21(2)
amended by
No. 16/2016
s. 172.

22 Chief Commissioner of Police must notify police complaint disclosures to the IBAC

- (1) This section applies if—
- (a) a police complaint disclosure is made to the Chief Commissioner of Police or referred to the Chief Commissioner under section 168 of the **Victoria Police Act 2013**; and
 - (b) the Chief Commissioner considers that the disclosure may be a protected disclosure.

S. 22(1)(a)
amended by
No. 37/2014
s. 10(Sch.
item 134.5).

- (2) The Chief Commissioner of Police must, no later than 28 days after the police complaint disclosure is made or referred to the Chief Commissioner, notify the disclosure to the IBAC for assessment under this Part.

23 Provision of other information to the IBAC

- (1) An entity that has notified a disclosure to the IBAC under section 21 or 22 may provide to the IBAC any information in respect of the disclosure obtained in the course of determining that the disclosure is a disclosure that must be notified to the IBAC.
- (2) Information may be provided to the IBAC under subsection (1) at the time of the notification of the disclosure or at any later time.

24 Advice to person making disclosure to entity other than a Presiding Officer

- (1) This section applies if a disclosure is made to an entity, other than a Presiding Officer.
- (2) If the entity notifies the disclosure to the IBAC under section 21(2) or 22(2), the entity must advise the person who made the disclosure that the disclosure has been notified to the IBAC for assessment under this Act.
- (3) Subject to subsection (5), if the entity does not notify the disclosure to the IBAC under section 21(2) or 22(2), the entity must advise the person who made the disclosure that—
 - (a) the entity considers the disclosure is not a protected disclosure; and
 - (b) the disclosure has not been notified to the IBAC for assessment under this Act; and

- (c) regardless of whether the disclosure is notified to the IBAC for assessment under this Act, the protections under Part 6 apply to a protected disclosure.
- (4) Advice given under subsection (2) or (3) must—
 - (a) be in writing; and
 - (b) be given no later than 28 days after the disclosure is made to the entity.
- (5) Advice given under subsection (2) must include a written statement advising the recipient that it is an offence under section 74 to disclose that the disclosure has been notified to the IBAC for assessment under this Act.
- (6) An entity is not required to advise the person under subsection (3) unless the person has indicated to the entity, or it otherwise appears to the entity, that the person wishes to receive the protections that apply to a protected disclosure under this Act.

25 Advice to person making disclosure to a Presiding Officer

- (1) This section applies if a disclosure is made to a Presiding Officer.
- (2) If the Presiding Officer notifies the disclosure to the IBAC under section 21(3), the Presiding Officer may advise the person who made the disclosure that the disclosure has been notified to the IBAC for assessment under this Act.
- (3) If the Presiding Officer does not notify the disclosure to the IBAC under section 21(3), the Presiding Officer may advise the person who made the disclosure that the disclosure has not been notified to the IBAC for assessment under this Act.

- (4) Advice given under subsection (2) must include a written statement advising the recipient that it is an offence under section 74 to disclose that the disclosure has been notified to the IBAC for assessment under this Act.

**Division 2—Assessment of disclosure
and determination of whether disclosure
is a protected disclosure complaint**

**26 Assessment of disclosure and determination by the
IBAC**

- (1) This section applies if—
- (a) a disclosure is made in accordance with Division 2 of Part 2 directly to the IBAC; or
 - (b) a disclosure is notified to the IBAC under section 21 or 22; or
 - (c) a police complaint disclosure is made directly to the IBAC; or
 - (d) a disclosure is made or notified to the IBAC in accordance with any other Act.

S. 26(1)(c)
amended by
No. 30/2016
s. 85(1)(a).

S. 26(1)(d)
inserted by
No. 30/2016
s. 85(1)(b).

S. 26(2)
substituted by
No. 30/2016
s. 85(2).

- (2) The IBAC—
- (a) must assess whether, in its view, a disclosure specified in subsection (1)(a), (b) or (c) is a protected disclosure;
 - (b) may assess whether, in its view, a disclosure specified in subsection (1)(d) is a protected disclosure.

- (3) Following an assessment under subsection (2), the IBAC must—
- (a) if the IBAC is of the view that the disclosure is a protected disclosure—determine that the disclosure is a protected disclosure complaint; or
 - (b) in any other case—determine that the disclosure is not a protected disclosure complaint.

Note

The protections under Part 6 apply to a protected disclosure whether or not the IBAC has determined that the disclosure is a protected disclosure complaint.

- (4) A determination under subsection (3) must be made within a reasonable time after the disclosure is made, or notified, to the IBAC.
- (5) The IBAC must not exercise any of its powers of investigation under the **Independent Broad-based Anti-corruption Commission Act 2011** when making an assessment under subsection (2).

27 Advice to notifying entity

- (1) If a disclosure has been notified to the IBAC by an entity under section 21 or 22, the IBAC must advise the entity of the IBAC's determination under section 26.
- (2) The advice must—
- (a) be in writing; and
 - (b) be given within a reasonable time after the determination is made.

28 Disclosure determined to be a protected disclosure complaint—advice to person who made disclosure

- (1) If the IBAC determines that a disclosure is a protected disclosure complaint, the IBAC must advise the person who made the disclosure that—

- (a) the IBAC has determined that the disclosure is a protected disclosure complaint; and
 - (b) regardless of whether the IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 apply to a protected disclosure.
- (2) The advice must—
- (a) be in writing; and
 - (b) be given within a reasonable time after the determination is made.
- (3) The advice must include a written statement containing the prescribed matters relating to the rights, protections and obligations under this Act of a person who has made a protected disclosure.
- (4) The advice must include a written statement advising the recipient that it is an offence under section 74 to disclose that the IBAC has determined that the disclosure is a protected disclosure complaint.

29 Disclosure determined not to be a protected disclosure complaint—advice to person who made disclosure

- (1) Subject to subsection (3), if the IBAC determines that a disclosure is not a protected disclosure complaint, the IBAC must advise the person who made the disclosure that—
- (a) the IBAC has determined that the disclosure made by the person is not a protected disclosure complaint; and
 - (b) as a consequence of that determination—
 - (i) the disclosure will not be investigated as a protected disclosure complaint; and

- (ii) the confidentiality provisions under Part 7 of this Act no longer apply in relation to the disclosure; and
 - (c) regardless of whether the IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 apply to a protected disclosure.
- (2) The advice must—
 - (a) be in writing; and
 - (b) be given within a reasonable time after the determination is made.
- (3) If a person has made a disclosure directly to the IBAC, the IBAC is not required to advise the person under subsection (1) unless the person has indicated to the IBAC, or it otherwise appears to the IBAC, that the person wishes to receive the protections that apply to a protected disclosure under this Act.

30 Advice regarding alternative procedures for dealing with disclosure

If the IBAC determines that a disclosure is not a protected disclosure complaint but is of the view that the matter which is the subject of the disclosure may be able to be dealt with by another entity, the IBAC may advise the person who made the disclosure that—

- (a) the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a protected disclosure complaint; and
- (b) if the person wishes to pursue the matter, the person should make a complaint directly to that entity.

31 Assessment of disclosure and determination by the Victorian Inspectorate

- (1) If a disclosure is made to the Victorian Inspectorate in accordance with Division 2 of Part 2 that relates to the IBAC or an IBAC Officer, the Victorian Inspectorate must assess whether, in its view, the disclosure is a protected disclosure.
- (2) Following an assessment under subsection (1), the Victorian Inspectorate must—
 - (a) if the Victorian Inspectorate considers that the disclosure is a protected disclosure—determine that the disclosure is a protected disclosure complaint; or
 - (b) in any other case—determine that the disclosure is not a protected disclosure complaint.

Note

The protections under Part 6 apply to a protected disclosure whether or not the Victorian Inspectorate has determined that the disclosure is a protected disclosure complaint.

- (3) A determination under subsection (2) must be made within a reasonable time after the disclosure is made to the Victorian Inspectorate.
- (4) The Victorian Inspectorate must not exercise any of its powers of investigation under the **Victorian Inspectorate Act 2011** when making an assessment under subsection (1).
- (5) Sections 28, 29 and 30 apply to a disclosure assessed by the Victorian Inspectorate under subsection (1) as if a reference to the IBAC were a reference to the Victorian Inspectorate.

Part 4—Disclosures determined to be protected disclosure complaints

32 Disclosure determined by the IBAC to be a protected disclosure complaint

If the IBAC determines that a disclosure is a protected disclosure complaint, the IBAC must deal with the disclosure in accordance with the **Independent Broad-based Anti-corruption Commission Act 2011**.

Note

Under section 7 of the **Independent Broad-based Anti-corruption Commission Act 2011**, a protected disclosure complaint is taken to be a complaint for the purposes of that Act (other than Divisions 1 and 2 of Part 3).

Note to s. 32 amended by No. 82/2012 s. 315(c).

33 Disclosure determined by the Victorian Inspectorate to be a protected disclosure complaint

If the Victorian Inspectorate determines that a disclosure is a protected disclosure complaint, the Victorian Inspectorate must deal with the disclosure in accordance with the **Victorian Inspectorate Act 2011**.

Note

Under section 4 of the **Victorian Inspectorate Act 2011**, a protected disclosure complaint is taken to be a complaint for the purposes of that Act.

Note to s. 33 amended by No. 82/2012 s. 315(d).

Part 5—Notification of related disclosures made in course of investigation

34 Related disclosures

- (1) For the purposes of this Part a disclosure is a related disclosure if—
 - (a) the disclosure is made to an investigating entity, other than in the circumstances specified in subsection (2), in the course of its investigation of a protected disclosure complaint; and
 - (b) the investigating entity is an entity to which the disclosure may be made under Division 2 of Part 2; and
 - (c) the disclosure concerns the same subject matter as the protected disclosure complaint being investigated by that entity.
- (2) For the purposes of subsection (1)(a), the following circumstances are specified—
 - (a) the disclosure is made to—
 - (i) the IBAC; or
 - (ii) the Victorian Inspectorate in the course of its investigation of a protected disclosure complaint made to it under section 17; or
 - (b) the investigating entity to which the disclosure is made—
 - (i) is unable to investigate the disclosure because it is not authorised to do so under the Act authorising the investigation of the protected disclosure complaint to which the disclosure relates; or

- (ii) is able to investigate the disclosure but does not intend to investigate the disclosure as part of its investigation of the protected disclosure complaint to which the disclosure relates.

35 Related disclosure made by person who made protected disclosure complaint

A related disclosure made to an investigating entity by the person who made the protected disclosure complaint to which it relates—

- (a) is taken to be part of the protected disclosure complaint; and
- (b) despite section 21, is not required to be notified to the IBAC for assessment under Part 3; and
- (c) must be investigated by the investigating entity as part of its investigation of the protected disclosure complaint.

Note

Under section 38(2) further information relating to a protected disclosure provided by the person who made the disclosure is to be treated for the purposes of Part 6 as if it were a protected disclosure.

36 Related disclosure made by other person

- (1) This section applies—
 - (a) if a related disclosure is made to an investigating entity by a person other than the person who made the protected disclosure complaint; and
 - (b) regardless of whether the related disclosure is made in accordance with Division 2 of Part 2.

- (2) Despite section 21, the investigating entity must notify the related disclosure to the IBAC for assessment under Part 3 if, and only if, the investigating entity considers that the related disclosure is a protected disclosure.
- (3) A related disclosure notified to the IBAC under subsection (2) is taken to have been notified to the IBAC under section 21.

37 Related disclosure notified to the IBAC

- (1) If a related disclosure is notified to the IBAC by an investigating entity under section 36(2), the investigating entity must advise the person who made the related disclosure that the related disclosure has been notified to the IBAC for assessment under this Act.
- (2) The advice given under subsection (1) must—
 - (a) be in writing; and
 - (b) be given no later than 28 days after the disclosure is made to the entity.
- (3) The advice given under subsection (1) must include a written statement advising the recipient that it is an offence under section 74 to disclose that the related disclosure has been notified to the IBAC for assessment under this Act.

Part 6—Protection of person making protected disclosure

38 Application of Part

- (1) This Part applies to a protected disclosure from the time the disclosure is made—
 - (a) whether or not the entity to which the disclosure has been made notifies the disclosure to the IBAC; and
 - (b) whether or not the IBAC or the Victorian Inspectorate has determined that the disclosure is a protected disclosure complaint.
- (2) For the purposes of this Part, any further information relating to a protected disclosure provided by the person who made the disclosure is to be treated as if it were a protected disclosure.
- (3) Subsection (2) applies only to further information provided, whether orally or in writing, to—
 - (a) the entity to which the protected disclosure was made; or
 - (b) the IBAC; or
 - (c) the Victorian Inspectorate; or
 - (d) an investigating entity that is investigating that protected disclosure.

39 Immunity from liability

- (1) A person who makes a protected disclosure is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure.

- (2) Subsection (1) does not apply to a person who, in making the protected disclosure, has contravened section 72(1) or (2) in relation to the information disclosed.

40 Confidentiality provisions do not apply

- (1) Without limiting section 39, a person who makes a protected disclosure does not by doing so—
- (a) commit an offence under section 95 of the **Constitution Act 1975** or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
 - (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.
- (2) Subsection (1) does not apply to a person who, in making the protected disclosure, has contravened section 72(1) or (2) in relation to the information disclosed.

41 Protection from defamation action

- (1) Without limiting section 39, in any proceeding for defamation there is a defence of absolute privilege in respect of the making of a protected disclosure.
- (2) Subsection (1) does not apply to a person who, in making the protected disclosure, has contravened section 72(1) or (2) in relation to the information disclosed.

42 Liability for own conduct

Despite anything to the contrary in this Part, a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under this Act.

43 Detrimental action in reprisal for protected disclosure

- (1) For the purposes of this Act and subject to subsections (2) and (3), a person takes detrimental action against another person in reprisal for a protected disclosure if—
 - (a) the person takes or threatens to take detrimental action against the other person because, or in the belief that—
 - (i) the other person or anyone else has made, or intends to make, the disclosure; or
 - (ii) the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
 - (b) for either of those reasons, the person incites or permits someone else to take or threaten to take detrimental action against the other person.
- (2) A person does not take detrimental action against another person in reprisal for a protected disclosure made by the other person if the other person has contravened section 72(1) or (2) in relation to the information disclosed by the protected disclosure.
- (3) In addition, for the purposes of this Act, other than section 45, a person who takes detrimental action against another person does not take detrimental action against the other person in reprisal for a

protected disclosure unless a reason referred to in subsection (1)(a) is a substantial reason for the person taking the action.

44 Management action not prevented

- (1) Nothing in this Part is intended to prevent a manager from taking management action in relation to an employee who has made a protected disclosure.
- (2) A manager may take management action that is detrimental action in relation to an employee who has made a protected disclosure only if the fact that the person has made the protected disclosure is not a substantial reason for the manager taking the action.

45 Protection from reprisal

- (1) A person must not take detrimental action against another person in reprisal for a protected disclosure.

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

- (2) It is a defence in a proceeding for an offence against subsection (1) if a reason referred to in section 43(1)(a) was not a substantial reason for the person taking the detrimental action against the other person.
- (3) It is a defence in a proceeding for an offence against subsection (1) if—
 - (a) the IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure complaint; and
 - (b) at the time the person took the detrimental action, the person knew of that determination.

46 Order for damages or reinstatement

(1) If a person is convicted or found guilty of an offence against section 45, the court may, in addition to imposing a penalty, order that, within a specified time, the offender pay to the person against whom the detrimental action was taken damages that the court considers appropriate to compensate the person for any injury, loss or damage.

(2) If—

(a) the employer of a person; or

(b) someone in the course of employment with, or while acting as an agent of, the employer of a person—

is convicted or found guilty of an offence against section 45 in relation to detrimental action taken against that person, the court may, in addition to imposing a penalty and in addition to any damages ordered under subsection (1), order that the employer reinstate or re-employ the person in his or her former position or, if that position is not available, in a similar position.

(3) Without limiting the court's discretion, when making an order under subsection (1), the court may take into account any remedy granted under section 47 or any order made under section 49 in relation to the same conduct.

47 Proceedings for damages for reprisal

(1) A person who takes detrimental action against another person in reprisal for a protected disclosure is liable in damages for any injury, loss or damage to that other person.

(2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.

- (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
- (4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the detrimental action.
- (5) Proceedings for damages under this section may be brought even if a prosecution in relation to the detrimental action has not been brought under section 45.
- (6) Without limiting the court's discretion, when granting a remedy under this section, the court may take into account any order made under section 46 or 49 in relation to the same conduct.

48 Vicarious liability of public body

- (1) If a person in the course of employment with, or while acting as an agent of, a public body takes detrimental action against another person in reprisal for a protected disclosure—
 - (a) the public body and the employee or agent (as the case may be) are jointly and severally civilly liable for the detrimental action; and
 - (b) a proceeding under section 47 may be taken against either or both.
- (2) It is a defence to a proceeding against a public body under section 47 if the public body proves, on the balance of probabilities, that it took reasonable precautions to prevent the employee or agent from taking detrimental action against the other person in reprisal for the protected disclosure.

49 Injunction or order

- (1) If, on receipt of an application under section 50, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a protected disclosure, the Court may—
 - (a) order the person who took the detrimental action to remedy that action; or
 - (b) grant an injunction in any terms the Court considers appropriate.
- (2) The Supreme Court, pending the final determination of an application under section 50, may—
 - (a) make an interim order in the terms of subsection (1)(a); or
 - (b) grant an interim injunction.
- (3) Without limiting the discretion of the Supreme Court, when granting a remedy under this section, the Court may take into account any order made under section 46 or 47 in relation to the same conduct.

50 Application for injunction or order

An application for an order or an injunction by the Supreme Court under section 49 may be made by—

- (a) a person who believes that detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure; or
- (b) an investigating entity if the investigating entity believes that detrimental action has been taken or may be taken in reprisal for a protected disclosure the subject of which is a

matter that the investigating entity is authorised to investigate under another Act.

51 Transfer of employee

- (1) An employee of a public service body or a public entity who has made a protected disclosure and who believes on reasonable grounds that detrimental action will be, is being or has been taken against him or her in contravention of section 45 may request a transfer of employment in accordance with this section.
- (2) Subject to subsection (4), a public service body Head may transfer an employee of the public service body who has made a protected disclosure to duties within—
 - (a) another public service body; or
 - (b) a public entity; or
 - (c) a different area of the same public service body—on terms and conditions of employment that are no less favourable overall.
- (3) Subject to subsection (4), a public entity Head may transfer an employee of the public entity who has made a protected disclosure to duties within—
 - (a) a public service body; or
 - (b) a different area of the same public entity—on terms and conditions of employment that are no less favourable overall.
- (4) An employee may only be transferred under subsection (2) or (3) if—
 - (a) the employee requests or consents to the transfer; and

- (b) the public service body Head or the public entity Head (as the case may be) has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee in contravention of section 45; and
 - (c) the public service body Head or the public entity Head (as the case may be) considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee; and
 - (d) the Head of the public service body or public entity to which it is proposed to transfer the employee consents to the transfer.
- (5) The transfer of an employee under subsection (2) or (3) may be permanent or for a fixed term.
- (6) The transfer of an employee under subsection (2) or (3) does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with the pre-transfer service.
- (7) In this section, *public entity*, *public entity Head*, *public service body* and *public service body Head* have the same meanings as they have in the **Public Administration Act 2004**.

Part 7—Confidentiality of disclosures

52 Content of assessable disclosure must not be disclosed

- (1) This section applies to a person or body—
- (a) to whom an assessable disclosure has been made; or
 - (b) who receives an assessable disclosure in the performance of duties or functions under this Act; or
 - (c) to whom the IBAC or the Victorian Inspectorate provides information about the content of an assessable disclosure in the course of assessing the disclosure to determine whether the disclosure is a protected disclosure complaint; or
 - (d) to whom an assessable disclosure, or information about the content of an assessable disclosure, is disclosed in any of the circumstances referred to in subsection (3)(a); or
 - (e) to whom an assessable disclosure, or information about the content of an assessable disclosure, has been disclosed in contravention of subsection (2).
- (2) The person or body must not disclose the content, or information about the content, of an assessable disclosure.

Penalty: In the case of a natural person,
120 penalty units or 12 months
imprisonment or both.

In the case of a body corporate,
600 penalty units.

- (3) Subsection (2) does not apply if—
- (a) the person or body discloses the content, or information about the content, of the assessable disclosure—
 - (i) in accordance with section 54; or
 - (ii) in accordance with a direction or authorisation given by the investigating entity that is investigating the disclosure; or
 - (iii) to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the assessable disclosure including a disciplinary process or action; or
 - (b) the IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure complaint and the person or body discloses the content, or information about the content, of the assessable disclosure after that determination; or
 - (c) an investigating entity has—
 - (i) published in a report to Parliament under this or any other Act, or otherwise made public, the content, or information about the content, of the assessable disclosure; and
 - (ii) in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act—and the person or body discloses the content, or information about the content, of the assessable disclosure after that publication.

53 Identity of person making assessable disclosure must not be disclosed

- (1) A person or body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure.

Penalty: In the case of a natural person,
120 penalty units or 12 months
imprisonment or both.

In the case of a body corporate,
600 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the person who made the assessable disclosure has given written consent to an investigating entity to disclose—
 - (i) any information likely to lead to the person's identification; or
 - (ii) specific information likely to lead to the person's identification—and the information is disclosed by the investigating entity after and in accordance with that consent; or
 - (b) the person or body discloses the information in accordance with section 54; or
 - (c) the IBAC or the Victorian Inspectorate has determined that the assessable disclosure is not a protected disclosure complaint and the person or body discloses the information after that determination; or
 - (d) an investigating entity has—
 - (i) published in a report to Parliament under this or any other Act, or otherwise made public, the information; and

(ii) in doing so, acted consistently with the obligations relating to confidentiality that apply to the investigating entity under this Act—

and the person or body discloses the information after that publication.

54 Circumstances in which information may be disclosed

- (1) A person or body may, in any of the circumstances set out in subsection (2), disclose—
- (a) the content, or information about the content, of an assessable disclosure; or
 - (b) information likely to lead to the identification of a person who has made an assessable disclosure.
- (2) For the purposes of subsection (1) information may be disclosed in the following circumstances—
- (a) where necessary for the purpose of the exercise of functions under this Act;
 - (b) by an investigating entity, or an officer of an investigating entity, where necessary for the purpose of the exercise of functions under the **Independent Broad-based Anti-corruption Commission Act 2011**, the **Victorian Inspectorate Act 2011**, the **Ombudsman Act 1973**, the **Judicial Commission of Victoria Act 2016** or Part 10 of the **Victoria Police Act 2013**;
 - (c) for the purpose of a proceeding for an offence against—
 - (i) a relevant Act; or

S. 54(2)(b)
amended by
Nos 37/2014
s. 10(Sch.
item 134.6(a)),
16/2016
s. 173(1).

- (ii) section 19 of the **Evidence (Miscellaneous Provisions) Act 1958** arising from an investigation by the Ombudsman;
- (d) for the purpose of a disciplinary process or action instituted in respect of conduct that could constitute an offence against—
 - (i) a relevant Act; or
 - (ii) section 19 of the **Evidence (Miscellaneous Provisions) Act 1958** arising from an investigation by the Ombudsman;
- (e) for the purpose of obtaining legal advice or representation in relation to—
 - (i) a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice or an order extending a confidentiality notice;
 - (ii) the person's rights, liabilities, obligations and privileges under a relevant Act;
- (f) by an Australian legal practitioner to whom an assessable disclosure or information has been disclosed in the circumstances specified in paragraph (e), for the purpose of complying with a legal duty of disclosure or a professional obligation arising from his or her professional relationship with his or her client;
- (g) to an interpreter, for the purpose of enabling a person who does not have a sufficient knowledge of the English language to comply with this Part;

- (h) to a parent or guardian of a person or to an independent person, for the purpose of enabling a person who is under the age of 18 years to comply with this Part;
- (i) to an independent person, for the purpose of enabling a person who is illiterate or has a mental or physical impairment that prevents the person from understanding an obligation imposed under this Part to comply with this Part.

(3) For the purposes of subsection (2)—

confidentiality notice means—

- (a) a confidentiality notice issued by the IBAC under section 42(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a confidentiality notice issued by the Victorian Inspectorate under section 38(1) of the **Victorian Inspectorate Act 2011**; or
- (c) a confidentiality notice issued by the Ombudsman under section 26C(1) of the **Ombudsman Act 1973**;

S. 54(3) def. of *confidentiality notice* amended by No. 82/2012 s. 315(e)(i).

officer of an investigating entity means a person who is—

- (a) carrying out investigative functions in relation to a protected disclosure complaint; and
- (b) is authorised to perform those functions by or under the Act under which the protected disclosure complaint is being investigated by the investigating entity;

S. 54(3) def. of *relevant Act* amended by Nos 37/2014 s. 10(Sch. item 134.6(b)), 16/2016 s. 173(2)(a)(b).

relevant Act means—

- (a) this Act; or
- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (d) the **Ombudsman Act 1973**; or
- (e) Part 10 of the **Victoria Police Act 2013**; or
- (f) the **Judicial Commission of Victoria Act 2016**; or
- (g) Part IIIAA of the **Constitution Act 1975**;

S. 54(3) def. of *witness summons* amended by Nos 82/2012 s. 315(e)(ii), 16/2016 s. 173(2)(c)(d).

witness summons means—

- (a) a witness summons issued by the IBAC under section 120(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a witness summons issued by the Victorian Inspectorate under section 53(1) of the **Victorian Inspectorate Act 2011**; or
- (c) a witness summons issued by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**; or
- (d) a requirement to produce a document or thing under section 69 of the **Judicial Commission of Victoria Act 2016**; or
- (e) a witness summons issued under section 70 of the **Judicial Commission of Victoria Act 2016**.

Part 8—Functions and powers of the IBAC and Victorian Inspectorate

55 Functions and powers of the IBAC

- (1) The main functions of the IBAC under this Act are—
 - (a) to receive, whether directly or by notification from other entities, assessable disclosures; and
 - (b) to assess those disclosures; and
 - (c) to determine whether those disclosures are protected disclosure complaints.
- (2) In addition, the IBAC has the following functions relating to the protected disclosure scheme established under this Act—
 - (a) to issue guidelines for procedures—
 - (i) to facilitate the making of disclosures in accordance with Part 2 (other than disclosures made to the Victorian Inspectorate);
 - (ii) for the handling of those disclosures and, where appropriate, their notification to the IBAC;
 - (iii) for the protection of persons from detrimental action in contravention of section 45;
 - (b) to issue guidelines for the management of the welfare of persons who make protected disclosures or who are otherwise affected by protected disclosures;
 - (c) to provide advice to the public sector on any matter included in the guidelines referred to in paragraphs (a) and (b);

- (d) to review the procedures established by the public sector under Part 9, other than those established by the Victorian Inspectorate and the Ombudsman, and the implementation of those procedures;
 - (e) to provide information and education about the protected disclosure scheme;
 - (f) to assist the public sector to increase its capacity to comply with the protected disclosure scheme;
 - (g) to provide information to, consult with and make recommendations to the public sector on matters relevant to the operation of the protected disclosure scheme;
 - (h) to undertake research and collect, analyse and report on data and statistics relating to the protected disclosure scheme;
 - (i) to report to Parliament at any time on matters arising from the performance of any of its research and education functions;
 - (j) to perform any other function conferred on the IBAC by or under this Act.
- (3) The IBAC has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

56 Functions and powers of the Victorian Inspectorate

- (1) The functions of the Victorian Inspectorate under this Act are—
- (a) to receive assessable disclosures that relate to the IBAC or IBAC Officers; and
 - (b) to assess those disclosures; and
 - (c) to determine whether those disclosures are protected disclosure complaints; and
-

- (d) to receive other assessable disclosures and to notify those disclosures to the IBAC; and

Note

The Victorian Inspectorate may receive disclosures that relate to certain entities other than the IBAC or IBAC Officers: see section 15.

- (e) to review the procedures established by the IBAC and the Ombudsman under Part 9 and the implementation of those procedures; and
 - (f) to perform any other function conferred on the Victorian Inspectorate by or under this Act.
- (2) The Victorian Inspectorate has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions under this Act.

Part 9—Guidelines, procedures and education

Division 1—Guidelines and procedures

57 Guidelines

- (1) The IBAC must issue guidelines consistent with this Act and the regulations made under this Act for procedures—
 - (a) to facilitate the making of disclosures to entities under sections 13 to 18 (other than disclosures to the Victorian Inspectorate) in accordance with Part 2; and
 - (b) for the handling of those disclosures and, where appropriate, the notification of those disclosures to the IBAC under section 21(2) or 36(2); and
 - (c) for the protection of persons from detrimental action in contravention of section 45.
- (2) The IBAC must issue guidelines consistent with this Act and the regulations made under this Act for the management of the welfare of—
 - (a) any person who makes a protected disclosure; and
 - (b) any person affected by a protected disclosure whether as a witness in the investigation of the disclosure or as a person who is a subject of that investigation.
- (3) The IBAC must ensure its guidelines are readily available to—
 - (a) the public; and
 - (b) each entity required to establish procedures under section 58; and

- (c) each member, officer and employee of an entity referred to in paragraph (b); and
- (d) each member of Victoria Police personnel.

S. 57(3)(d)
amended by
No. 37/2014
s. 10(Sch.
item 134.7).

58 Procedures—entities required to establish procedures

- (1) An entity that may receive disclosures made in accordance with Part 2 must establish procedures—
 - (a) to facilitate the making of those disclosures; and
 - (b) for the handling of those disclosures and, where appropriate, the notification of those disclosures to the IBAC under section 21(2) or 36(2).
- (2) Subsection (1) does not apply to—
 - (a) the IBAC; or
 - (b) a Presiding Officer; or
 - (c) a member of Victoria Police personnel.
- (3) The Chief Commissioner of Police must, in relation to disclosures that may be made to a member of Victoria Police personnel in accordance with Part 2, establish procedures—
 - (a) to facilitate the making of those disclosures; and
 - (b) for the handling of those disclosures and, where appropriate, the notification of those disclosures to the IBAC under section 21(2) or 36(2).

S. 58(2)(c)
amended by
No. 37/2014
s. 10(Sch.
item 134.7).

S. 58(3)
amended by
No. 37/2014
s. 10(Sch.
item 134.7).

S. 58(6)
amended by
No. 37/2014
s. 10(Sch.
item 134.7).

- (4) The IBAC must establish procedures—
 - (a) to facilitate the making of disclosures to the IBAC in accordance with Part 2; and
 - (b) for the handling of those disclosures and disclosures notified to the IBAC under sections 21 and 36(2).
- (5) A public body must establish procedures for the protection of persons from detrimental action in contravention of section 45 taken by the public body or members, officers or employees of the public body.
- (6) The Chief Commissioner of Police must establish procedures for the protection of persons from detrimental action in contravention of section 45 taken by members of Victoria police personnel.
- (7) The holder of a public office prescribed for the purpose of this subsection must establish procedures for the protection of persons from detrimental action in contravention of section 45 taken by officers or employees of the office holder.

59 Procedures—requirements

- (1) The procedures required to be established by an entity under section 58 must be established—
 - (a) in the case of an entity existing immediately before the commencement of this section—as soon as practicable but no later than 6 months after that commencement; and
 - (b) in the case of an entity established on or after that commencement—as soon as practicable after the public body is established or a person is appointed to the office.

- (2) The procedures must be consistent with—
 - (a) this Act; and
 - (b) the regulations made under this Act.
- (3) The procedures, other than the procedures established by the Victorian Inspectorate, must be consistent with the guidelines issued by the IBAC under section 57.
- (4) An entity required to establish procedures under section 58 must ensure those procedures are readily available to the public and—
 - (a) if the entity is the Chief Commissioner of Police—to each member of Victoria Police personnel; or
 - (b) in any other case—to each member, officer and employee of the entity.

S. 59(4)(a)
amended by
No. 37/2014
s. 10(Sch.
item 134.7).

60 Review of procedures

- (1) The IBAC may at any time review the procedures established by an entity under section 58, other than the procedures established by the Victorian Inspectorate or the Ombudsman, to ensure the procedures are consistent with—
 - (a) this Act; and
 - (b) the regulations made under this Act; and
 - (c) the guidelines issued by the IBAC under section 57.
- (2) The IBAC may review the implementation of the procedures established by an entity under section 58, other than the procedures established by the Victorian Inspectorate, the Judicial Commission or the Ombudsman, to ensure their implementation is consistent with—

S. 60(2)
amended by
No. 16/2016
s. 174.

- (a) this Act; and
- (b) the regulations made under this Act; and
- (c) the guidelines issued by the IBAC under section 57.

61 Recommendation following review by the IBAC

- (1) The IBAC may make any recommendation to an entity that the IBAC thinks fit arising from a review under section 60 of the procedures of the entity or the implementation of those procedures by the entity.
- (2) If it appears to the IBAC that insufficient steps have been taken by an entity within a reasonable time after making a recommendation under subsection (1), the IBAC may, after considering any comments of the entity, send a copy of the recommendation to the relevant Minister.
- (3) In this section—

relevant Minister means—

- (a) in relation to a public body—the Minister responsible for that public body;
- (b) in relation to a public officer—the Minister responsible for that public officer.

62 Review of procedures established by the IBAC, the Judicial Commission and the Ombudsman

- (1) The Victorian Inspectorate may at any time review the procedures established by the IBAC, the Judicial Commission or the Ombudsman under section 58 to ensure the procedures are consistent with—
 - (a) this Act; and

S. 62
(Heading)
amended by
No. 16/2016
s. 175(1).

S. 62(1)
amended by
No. 16/2016
s. 175(2).

- (b) the regulations made under this Act; and
 - (c) the guidelines issued by the IBAC under section 57.
- (2) The Victorian Inspectorate may review the implementation of the procedures established by the IBAC, the Judicial Commission or the Ombudsman under section 58 to ensure their implementation is consistent with—
- (a) this Act; and
 - (b) the regulations made under this Act; and
 - (c) the guidelines issued by the IBAC under section 57.

S. 62(2)
amended by
No. 16/2016
s. 175(2).

63 Recommendation following review by the Victorian Inspectorate

- (1) The Victorian Inspectorate may make any recommendation to the IBAC or the Ombudsman that the Victorian Inspectorate thinks fit arising from a review under section 62.
- (2) If the IBAC or the Ombudsman decides not to adopt a recommendation made by the Victorian Inspectorate under subsection (1), the IBAC or the Ombudsman (as relevant) must—
 - (a) advise the Victorian Inspectorate in writing of that decision; and
 - (b) include in that advice the reasons for the decision.

Division 2—Guidelines and procedures relating to the Presiding Officers

64 Guidelines

- (1) Subject to subsection (3), the IBAC may issue guidelines consistent with this Act and the regulations made under this Act for procedures to facilitate the making of disclosures to the Speaker

of the Legislative Assembly in accordance with Part 2.

- (2) Subject to subsection (3), the IBAC may issue guidelines consistent with this Act and the regulations made under this Act for procedures to facilitate the making of disclosures to the President of the Legislative Council in accordance with Part 2.
- (3) The IBAC must not issue guidelines under this section, or any amendment to those guidelines, without the prior agreement of the relevant Presiding Officer.
- (4) The IBAC must ensure its guidelines are readily available to the public, to the relevant Presiding Officer and to each Member of the relevant House of Parliament.

65 Presiding Officer may establish procedures

- (1) A Presiding Officer of a House of Parliament may establish procedures—
 - (a) to facilitate the making of disclosures to the Presiding Officer; and
 - (b) for the handling of those disclosures and the notification of those disclosures to the IBAC under section 21(3).
- (2) The procedures must be consistent with—
 - (a) this Act; and
 - (b) the regulations made under this Act; and
 - (c) any guidelines issued by the IBAC under section 64 in relation to that House.
- (3) The Presiding Officer of a House of Parliament must ensure any procedures established by the Presiding Officer under this section are readily available to the public and to each Member of the House.

Division 3—Advisory role

66 The IBAC may give advice to the public sector

- (1) The IBAC may give advice to the public sector on any matter included in a guideline issued by the IBAC under this Part.
- (2) The giving of advice by the IBAC under subsection (1) does not give rise to—
 - (a) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person to whom the advice is given;
or
 - (b) any defence that would not otherwise be available to that person.
- (3) Without limiting subsection (2)(b), the giving of advice by the IBAC under subsection (1) does not give rise to a defence to proceedings for an offence under section 45(1).

Part 10—Reports

67 Annual report by the IBAC

- (1) The IBAC in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include—
 - (a) information about how to access the guidelines issued and procedures established by the IBAC under Part 9 of this Act;
 - (b) for the financial year—
 - (i) the number and types of assessable disclosures made directly to the IBAC;
 - (ii) the number and types of disclosures notified to the IBAC under section 21 or 22;
 - (iii) the number and types of assessments made by the IBAC under section 26 to determine whether a disclosure is a protected disclosure complaint;
 - (iv) the number and types of protected disclosure complaints that, under the **Independent Broad-based Anti-corruption Commission Act 2011**, have been—
 - (A) investigated by the IBAC;
 - (B) referred by the IBAC to another investigating entity;
 - (C) dismissed by the IBAC;
 - (v) the number and types of disclosures that the IBAC has been unable to either investigate or refer to another investigating entity;
 - (c) any recommendations made by the IBAC under section 61 during the financial year;

- (d) for each of those recommendations, the action taken by the entity in relation to the recommendation;
 - (e) the number of applications for an injunction made by the IBAC under section 50 during the financial year.
- (2) The matters required to be included in the report under subsection (1) are—
- (a) in addition to the matters required to be included in the report under section 165 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (b) subject to any restrictions on the inclusion of information imposed by that section.

S. 67(2)(a)
amended by
No. 82/2012
s. 315(f).

68 Annual report by the Victorian Inspectorate

- (1) The Victorian Inspectorate in its annual report for a financial year under Part 7 of the **Financial Management Act 1994** must include—
- (a) information about how to access the procedures established by the Victorian Inspectorate under Part 9 of this Act;
 - (b) for the financial year—
 - (i) the number and types of assessable disclosures made to the Victorian Inspectorate;
 - (ii) the number and types of assessments made by the Victorian Inspectorate under section 31 to determine whether a disclosure is a protected disclosure complaint;
 - (iii) the number and types of disclosures notified to the IBAC under section 21(2);

- (iv) the number and types of protected disclosure complaints referred to the Victorian Inspectorate by the IBAC;
 - (v) the number and types of protected disclosure complaints investigated by the Victorian Inspectorate;
 - (c) any recommendations made by the Victorian Inspectorate under section 63 during the financial year;
 - (d) for each of those recommendations, the action taken by the relevant body in relation to the recommendation;
 - (e) the number of applications for an injunction made by the Victorian Inspectorate under section 50 during the financial year.
- (2) The matters required to be included in the report under subsection (1) are—
- (a) in addition to the matters required to be included in the report under section 91 of the **Victorian Inspectorate Act 2011**; and
 - (b) subject to any restrictions on the inclusion of information imposed by that section.

S. 68(2)(a)
amended by
No. 82/2012
s. 315(g).

69 Annual report by other investigating entities

- (1) An investigating entity that is required under another Act to provide an annual report for a financial year must include in that report—
- (a) information about how to access the procedures established by the investigating entity under Part 9;
 - (b) for the financial year—
 - (i) the number and types of disclosures notified to the IBAC under section 21(2) or 22;

- (ii) the number and types of protected disclosure complaints referred to the investigating entity by the IBAC;
 - (iii) the number and types of protected disclosure complaints investigated by the investigating entity;
 - (iv) the number and types of protected disclosure complaints dismissed by the investigating entity;
 - (c) the number of applications for an injunction made by the investigating entity under section 50 during the financial year.
- (2) The matters required to be included in the report under subsection (1) are—
- (a) in addition to the matters required to be included in the report under any other Act; and
 - (b) subject to any restrictions on the inclusion of information imposed by section 71.

70 Annual report by public bodies that are not investigating entities

- (1) A public body, other than an investigating entity, that is required under another Act to provide an annual report for a financial year must include in that report—
- (a) information about how to access the procedures established by the public body under Part 9; and
 - (b) in the case of a public body that can receive disclosures made in accordance with Part 2—the number of disclosures notified to the IBAC under section 21(2) during the financial year.

- (2) The matters required to be included in the report under subsection (1) are—
 - (a) in addition to the matters required to be included in the report under any other Act; and
 - (b) subject to any restrictions on the inclusion of information imposed by section 71.

71 Information likely to lead to identification of person who has made assessable disclosure

- (1) The matters required to be included in a report under section 69(1) or 70(1) must not include information that is likely to lead to the identification of a person who has made an assessable disclosure.
- (2) However, a matter included in a report under section 69(1) or 70(1) may include information to which section 53(2)(a), (c) or (d) applies.

Part 11—General

Division 1—Offences and proceedings

72 Offence to make false disclosure or provide false further information

- (1) A person must not provide information under this Act that the person knows is false or misleading in a material particular, intending that the information be acted on as a protected disclosure.

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

- (2) A person must not provide further information, relating to a protected disclosure made by the person, that the person knows is false or misleading in a material particular.

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

73 Offence to falsely claim disclosure is a protected disclosure or is a protected disclosure complaint

- (1) A person must not claim that a matter is the subject of a protected disclosure knowing that claim to be false.

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

- (2) A person must not claim that a matter is the subject of a disclosure that the IBAC or the Victorian Inspectorate has determined to be a protected disclosure complaint knowing that claim to be false.

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

74 Offence to disclose certain advice

- (1) A person who is advised by an entity under section 24(2), 25(2) or 37(1) that a disclosure or related disclosure made by the person to the entity has been notified to the IBAC for assessment under this Act must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (2) A person who is advised by the IBAC under section 28(1), or by the Victorian Inspectorate under section 28(1) as applied by section 31, that a disclosure made by the person has been determined by the IBAC or the Victorian Inspectorate, as the case may be, to be a protected disclosure complaint must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (3) A person who receives information referred to in subsection (1) or (2) in any circumstance specified in subsection (5) must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (4) A person other than a person referred to in subsection (3) who receives information referred to in subsection (1), (2) or (3) from a person referred to in those subsections must not disclose that information except in the circumstances specified in subsection (5).

Penalty: 60 penalty units or 6 months imprisonment or both.

- (5) For the purposes of this section, the specified circumstances are—
- (a) disclosure 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, a notice cancelling a confidentiality notice or an order extending a confidentiality notice or to comply with this section, 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, a notice cancelling a confidentiality notice, an order extending a confidentiality notice or this section—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, a notice cancelling a confidentiality notice, an order extending a confidentiality notice or this section without assistance—to an independent person;
 - (b) disclosure for the purposes of obtaining legal advice or representation in relation to—
 - (i) a witness summons, a confidentiality notice, a notice cancelling a confidentiality notice, an order extending a confidentiality notice or compliance with this section;

- (ii) the person's rights, liabilities, obligations and privileges under a relevant Act;
- (c) disclosure by an Australian legal practitioner who receives a disclosure in the circumstances specified in paragraph (b), 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;
- (d) disclosure for the purposes of making—
 - (i) a complaint to the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (ii) a complaint to the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**;
- (e) disclosure for the purposes of complying with—
 - (i) a witness summons served on a person by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
 - (ii) a witness summons served on a person by the Victorian Inspectorate under the **Victorian Inspectorate Act 2011**;
- (f) disclosure of information that has been published by the IBAC in a report or has otherwise been made public in accordance with a relevant Act;
- (g) disclosure to a person's spouse or domestic partner;

- (h) disclosure to a person's employer or manager or both;
- (i) disclosure as is otherwise authorised or required to be made by or under a relevant Act.

(6) For the purposes of subsection (5)—

confidentiality notice means—

- (a) a confidentiality notice issued by the IBAC under section 33C(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a confidentiality notice issued by the Victorian Inspectorate under section 28E(1) of the **Victorian Inspectorate Act 2011**; or
- (c) a confidentiality notice issued by the Ombudsman under section 26C(1) of the **Ombudsman Act 1973**;

relevant Act means—

- (a) this Act; or
- (b) the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (c) the **Victorian Inspectorate Act 2011**; or
- (ca) the **Judicial Commission of Victoria Act 2016**; or
- (cb) Part IIIAA of the **Constitution Act 1975**; or
- (d) the **Ombudsman Act 1973**; or
- (e) Part 10 of the **Victoria Police Act 2013**;

S. 74(6) def. of *relevant Act* amended by Nos 37/2014 s. 10(Sch. item 134.8), 16/2016 s. 176(a).

S. 74(6) def. of
*witness
summons*
amended by
No. 16/2016
s. 176(b).

witness summons means—

- (a) a witness summons issued by the IBAC under section 82F(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (b) a witness summons issued by the Victorian Inspectorate under section 33E(1) of the **Victorian Inspectorate Act 2011**; or
- (ba) a requirement to produce a document or thing under section 69 of the **Judicial Commission of Victoria Act 2016**; or
- (bb) a witness summons issued under section 70 of the **Judicial Commission of Victoria Act 2016**; or
- (c) a witness summons issued by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**.

75 Power to bring proceedings

Proceedings for an offence under this Act or the regulations made under this Act may be brought by—

- (a) the IBAC;
- (b) a sworn IBAC Officer within the meaning of section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** who is authorised by the Commissioner;
- (c) the Victorian Inspectorate;

- (d) a Victorian Inspectorate Officer who is authorised by the Victorian Inspectorate;
- (e) a police officer.

S. 75(e)
substituted by
No. 37/2014
s. 10(Sch.
item 134.9).

Division 2—Miscellaneous

76 Protection of public officers

- (1) This section applies if—
 - (a) a public officer of a receiving entity discloses—
 - (i) information to another public officer of that entity in the course of handling a disclosure; or
 - (ii) information in the course of notifying a disclosure to the IBAC under section 21 or 22; or
 - (iii) information to the IBAC under section 23; and
 - (b) the disclosure of the information is made in good faith; and
 - (c) the disclosure is made in accordance with—
 - (i) this Act and the regulations made under this Act; and
 - (ii) the guidelines issued by the IBAC under Part 9; and
 - (iii) the procedures of the receiving entity or, in the case of a member of Victoria Police personnel, the procedures of the Chief Commissioner of Police established under Part 9.

S. 76(1)(c)(iii)
amended by
No. 37/2014
s. 10(Sch.
item 134.10).

- (2) By disclosing the information, the public officer does not—
- (a) commit an offence under section 95 of the **Constitution Act 1975** or a provision of any other Act that imposes a duty to maintain confidentiality with respect to a matter or any other restriction on the disclosure of information; or
 - (b) breach an obligation by way of oath or rule of law or practice or under an agreement requiring him or her to maintain confidentiality or otherwise restricting the disclosure of information with respect to a matter.
- (3) The public officer is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for disclosing the information.
- (4) In this section—

S. 76(4) def. of *public officer of a receiving entity* amended by No. 37/2014 s. 10(Sch. item 134.11).

public officer of a receiving entity means—

- (a) an employee, member or officer of the receiving entity; or
- (b) if the receiving entity is a public officer, that public officer; or
- (c) a member of Victoria Police personnel prescribed for the purposes of section 18;

receiving entity means an entity to which a disclosure may be made under Division 2 of Part 2.

77 Immunity of the IBAC and Victorian Inspectorate and officers

- (1) The IBAC, an IBAC Officer, 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 duty or a function or the exercise of a power under this Act or the regulations made under this Act; or
 - (b) in the reasonable belief that the act or omission was in the performance of a duty or a function or the exercise of a power under this Act or the regulations made under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to the IBAC, an IBAC Officer, the Victorian Inspectorate or a Victorian Inspectorate Officer attaches instead to the State.

78 Exemption from Freedom of Information Act 1982

- (1) The **Freedom of Information Act 1982** does not apply to a document that is in the possession of any person or body, to the extent that the document discloses information that—
 - (a) relates to a protected disclosure; or
 - (b) relates to an assessable disclosure; or
 - (c) is likely to lead to the identification of a person who made a protected disclosure.
- (2) In this section, *document* has the same meaning as it has in the **Freedom of Information Act 1982**.

79 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 may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) confer a discretionary authority or impose a duty on a specified person or a specified class of person.

S. 80
repealed by
No. 85/2012
s. 80(4).

* * * * *

Part 12—Transitional and savings provisions

81 Offence to reveal confidential information obtained or received under the Whistleblowers Protection Act 2001

- (1) Subsection (2) applies if a person obtains or receives information in the course of or as a result of a protected disclosure, within the meaning of the **Whistleblowers Protection Act 2001**, or the investigation of a disclosed matter under that Act whether—
 - (a) before the commencement of section 82; or
 - (b) on or after the commencement of section 82 under the continued provisions of the **Whistleblowers Protection Act 2001**.
- (2) On or after the commencement of section 82, the person must not disclose the information referred to in subsection (1) except as provided in subsection (3).

Penalty: 60 penalty units or 6 months imprisonment or both.
- (3) A person may disclose information referred to in subsection (1)—
 - (a) for the purposes of the exercise of functions under the continued provisions of the **Whistleblowers Protection Act 2001** of the President of the Legislative Council, the Speaker of the Legislative Assembly, the Ombudsman, the Chief Commissioner of Police or a public body; or
 - (b) in the case of information relating to the investigation of a disclosure made in accordance with Part 2 of the **Whistleblowers Protection Act 2001** that transfers from the Director to the IBAC under Schedule 1—as would be permitted

- under the **Independent Broad-based Anti-corruption Commission Act 2011** if the information had been disclosed under this Act or in the course of an investigation of a protected disclosure complaint under any Act; or
- (c) for the purposes of any proceeding in relation to an offence against section 22, 60 or 106 of the **Whistleblowers Protection Act 2001** or section 19 of the **Evidence Act 1958**; or
- (d) for the purposes of any criminal or disciplinary proceedings taken against a member of the police force as a result of an investigation of a disclosed matter by the Chief Commissioner of Police under Part 7 of the **Whistleblowers Protection Act 2001**; or
- (e) for the purposes of any report of recommendation to be made under any continued provision of the **Whistleblowers Protection Act 2001**; or
- (f) for the purposes of any report referred to in Part 9 of the **Whistleblowers Protection Act 2001**.
- (4) In this section—
- continued provision*, of the **Whistleblowers Protection Act 2001**, means a provision of that Act continued in force under Schedule 1;
- Director* has the same meaning as it has in section 3(1) of the **Whistleblowers Protection Act 2001**;
- public body* has the same meaning as it has in section 3(1) of the **Whistleblowers Protection Act 2001**.

82 Transitional and savings provisions

Schedule 1 has effect.

* * * * *

**Pt 13
(Heading and
ss 83–174)
repealed by
No. 85/2012
s. 174.**

Schedule 1—Transitional and savings provisions

Section 82

1 Definitions

In this Schedule—

commencement day means the day on which section 83 comes into operation;

Director means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** as in force immediately before its repeal;

OPI means the Office of Police Integrity continued by section 5 of the **Police Integrity Act 2008** immediately before its repeal;

public body has the same meaning as it has in the **Whistleblowers Protection Act 2001**;

SIM means the Special Investigations Monitor appointed under section 5 of the **Major Crime (Special Investigations Monitor) Act 2004** as in force immediately before its repeal;

WPA means the **Whistleblowers Protection Act 2001** 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 WPA 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 WPA necessary to give effect to that continued provision; and
- (b) any regulations made under the WPA for the purposes of that continued provision.

3 WPA continues to apply to disclosures made before commencement day

- (1) If before the commencement day a disclosure is made in accordance with Part 2 of the WPA, on and after the commencement day—
 - (a) subject to any contrary provision in this Schedule, the WPA continues to apply to that disclosure despite the repeal of that Act; and
 - (b) to avoid doubt, the protections under Part 3 of the WPA continue to apply to that disclosure.
- (2) Subclause (1)(b) applies whether the disclosure is investigated, or otherwise dealt with, as a disclosure under the WPA or as a protected disclosure complaint under this or any other Act.
- (3) Any provision of this Schedule that continues the operation of the WPA does not affect the generality of this clause.

4 Disclosure assessed by the Ombudsman to be public interest disclosure

- (1) This clause applies if, on or after the commencement day, the Ombudsman determines under section 24 of the WPA that a disclosure made in accordance with Part 2 of that Act is a public interest disclosure.

- (2) The Ombudsman must—
- (a) despite the repeal of the WPA, commence an investigation of the disclosed matter under Division 3 of Part 5 of the WPA; or
 - (b) notify the disclosure to the IBAC under section 21(2) of this Act; or
 - (c) despite the repeal of the WPA, decide under section 40 of the WPA not to investigate the disclosed matter.
- (3) On and after the commencement day the Ombudsman must not refer a disclosure made under the WPA to another entity under section 41, 42, 43 or 44 of the WPA.
- (4) A disclosure notified to the IBAC under subclause (2)(b) is taken to be a protected disclosure complaint and must be dealt with by the IBAC in accordance with the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (5) The notification by the Ombudsman of a disclosure to the IBAC pursuant to subclause (2)(b) does not contravene section 22 of the WPA or section 80 of this Act.

5 Disclosure made to the Director but not notified to Ombudsman

If, before the commencement day—

- (a) a disclosure has been made to the Director in accordance with Part 2 of the WPA; and
- (b) the Director has not referred the disclosure to the Ombudsman under section 34 or 36 of the WPA—

the disclosure is on the commencement day taken to have been made to the IBAC in accordance with Division 2 of Part 2 of this Act and must be

dealt with by the IBAC as an assessable disclosure in accordance with this Act.

6 Report by Ombudsman on investigation by Director

- (1) This clause applies if the Director has—
 - (a) completed an investigation of a disclosed matter under Part 5 of the WPA; and
 - (b) made a report to the Ombudsman under section 62 of the WPA on the completed investigation.
- (2) On and after the commencement day, the Ombudsman may—
 - (a) make a written report on the results of the investigation to the IBAC; and
 - (b) make recommendations as to the action to be taken as a result of the investigation.
- (3) On or after the commencement day, the Ombudsman must not make a report under section 63A or 103 of the WPA on the results of an investigation completed by the Director.

7 Investigation of disclosure referred to the Director

- (1) This clause applies if, before the commencement day—
 - (a) a disclosed matter has been referred under section 43 of the WPA to the Director for investigation; and
 - (b) the investigation of the matter has not commenced or has commenced but has not been completed.
- (2) For the purposes of subclause (1)(b), an investigation is taken not to have been completed if the Director has not made a report of the investigation to the Ombudsman under section 62 of the WPA.

- (3) On or after the commencement day, the disclosed matter is taken to be a protected disclosure complaint made to the IBAC and must be dealt with in accordance with the **Independent Broad-based Anti-corruption Commission Act 2011**.
- (4) Subject to clause 7 of the Schedule to the **Independent Broad-based Anti-corruption Commission Act 2011**, the IBAC may, in any investigation of the disclosed matter under that Act, use or rely on any evidence given, or document or other thing produced in relation to the disclosed matter before the commencement day.

8 Witness summons issued by the Director

- (1) This clause applies if a witness summons issued by the Director under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** is in force immediately before the commencement day in relation to an investigation by the Director under the WPA.
- (2) Despite the repeal of the WPA—
 - (a) the witness summons remains in force on and after the commencement day; and
 - (b) the provisions under the WPA relating to any associated examination or obligation to produce documents continue to apply in relation to the witness summons; and
 - (c) the IBAC may on and after the commencement day exercise the same powers under section 18 of the **Evidence (Miscellaneous Provisions) Act 1958** in relation to the person summoned that the Director could exercise immediately before the commencement day; and

- (d) any confidentiality notice issued by the Director under section 61G of the WPA in relation to the witness summons that is in force immediately before the commencement day remains in force on and after the commencement day.
- (3) If the summons is directed to a person who is held in a prison or police gaol, the IBAC may give a direction under section 126 of the **Independent Broad-based Anti-corruption Commission Act 2011** in relation to that person.

Sch. 1 cl. 8(3)
amended by
No. 82/2012
s. 316(a).

9 Pending application for search warrant

- (1) This clause applies if—
- (a) an application has been made for a search warrant by the Director under section 61C(1) of the WPA before the commencement day; and
 - (b) a magistrate has not determined that application before that day.
- (2) Despite the repeal of the WPA—
- (a) a magistrate may determine that application on or after the commencement day; and
 - (b) if a magistrate issues a warrant under section 61C(2) of the WPA in respect of that application, sections 61C to 61F of that Act continue to apply to the search warrant as if a reference in those sections to the Director were a reference to the IBAC.

10 Search warrant

- (1) This clause applies to a search warrant issued under section 61C(2) of the WPA that is in force immediately before the commencement day.

Sch. 1
cl. 10(2)(b)
amended by
No. 82/2012
s. 316(b).

- (2) Despite the repeal of the WPA, on and after the commencement day—
- (a) the warrant continues in force in accordance with its terms; and
 - (b) subject to any conditions or limitations on his or her appointment, an IBAC Officer appointed to be an authorised officer under section 81 of the **Independent Broad-based Anti-corruption Commission Act 2011** is authorised to do anything that a person named in the warrant is authorised to do pursuant to the warrant or in the execution of the warrant; and
 - (c) sections 61C to 61F of the WPA continue to apply to the warrant and anything done under the warrant as if a reference in those sections to the Director were a reference to the IBAC.

11 Pending application for warrant to arrest a person

- (1) This clause applies if—
- (a) an application has been made for a warrant to arrest a person by the Director under section 61K(1) of the WPA before the commencement day; and
 - (b) a magistrate has not determined that application before that day.
- (2) Despite the repeal of the WPA—
- (a) a magistrate may determine that application on or after the commencement day; and
 - (b) if a magistrate issues a warrant under section 61K(2) of the WPA in respect of that application—

- (i) sections 61K and 61L of the WPA continue to apply in relation to the person arrested and held in custody pursuant to the warrant; and
- (ii) for those purposes, a reference to the Director in sections 61K and 61L of the WPA is taken to be a reference to the IBAC.

12 Warrant to arrest a person

- (1) This clause applies to a warrant to arrest a person issued under section 61K(2) of the WPA that is in force immediately before the commencement day.
- (2) Despite the repeal of the WPA, on and after the commencement day—
 - (a) the warrant remains in force in accordance with its terms; and
 - (b) subject to any conditions or limitations on his or her appointment, an IBAC Officer appointed to be an authorised officer under section 81 of the **Independent Broad-based Anti-corruption Commission Act 2011** is authorised to do anything that a person named in the warrant is authorised to do pursuant to the warrant or in the execution of the warrant; and
 - (c) sections 61K and 61L of the WPA continue to apply in relation to the person arrested and held in custody pursuant to the warrant; and
 - (d) for those purposes, a reference to the Director in sections 61K and 61L of the WPA is taken to be a reference to the IBAC.

Sch. 1
cl. 12(2)(b)
amended by
No. 82/2012
s. 316(c).

13 Document and other things in possession of the Director

- (1) This clause applies subject to clauses 14 and 15.
 - (2) Any document or thing seized by the Director from police personnel premises under section 61BC of the WPA that is in the possession of the Director immediately before the commencement day, is on the commencement day taken to have been seized by the IBAC under Division 3 of Part 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
 - (3) Any document or thing seized by the Director under a search warrant issued under section 61C of the WPA that is in the possession of the Director immediately before the commencement day, is on the commencement day taken to have been seized by the IBAC under Division 4 of Part 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
 - (4) If a document or thing—
 - (a) is seized by the Director under section 61BC of the WPA from a public authority premises, other than police personnel premises; and
 - (b) immediately before the commencement day, the document or thing is in the possession of the Director—on and after the commencement day, section 61BH of the WPA continues to apply in relation to the thing or document as if a reference in that section to the Director were a reference to the IBAC.
 - (5) For the purposes of this clause, *police personnel premises* has the same meaning as it has in the **Independent Broad-based Anti-corruption Commission Act 2011**.
-

14 Request for copy of thing or information seized

- (1) This clause applies to a request under section 61BD(1) of the WPA for a copy of a thing or information seized that has not been determined before the commencement day.
- (2) Despite the repeal of the WPA, section 61BD of that Act continues to apply to that request on and after the commencement day except that—
 - (a) subject to subclause (3), a reference in that section to a request made to an authorised officer is to be read as a reference to a request made to an IBAC Officer appointed to be an authorised officer under section 81 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (b) a reference in that section to the Director is to be read as a reference to the IBAC.
- (3) The exercise of a power or function by an IBAC Officer under section 61BD of the WPA pursuant to subclause (2)(a) is subject to any conditions or limitations on the IBAC Officer's appointment as an authorised officer under section 81 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

Sch. 1
cl. 14(2)(a)
amended by
No. 82/2012
s. 316(d).

Sch. 1 cl. 14(3)
amended by
No. 82/2012
s. 316(d).

15 Application for return of document or thing seized

- (1) This clause applies to an application to the Magistrates' Court under section 61BG(1) of the WPA for the return of a document or thing seized that has not been determined before the commencement day.
- (2) Despite the repeal of the WPA, section 61BG of that Act continues to apply to that application on and after the commencement day as if a reference in that section to the Director is to be read as a reference to the IBAC.

16 Claim of legal professional privilege made before commencement day

- (1) This clause applies if, before the commencement day—
 - (a) a person has claimed under section 61BB(3)(a) or 61BC(2)(a) of the WPA that a document or thing is the subject of legal professional privilege; and
 - (b) the Magistrates' Court has not determined whether or not the document or thing is the subject of legal professional privilege.
- (2) Despite the repeal of the WPA, on and after the commencement day—
 - (a) the procedure under section 61BE of the WPA continues to apply to the handling of the document or thing as if a reference in that section to an authorised officer were a reference to an IBAC Officer appointed to be an authorised officer under section 81 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
 - (b) section 61C of the WPA continues to apply as if a reference in that section to the Director were a reference to the IBAC; and
 - (c) the Magistrates' Court must make its decision under section 61BF of the WPA.

Sch. 1
cl. 16(2)(a)
amended by
No. 82/2012
s. 316(d).

17 Claim of legal professional privilege made on or after commencement day

- (1) Any claim that a document or thing is the subject of legal professional privilege made on or after the commencement day must be dealt with in accordance with the **Independent Broad-based Anti-corruption Commission Act 2011** and the claim determined by the Supreme Court under section 101 of that Act.

Sch. 1 cl. 17(1)
amended by
No. 82/2012
s. 316(e).

- (2) Subclause (1) applies even if the document or thing is the subject of a warrant issued under the WPA.

18 Direction given by the Director

- (1) A direction given by the Director under section 55(1) of the WPA that is in force immediately before the commencement day is on the commencement day taken to have been given by the IBAC under section 84(2) of the **Independent Broad-based Anti-corruption Commission Act 2011**.

Sch. 1 cl. 18(1)
amended by
No. 82/2012
s. 316(f)(i).

- (2) A direction given by the Director under section 61L(2) of the WPA that is in force immediately before the commencement day is on the commencement day taken to have been given by the IBAC under section 126(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**.

Sch. 1 cl. 18(2)
amended by
No. 82/2012
s. 316(f)(ii).

19 Transmission of report to Parliament

- (1) This clause applies if, before the commencement day, the Director is required under section 103A of the WPA to cause a report to be transmitted to each House of Parliament.
- (2) On or after the commencement day, the IBAC may cause the report to be transmitted to each House of the Parliament if the Director has not already done so.

20 Disclosure made to the Chief Commissioner of Police but not notified to Ombudsman

If, before the commencement day—

- (a) a disclosure has been made to the Chief Commissioner of Police in accordance with Part 2 of the WPA; and

- (b) the Chief Commissioner of Police has not referred the disclosure to the Ombudsman under section 29 or 31 of the WPA—

the disclosure is on the commencement day taken to have been made to the Chief Commissioner of Police in accordance with Division 2 of Part 2 of this Act and must be notified to the IBAC under section 21(2) of this Act.

21 Investigation completed by Chief Commissioner of Police

- (1) This clause applies if the Chief Commissioner of Police has completed an investigation of a disclosed matter under Part 7 of the WPA.
- (2) Despite the repeal of the WPA, on and after the commencement day—
- (a) Division 3 of Part 7 of the WPA applies to the investigation; and
- (b) the Ombudsman may make a written report of the results of the investigation in accordance with section 103 of the WPA.

22 Investigation commenced but not completed by Chief Commissioner of Police

- (1) This clause applies if the Chief Commissioner of Police has commenced but not completed an investigation of a disclosed matter under Part 7 of the WPA before the commencement day.
- (2) On and after the commencement day the Chief Commissioner of Police must continue the investigation of the disclosed matter as if it were a protected disclosure complaint referred to the Chief Commissioner of Police under the **Independent Broad-based Anti-corruption Commission Act 2011**.

23 Investigation by Chief Commissioner of Police taken over by the Ombudsman

- (1) This clause applies if the Ombudsman—
 - (a) has taken over an investigation by the Chief Commissioner of Police under section 86 of the WPA before the commencement day; and
 - (b) has not completed that investigation before that day.
- (2) Despite the repeal of the WPA, on and after the commencement day, the Ombudsman must deal with the disclosed matter in accordance with that Act.

24 Disclosure made to a public body before the commencement day

- (1) This clause applies if, before the commencement day—
 - (a) a disclosure has been made to a public body, other than the Chief Commissioner of Police, in accordance with Part 2 of the WPA; and
 - (b) the public body has not referred the disclosure to the Ombudsman under section 29 or 31 of the WPA.
- (2) On and after the commencement day—
 - (a) the public body must notify the disclosure to the IBAC no later than 28 days after the commencement day; and
 - (b) the disclosure must be dealt with by the IBAC as if it were an assessable disclosure in accordance with this Act.

25 Investigation by public body

- (1) This clause applies if a public body, other than the Chief Commissioner of Police, has commenced but not completed the investigation of a disclosed matter under the WPA before the commencement day.
- (2) Despite the repeal of the WPA, on and after the commencement day, the public body must—
 - (a) complete the investigation of the disclosure under the WPA; and
 - (b) without limiting paragraph (a)—
 - (i) provide information to the Ombudsman about the progress of the investigation in accordance with section 80 of the WPA; and
 - (ii) report to the Ombudsman on the completion of the investigation in accordance with section 82 of the WPA; and
 - (iii) have regard to the procedures established by the public body under section 68 of the WPA and the guidelines prepared and established by the Ombudsman under section 69 of the WPA.

26 Investigation by public body taken over by the Ombudsman

- (1) This clause applies if the Ombudsman—
 - (a) has taken over an investigation by a public body, other than the Chief Commissioner of Police, under section 75 of the WPA before the commencement day; and

(b) has not completed that investigation before that day.

(2) Despite the repeal of the WPA, on and after the commencement day, the Ombudsman must deal with the disclosed matter in accordance with that Act.

27 Disclosure made to a Presiding Officer

(1) This clause applies if a disclosure has been made to a Presiding Officer in accordance with Part 2 of the WPA but has not been referred under section 96 of that Act to the Ombudsman before the commencement day.

(2) On and after the commencement day—

(a) the Presiding Officer may notify the disclosure to the IBAC; and

(b) if the disclosure is notified to the IBAC, the disclosure is taken to be an assessable disclosure and must be dealt with by the IBAC in accordance with this Act.

28 Disclosure referred by a Presiding Officer to the Ombudsman

(1) This clause applies if a disclosure has been referred to the Ombudsman by a Presiding Officer before the commencement day.

(2) Despite the repeal of the WPA, on and after the commencement day, the Ombudsman must deal with the disclosed matter in accordance with that Act.

29 Disclosure made after the commencement day

- (1) Subclause (2) applies if—
 - (a) a disclosure is made at any time no later than 6 months after the commencement day; and
 - (b) had the disclosure been made before the commencement day, it would be a disclosure made in accordance with Part 2 of the WPA; and
 - (c) the disclosure is not an assessable disclosure.
- (2) Despite anything to the contrary in this Act, on and after the commencement day—
 - (a) if the disclosure is made to a Presiding Officer, the Presiding Officer may notify the disclosure to the IBAC;
 - (b) in any other case, the entity to which the disclosure is made must notify the disclosure to the IBAC no later than 28 days after the disclosure is made.
- (3) A disclosure notified to the IBAC under subclause (2) is taken to be an assessable disclosure and must be dealt with by the IBAC in accordance with this Act.

30 Exemptions from Freedom of Information Act 1982

Despite the repeal of the WPA, section 109 of that Act continues to apply to any document specified in that section.

31 Reference to Director's functions in annual report of the IBAC

On and after the commencement day, a reference in section 165 of the **Independent Broad-based Anti-corruption Commission Act 2011** to the performance of the IBAC's duties and functions is to be read as including a reference to the performance by the IBAC of any duties and

Sch. 1 cl. 31
amended by
No. 82/2012
s. 316(g).

functions under the WPA pursuant to this Schedule during the financial year to which the annual report relates.

32 Investigations by the Special Investigations Monitor

- (1) This clause applies if, before the commencement day, the Special Investigations Monitor has received a complaint under section 105E of the WPA and either has not commenced or has not completed an investigation of the complaint.
- (2) On or after the commencement day, the complaint is taken to be a complaint made to the Victorian Inspectorate under section 43 of the **Victorian Inspectorate Act 2011** and must be dealt with in accordance with that Act.
- (3) Subject to clause 8 of the Schedule to the **Victorian Inspectorate Act 2011**, the Victorian Inspectorate may, in any investigation of the complaint under that Act, use or rely on any evidence given or document or other thing produced in relation to the complaint before the commencement day.

Sch. 1 cl. 32(2)
amended by
No. 82/2012
s. 316(h).

33 Complaint regarding examination under the WPA

A complaint that could be made to the Special Investigations Monitor in accordance with section 105E of the WPA had that Act not been repealed may, on and after the commencement day, be made to the Victorian Inspectorate.

Note

Under section 105E of the WPA a person who has attended the Director in the course of an investigation under the WPA may make a complaint within 3 days after the person was excused from attendance. Consequently, this clause would only apply to a complaint in relation to an attendance occurring 3 days or less before the repeal of the WPA.

34 Actions taken by the Victorian Inspectorate under clause 32 or 33

For the purposes of clause 32 and 33—

Sch. 1 cl. 34(a)
amended by
No. 82/2012
s. 316(i).

- (a) section 47 of the **Victorian Inspectorate Act 2011** (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;

Sch. 1 cl. 34(b)
amended by
No. 82/2012
s. 316(j).

- (b) section 48(1) of the **Victorian Inspectorate Act 2011** applies as if a reference to an investigation in relation to the IBAC or IBAC personnel under Part 3 were a reference to an investigation under this clause;
- (c) Division 2 of Part 3 of the **Victorian Inspectorate Act 2011** 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 3 of the **Victorian Inspectorate Act 2011** apply;

Sch. 1 cl. 34(e)
amended by
No. 82/2012
s. 316(k).

- (e) section 78 of the **Victorian Inspectorate Act 2011** 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) of the Victorian Inspectorate Act 2011 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; | Sch. 1 cl. 34(f)
amended by
No. 82/2012
s. 316(l). |
| (g) sections 87 and 88 of the Victorian Inspectorate Act 2011 apply; | Sch. 1 cl. 34(g)
amended by
No. 82/2012
s. 316(m). |
| (h) section 89(1) (except paragraph (b)) of the Victorian Inspectorate Act 2011 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; | Sch. 1 cl. 34(h)
amended by
No. 82/2012
s. 316(n). |
| (i) section 90 of the Victorian Inspectorate Act 2011 applies. | Sch. 1 cl. 34(i)
amended by
No. 82/2012
s. 316(o). |

35 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 summons issued by the Director under section 17 of the Evidence (Miscellaneous Provisions) Act 1958 unless the Director has given a written report on the summons to the SIM under section 105B of the WPA before the commencement day. | Sch. 1 cl. 35(1)
amended by
No. 82/2012
s. 316(p). |
| (2) Section 142 of the Independent Broad-based Anti-corruption Commission Act 2011 applies, on and from the commencement day, in relation to a warrant to arrest a person issued under section 61K(2) of the WPA unless the Director has given a written report on the warrant to the SIM under section 105C of the WPA before the commencement day. | Sch. 1 cl. 35(2)
amended by
No. 82/2012
s. 316(q). |

Sch. 1 cl. 35(3)
amended by
No. 82/2012
s. 316(r).

(3) Section 134 of the **Independent Broad-based Anti-corruption Commission Act 2011** applies, on and from the commencement day, in relation to the video-recording, made under section 61BA of the WPA, and any transcript of an attendance by a person in the course of an investigation by the Director under the WPA or in compliance with a summons under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958** unless the Director has given a written report on and a copy video-recording and any transcript of the attendance to the SIM under section 105D of the WPA before the commencement day.

Sch. 1 cl. 35(4)
amended by
No. 82/2012
s. 316(s).

(4) On and from the commencement day, the IBAC must comply with a requirement of the Victorian Inspectorate under section 40 of the **Victorian Inspectorate Act 2011** in relation to an attendance referred to in subclause (3) occurring before the commencement day as if that attendance were an examination of a person by the IBAC unless the Director has given a written report on and a copy video recording and any transcript of the attendance to the SIM under section 105D of the WPA before the commencement day.

36 Annual report of Victorian Inspectorate

Sch. 1 cl. 36(1)
amended by
No. 82/2012
s. 316(t).

(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) of the **Victorian Inspectorate Act 2011** 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 WPA 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 105L(1) of the WPA 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 105L(1) of the WPA for the financial year ending before the commencement day but that report has not been laid before each House of the Parliament under section 105L of the WPA, the Victorian Inspectorate must cause that report to be laid before each House of the Parliament in accordance with the applicable requirements of section 105L of the WPA 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 WPA, the Victorian Inspectorate may prepare a report referred to in those subclauses as a separate report and cause the report to be laid before each House of the Parliament in accordance with section 105L of the WPA as in force immediately before its repeal; or
- (b) if the report relates to a partial financial year completed before the repeal of the WPA, the Victorian Inspectorate may prepare a report referred to in those subclauses as part of its own annual report under section 91 of the **Victorian Inspectorate Act 2011**.

Sch. 1
cl. 36(4)(b)
amended by
No. 82/2012
s. 316(u).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 14 November 2012

Legislative Council: 29 November 2012

The long title for the Bill for this Act was "A Bill for an Act to encourage and facilitate disclosures of improper conduct by public officers, public bodies and other persons or of detrimental action taken in reprisal for a disclosure, to provide protection for persons who make those disclosures and to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures, to make related amendments to other Acts, to repeal the **Whistleblowers Protection Act 2001** and for other purposes."

The **Protected Disclosure Act 2012** was assented to on 18 December 2012 and came into operation on 10 February 2013: Special Gazette (No. 32) 6 February 2013 page 2.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in

Protected Disclosure Act 2012
No. 85 of 2012
Endnotes

a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Protected Disclosure Act 2012** by Acts and subordinate instruments.

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: Ss 315, 316 on 11.2.13: s. 2(5)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Protected Disclosure Act 2012, No. 85/2012

Assent Date: 18.12.12
Commencement Date: S. 174 on 10.2.14: s. 174; s. 80(4) on 10.2.15: s. 80(4)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, No. 5/2013

Assent Date: 26.2.13
Commencement Date: S. 64 on 17.4.13: Special Gazette (No. 141) 16.4.13 p. 1
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Courts Legislation Amendment (Judicial Officers) Act 2013, No. 63/2013

Assent Date: 6.11.13
Commencement Date: S. 95 on 1.2.14: s. 2(2)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 77) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 134) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Protected Disclosure Act 2012
No. 85 of 2012
Endnotes

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date: 2.9.14
Commencement Date: S. 140(Sch. 3 item 37) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 29) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Judicial Commission of Victoria Act 2016, No. 16/2016

Assent Date: 19.4.16
Commencement Date: Ss 167–176 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Health Complaints Act 2016, No. 22/2016

Assent Date: 3.5.16
Commencement Date: S. 241 on 1.2.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016

Assent Date: 31.5.16
Commencement Date: Ss 84, 85 on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

Freedom of Information Amendment (Office of the Victorian Information Commissioner) Act 2017, No. 20/2017

Assent Date: 16.5.17
Commencement Date: S. 134(Sch. 1 item 14) on 1.9.17: s. 2(3)
Current State: This information relates only to the provision/s amending the **Protected Disclosure Act 2012**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.