

PARLIAMENT OF VICTORIA

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**Protected Disclosure Bill 2012**

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# PARLIAMENT OF VICTORIA

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Introduced in the Assembly  
Amended in the Assembly on 29 November 2012

## **Protected Disclosure Bill 2012**

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 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

5

(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—

*acting coroner* means—

(a) a coroner appointed under the **Coroners Act 1985** (as in force before the commencement of the **Coroners Act 2008**) who is not a judge of the County Court, a magistrate or an acting magistrate; or

(b) a person appointed under section 94 of the **Coroners Act 2008**;

*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

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- (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;

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

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

*corrupt conduct* has the meaning given by section 3A of the **Independent Broad-based Anti-corruption Commission Act 2011**;

*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;

- 5 (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 6 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

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

15 ***improper conduct*** has the meaning given by section 4;

***investigating entity*** means—

- 20 (a) the IBAC;  
(b) the Chief Commissioner of Police;  
(c) the Ombudsman;  
(d) the Victorian Inspectorate;

***judicial officer*** means the following—

- 25 (a) a Judge of the Supreme Court;  
(b) an Associate Judge of the Supreme Court;  
(c) an acting Judge of the Supreme Court;  
(d) a Judge or an acting Judge of the Supreme Court who is appointed or assigned to VCAT;  
(e) a judge of the County Court;  
30 (f) an associate judge of the County Court;  
(g) an acting judge of the County Court;
-

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- (h) a judge or an acting judge of the County Court who is appointed or assigned to VCAT;
  - (i) a magistrate of the Magistrates' Court;
  - (j) an acting magistrate of the Magistrates' Court;
  - (k) a magistrate or an acting magistrate who is appointed or assigned to the Coroners Court, the Children's Court or VCAT;
  - (l) an acting coroner;
  - (m) a judicial registrar;

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

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

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*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;

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*police force* means—

- (a) the Chief Commissioner of Police;
- (b) a Deputy Commissioner of Police or an Assistant Commissioner of Police appointed under Part I of the **Police Regulation Act 1958**;
- (c) any other member of the force within the meaning of section 3(1) of the **Police Regulation Act 1958**;



(d) police reservists appointed under Part VI of the **Police Regulation Act 1958**;

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(e) protective services officers appointed under Part VIA of the **Police Regulation Act 1958**;

*police personnel* means—

(a) a member of the police force;

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(b) an executive or employee employed under Part 3 of the **Public Administration Act 2004** in the office of the Chief Commissioner of Police;

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(c) a police recruit appointed under section 8A of the **Police Regulation Act 1958**;

*Presiding Officer* means—

(a) the Speaker of the Legislative Assembly; or

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(b) the President of the Legislative Council;

*protected disclosure* means—

(a) a disclosure made in accordance with Part 2; or

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(b) a complaint made in accordance with section 86L(2A) of the **Police Regulation Act 1958**;

*protected disclosure complaint* means—

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(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;

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*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**;

5 *public officer* has the meaning given by section 6;

*public sector* has the meaning given by section 6;

10 *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**;

15 *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*

20 (1) For the purposes of this Act, *improper conduct* means—

(a) corrupt conduct; or

25 (b) conduct specified in subsection (2) that is not corrupt conduct but that, if proved, would constitute—

(i) a criminal offence; or

30 (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—

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(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

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(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

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(c) of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or

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(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

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(e) that could constitute a conspiracy or an attempt to engage in any conduct referred to in paragraph (a), (b), (c) or (d); or

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(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.

- (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 **5 Meaning of *police complaint disclosure***

- (1) For the purposes of this Act, a ***police complaint disclosure*** is a complaint made by a member of the force about another member of the force to—

(a) the Chief Commissioner of Police; or

(b) the IBAC; or

(c) another member of the force of more senior rank who is not the Chief Commissioner of Police that is referred by that member of the force to the Chief Commissioner under section 86LA of the **Police Regulation Act 1958**.

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

- (3) In subsection (1), ***the force*** has the meaning given by section 3(1) of the **Police Regulation Act 1958**.

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

For the purposes of this Act—

***public body*** means—

(a) a ***public body*** within the meaning of section 3C 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 3C 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;

*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.

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**PART 2—DISCLOSURES**

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

**9 Disclosure of improper conduct or detrimental  
action**

5 (1) Subject to subsection (3), a natural person may  
disclose in accordance with this Part—

(a) information that shows or tends to show—

10 (i) a person, public officer or public body  
has engaged, is engaging or proposes to  
engage in improper conduct; or

15 (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—

20 (i) a person, public officer or public body  
has engaged, is engaging or proposes to  
engage in improper conduct; or

25 (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.

30 (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.

**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.

- 5 (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.

- 10 (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.

- 15 (3) A disclosure that relates to any of the following bodies or a member, officer or employee of any of the following bodies—

- 20 (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—

25 may be made to that body.

- 30 (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 (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—

- 10 (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**;
- 15 (d) the Solicitor-General appointed under the **Attorney-General and Solicitor-General Act 1972**;
- (e) the Governor appointed under the **Constitution Act 1975**;
- 20 (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**;
- 25 (i) a person to whom the Governor in Council has issued a commission under section 88B of the **Constitution Act 1975**;
- (j) a member of a board appointed by the Governor in Council under section 88C of the **Constitution Act 1975**;
- 30 (k) a judicial officer;
- (l) a member of VCAT who is not a judicial officer;

- 5
- (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**;
- 10 (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**;
- 15 (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**

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

- 25 (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.

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

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

- (a) a Councillor;

- 5
- (b) the Freedom of Information Commissioner appointed under the **Freedom of Information Act 1982**;
- (c) the Privacy Commissioner appointed under the **Information Privacy Act 2000**;
- (d) the Health Services Commissioner appointed under the **Health Services (Conciliation and Review) Act 1987**;
- 10 (e) the Commissioner for Law Enforcement Data Security appointed under the **Commissioner for Law Enforcement Data Security Act 2005**.

**17 Disclosures relating to the IBAC or an IBAC Officer**

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

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

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

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

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

- 25 (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.
- 30 (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.

- 5 (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**

- 10 (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.
- 15 (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
- 20 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
- 25 the purposes of this Act; and
- (b) the disclosure is otherwise made in accordance with Division 2.
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**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 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.

**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 86LA of the **Police Regulation Act 1958**; and

(b) the Chief Commissioner considers that the disclosure may be a protected disclosure.

- 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**

- 10
- (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.
- 15
- (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**

- 20
- (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.
- 25
- (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—
- 30
- (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.

5 (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.

10 (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.

15 (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.

20 **25 Advice to person making disclosure to a Presiding Officer**

(1) This section applies if a disclosure is made to a Presiding Officer.

25 (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.

30 (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.

- 5 (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**

- 10 (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
  - 15 (c) a police complaint disclosure is made directly to the IBAC.
- (2) The IBAC must assess whether, in its view, the disclosure is a protected disclosure.
- (3) Following an assessment under subsection (2), the IBAC must—
- 20 (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
  - 25 (b) in any other case—determine that the disclosure is not a protected disclosure complaint.

**Note**

30 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.

- 5 (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**

- 10 (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—
- 15 (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
- 20 (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
- 25 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.
- 30 (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.

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**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.

5

- (3) A determination under subsection (2) must be made within a reasonable time after the disclosure is made to the Victorian Inspectorate.

10

- (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).

15

- (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.
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**PART 4—DISCLOSURES DETERMINED TO BE  
PROTECTED DISCLOSURE COMPLAINTS**

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

5                   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.**

10                   **Note**

Under section 3D 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).

15                   **33 Disclosure determined by the Victorian Inspectorate  
to be a protected disclosure complaint**

20                   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.**

25                   **Note**

Under section 3A of the **Victorian Inspectorate Act 2011**, a  
protected disclosure complaint is taken to be a complaint for the  
purposes of that Act.

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**PART 5—NOTIFICATION OF RELATED DISCLOSURES  
MADE IN COURSE OF INVESTIGATION**

**34 Related disclosures**

5 (1) For the purposes of this Part a disclosure is a related disclosure if—

10 (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

15 (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—

20 (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

25 (b) the investigating entity to which the disclosure is made—

30 (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

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Part 5—Notification of Related Disclosures Made in Course of Investigation

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- 5 (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**

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

- 15 (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**

20 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**

- 25 (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  
30 (b) regardless of whether the related disclosure is made in accordance with Division 2 of Part 2.

5 (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**

10 (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  
15 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.

20 (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**

5 (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

10 (b) whether or not the IBAC or the Victorian Inspectorate has determined that the disclosure is a protected disclosure complaint.

15 (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—

20 (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.

25 **39 Immunity from liability**

30 (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**

- 5 (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.
- 10 (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.

15 **45 Protection from reprisal**

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

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

- 25 (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—
- 30 (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**

5 (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.

10 (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—

15 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  
20 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.

25 (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**

30 (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.

5 (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.

10 (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.

15 (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**

20 (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

25 (b) a proceeding under section 47 may be taken against either or both.

30 (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**

5 (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

10 (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—

15 (a) make an interim order in the terms of subsection (1)(a); or

(b) grant an interim injunction.

20 (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**

25 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

30 (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**

- 5 (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.
- 10 (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—
- 15 (a) another public service body; or
- (b) a public entity; or
- (c) a different area of the same public service body—
- 20 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—
- 25 (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—
- 30 (a) the employee requests or consents to the transfer; and



5

(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

10

(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

15

(d) the Head of the public service body or public entity to which it is proposed to transfer the employee consents to the transfer.

20

(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.

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(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**.

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**PART 7—CONFIDENTIALITY OF DISCLOSURES**

**52 Content of assessable disclosure must not be disclosed**

(1) This section applies to a person or body—

- 5 (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
- 10 (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
- 15 (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
- 20 (e) to whom an assessable disclosure, or information about the content of an assessable disclosure, has been disclosed in contravention of subsection (2).

25 (2) The person or body must not disclose the content, or information about the content, of an assessable disclosure.

30 **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**

- 5 (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.

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

- (2) Subsection (1) does not apply if—

- 15 (a) the person who made the assessable disclosure has given written consent to an investigating entity to disclose—

- 15 (i) any information likely to lead to the person's identification; or  
(ii) specific information likely to lead to the person's identification—

20 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

- 25 (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—

- 30 (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** or Part IVB of the **Police Regulation Act 1958**;

(c) for the purpose of a proceeding for an offence against—

(i) a relevant Act; or

- 
- 5 (ii) section 19 of the **Evidence (Miscellaneous Provisions) Act 1958** arising from an investigation by the Ombudsman;
- 5 (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
- 10 (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—
- 15 (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;
- 20 (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;
- 25 (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;
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(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 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**;

*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;

*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 IVB of the **Police Regulation Act 1958**;

*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
- (c) a witness summons issued by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**.



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**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);

- 5
- (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;
- 10 (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;
- 15 (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;
- 20 (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.
- 25

**56 Functions and powers of the Victorian Inspectorate**

- 30 (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

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

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- (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.

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**PART 9—GUIDELINES, PROCEDURES AND EDUCATION**

**Division 1—Guidelines and procedures**

**57 Guidelines**

- 5 (1) The IBAC must issue guidelines consistent with this Act and the regulations made under this Act for procedures—
- 10 (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
- 15 (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.
- 20 (2) The IBAC must issue guidelines consistent with this Act and the regulations made under this Act for the management of the welfare of—
- 25 (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.
- 30 (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 police personnel.

**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 police personnel.
- (3) The Chief Commissioner of Police must, in relation to disclosures that may be made to a member of 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).
- (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 (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.

10 (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 police personnel.

15 (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**

20 (1) The procedures required to be established by an entity under section 58 must be established—

25 (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.

30 (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 police personnel; or

(b) in any other case—to each member, officer and employee of the entity.

#### **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 or the Ombudsman, 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.

**61 Recommendation following review by the IBAC**

- 5 (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.
- 10 (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—

- 15 (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.
- 20

**62 Review of procedures established by the IBAC and the Ombudsman**

- 25 (1) The Victorian Inspectorate may at any time review the procedures established by the IBAC or the Ombudsman under section 58 to ensure the procedures are consistent with—
- (a) this Act; and
- (b) the regulations made under this Act; and
- 30 (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 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.

**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.

5 (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**

10 (1) A Presiding Officer of a House of Parliament may establish procedures—

(a) to facilitate the making of disclosures to the Presiding Officer; and

15 (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

20 (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**

30 (1) The IBAC may give advice to the public sector on any matter included in a guideline issued by the IBAC under this Part.

- 5
- (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.
- 10
- (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).
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**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 89 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.

**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;

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(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;

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(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.

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(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 38 of the **Victorian Inspectorate Act 2011**; and

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(b) subject to any restrictions on the inclusion of information imposed by that section.

### **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—

25

(a) information about how to access the procedures established by the investigating entity under Part 9;

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(b) for the financial year—

(i) the number and types of disclosures notified to the IBAC under section 21(2) or 22;

- 5
- (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;
- 10
- (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—

- 15
- (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.

20 **70 Annual report by public bodies that are not investigating entities**

- 25
- (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.
- 30

(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.



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**PART 11—GENERAL**

**Division 1—Offences and proceedings**

**72 Offence to make false disclosure or provide false further information**

5 (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.

10 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.

15 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**

20 (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.

25 (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.

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

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**74 Offence to disclose certain advice**

5 (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).

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

15 (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).

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

25 (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.

30 (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).

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

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(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;

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- (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;
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(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
- (d) the **Ombudsman Act 1973**; or
- (e) Part IVB of the **Police Regulation Act 1958**;

*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

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(c) a witness summons issued by the Ombudsman under section 17 of the **Evidence (Miscellaneous Provisions) Act 1958**.

### 75 Power to bring proceedings

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

(a) the IBAC;

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(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;

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(d) a Victorian Inspectorate Officer who is authorised by the Victorian Inspectorate;

(e) a member of the police force.

### Division 2—Miscellaneous

### 76 Protection of public officers

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(1) This section applies if—

(a) a public officer of a receiving entity discloses—

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(i) information to another public officer of that entity in the course of handling a disclosure; or

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- (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—
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- (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 police personnel, the procedures of the Chief Commissioner of Police established under Part 9.
- 15
- (2) By disclosing the information, the public officer does not—
- 20
- (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
- 25
- (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.
- 30
- (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.
- 35

(4) In this section—

*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 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.



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**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.

**80 Regulations dealing with transitional matters**

(1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including the repeals and amendments made by this Act.

- 
- (2) Regulations made under this section may—
- (a) have a retrospective effect to the day on which this Act received the Royal Assent; and
  - (b) be of limited or general application; and
  - (c) leave any matter or thing to be decided by a specified person or class of person; and
  - (d) provide for the exemption of persons or things or a class of persons or things from any of the regulations made under this section.
- (3) Regulations under this section have effect despite anything to the contrary—
- (a) in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**); or
  - (b) in any subordinate instrument.
- (4) This section is repealed on the second anniversary of the day on which it comes into operation.
-

**PART 12—TRANSITIONAL AND SAVINGS PROVISIONS**

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

5 (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—

- 10 (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**.

15 (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).

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

(3) A person may disclose information referred to in subsection (1)—

25 (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

30 (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

35

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.

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**PART 13—REPEAL AND AMENDMENT OF OTHER ACTS**

**Division 1—Repeal of Whistleblowers Protection Act 2001**

**83 Repeal**

The **Whistleblowers Protection Act 2001** is repealed.

See:  
Act No.  
36/2001.  
Reprint No. 2  
as at  
15 January  
2009  
and  
amending  
Act Nos  
36/2001,  
69/2009,  
66/2011,  
70/2011 and  
52/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

**Division 2—Independent Broad-based Anti-corruption  
Commission Act 2011**

**84 Definitions**

(1) In section 3(1) of the **Independent Broad-based  
Anti-corruption Commission Act 2011** insert  
the following definitions—

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

*detrimental action* has the same meaning as in the  
**Protected Disclosure Act 2012**;

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

See:  
Act No.  
66/2011  
and  
amending  
Act Nos  
66/2011,  
70/2011,  
13/2012 and  
28/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

- (2) In section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**, in the definition of *report of the Chief Commissioner of Police*, after "Part IVA" insert "or IVB".

**85 New section 3D inserted**

After section 3C of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

**"3D Protected disclosure complaint taken to be complaint**

- (1) For the purposes of this Act, other than Divisions 1 and 2 of Part 3—
- (a) a protected disclosure complaint that would not otherwise constitute a complaint is taken to be—
    - (i) a complaint made to the IBAC under section 34; or
    - (ii) if the disclosure relates to the conduct of a member of police personnel—a police personnel conduct complaint made to the IBAC under section 35; and
  - (b) the person who made the protected disclosure complaint is taken to be the complainant in relation to the complaint.
- (2) To avoid doubt, a protected disclosure complaint that would otherwise constitute a notification under this Act is taken to be a complaint not a notification."

**86 Functions of the IBAC**

(1) In section 9(2) of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "The" **substitute** "Without limiting the generality of subsection (1), the".

(2) After section 9(3) of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert—**

"(3A) Without limiting subsections (2) and (3), the IBAC has the following functions in relation to protected disclosure complaints—

(a) to investigate any of those complaints that it may investigate in accordance with—

(i) its corrupt conduct investigative functions; or

(ii) its police personnel conduct investigative functions;

(b) to refer the complaints to other persons or bodies to investigate;

(c) to dismiss the complaints."

(3) At the foot of section 9 of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert—**

**"Note**

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



**87 Unauthorised disclosures**

(1) In section 33A of the **Independent Broad-based Anti-corruption Commission Act 2011**—

(a) after paragraph (b) **insert**—

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

(b) in paragraph (c), after "this Act" **insert** "or the **Protected Disclosure Act 2012**".

(2) At the foot of section 33A of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert**—

**"Note**

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

**88 Disclosure of information by the IBAC**

After section 33B(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert**—

"(3) The IBAC must not provide or disclose information under subsection (1) that is likely to lead to the identification of a person who has made an assessable disclosure to—

(a) an entity specified in subsection (1)(a), (b) or (c), if the entity is—

(i) the subject of the assessable disclosure; or

(ii) the employer of the person who is the subject of the assessable disclosure; or

(b) an entity specified in subsection (1)(d) in any circumstances.

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

5                   **89 Confidentiality notices**

After section 33C(2)(c) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(ca) include a statement—

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

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

20                   **90 Disclosure subject to confidentiality notice**

- (1) At the foot of section 33E(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"**Note**

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

- 30                   (2) In section 33E(2)(c)(ii) of the **Independent Broad-based Anti-corruption Commission Act 2011**, after "Act" insert "or the **Protected Disclosure Act 2012**".

**91 Complaints and disclosures from detained persons**

(1) For section 37(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** substitute—

"(1) This section applies if a detained person wishes to—

(a) provide information or make a complaint to the IBAC under this Act; or

(b) make a disclosure to the IBAC under Part 2 of the **Protected Disclosure Act 2012**.

(1A) The detained person may inform the person in charge that he or she wishes to communicate with the IBAC.

(1B) The detained person is not required to inform the person in charge of the content or purpose of that communication.

(1C) On being informed by the detained person of his or her wish to communicate with the IBAC, the person in charge must—

(a) take all reasonable steps to facilitate that communication; and

(b) subject to subsection (3), immediately forward, unopened, to the IBAC any letter addressed to the IBAC by the detained person."

(2) In section 37(3) of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "(1)(b)" substitute "(1C)(b)".

**92 Withdrawal of complaint**

(1) In section 38(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** for "A person" substitute "Subject to subsection (4), a person".

(2) After section 38(3) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(4) A complaint that is a protected disclosure complaint may not be withdrawn."

**93 Notice of dismissal, investigation or referral of complaint or notification**

(1) In section 40B(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** for "subsection (2)" substitute "subsections (1A) and (2)".

(2) After section 40B(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(1A) Subject to subsection (2), the IBAC must notify the person who made a protected disclosure complaint of—

(a) the action referred to in section 40A which the IBAC has taken; and

(b) in the case of a decision by the IBAC to dismiss the protected disclosure complaint—the reasons for the decision.

(1B) A notification under (1A) must be given within a reasonable time after the action has been taken or the investigation has commenced."

- (3) In section 40B(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** after "subsection (1)" **insert** "or (1A)".

**94 New section 46A inserted**

After section 46 of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert**—

**"46A Conducting investigations into protected disclosure complaints about detrimental action**

- (1) This section applies if—
- (a) a protected disclosure complaint (the *original protected disclosure complaint*) is made that the IBAC may investigate in accordance with its investigative functions under this Act; and
  - (b) a further protected disclosure complaint is made (whether by the person who made the original protected disclosure complaint or by anyone else) alleging that a public officer or public body has taken, or a proposes to take, detrimental action in reprisal for the original protected disclosure complaint in contravention of section 45 of the **Protected Disclosure Act 2012**.
- (2) If the original protected disclosure complaint is a complaint that the IBAC may investigate under section 41, then for the purposes of that section, the IBAC may conduct an investigation, in accordance with its corrupt conduct investigative functions, on the further protected disclosure complaint.

5 (3) Subsection (2) applies whether or not the IBAC is reasonably satisfied that the conduct that is the subject of the further protected disclosure complaint is serious corrupt conduct.

10 (4) If the original protected disclosure complaint is a complaint that the IBAC may investigate under section 45, then for the purposes of that section, the IBAC may conduct an investigation, in accordance with its police personnel conduct investigative functions, on the further protected disclosure complaint."

**95 When certain complaints or notifications to the IBAC are dismissed**

15 (1) In section 47A of the **Independent Broad-based Anti-corruption Commission Act 2011** after "to the IBAC" insert "other than a protected disclosure complaint".

20 (2) At the end of section 47A of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(2) A protected disclosure complaint is dismissed if—

25 (a) the IBAC has determined under section 46(2)(b), (c), (d), (e) or (f) that the complaint does not warrant investigation; or

30 (b) the IBAC has determined under section 47(1) that the complaint does not warrant investigation because any of the criteria specified in section 47(2)(b), (c), (d), (e) or (f) apply; or

35 (c) the IBAC decides not to investigate the complaint in accordance with section 47(3); or

5

(d) the IBAC determines that the complaint does not warrant investigation because the IBAC considers on reasonable grounds that the subject matter of the complaint is trivial; or

(e) the person who made the complaint has requested that the complaint not be investigated.

10

(3) The IBAC must dismiss a protected disclosure complaint if the matter disclosed is a matter that neither the IBAC nor a body specified in section 49C(2A) may investigate.

15

(4) The IBAC may dismiss a protected disclosure complaint if the IBAC considers that referring the disclosure to any other body would prejudice criminal proceedings, a criminal investigation or an investigation by the IBAC or the Victorian Inspectorate."

20

**96 Referral of complaint or notification for investigation by another person or body**

25

(1) In section 49C(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** after "subsection (1)" insert "and subject to subsection (2A)".

(2) After section 49C(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

30

"(2A) A protected disclosure complaint may only be referred to—

(a) in the case of a protected disclosure complaint relating to the conduct of a member of the police personnel—the Chief Commissioner of Police; or

(b) in any other case—

(i) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**; or

(ii) the Victorian Inspectorate."

(3) For section 49C(4) of the **Independent Broad-based Anti-corruption Commission Act 2011** substitute—

"(4) If, in accordance with this section, the IBAC refers a complaint or notification to the Chief Commissioner of Police, the Chief Commissioner must—

(a) in the case of a complaint or notification that is not a protected disclosure complaint—investigate the complaint or notification under Division 2 of Part IVA of the **Police Regulation Act 1958**; or

(b) in the case of a protected disclosure complaint—investigate the protected disclosure complaint under Part IVB of the **Police Regulation Act 1958**."

#### **97 Examinations generally to be held in private**

(1) In section 82C(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "An" substitute "Subject to subsection (1A), an".

(2) After section 82C(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(1A) The IBAC must not hold an examination in public if the examination may disclose particulars likely to lead to the identification of a person who has made an assessable disclosure.



(1B) However, the IBAC may hold an examination in public if the information that may be disclosed is information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

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

In section 82P(1)(d) of the **Independent Broad-based Anti-corruption Commission Act 2011** after "the Act" insert "and, in the case of an investigation of a protected disclosure complaint, the confidentiality requirements under the **Protected Disclosure Act 2012**".

**99 New section 82PA inserted**

After section 82P of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

**"82PA Witness attending examination in relation to investigation of protected disclosure complaint to be informed of confidentiality obligations**

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

- (a) advise the person that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and
- (b) inform the person of the nature of those obligations."

**100 Privilege against self-incrimination abrogated for certain offences against the Protected Disclosure Act 2012**

After section 82ZC(2)(c) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

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

**101 Recommendations**

After section 83(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** insert—

"(2A) A recommendation under subsection (1), must not contain any information that is likely to lead to the identification of a person who has made an assessable disclosure.

(2B) However, a recommendation under subsection (1) may contain information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

**102 The IBAC may request the Chief Commissioner of Police to take certain actions**

In section 84(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** for "in accordance with section 86O of the **Police Regulation Act 1958**" substitute "under Part IVA of the **Police Regulation Act 1958** or, in the case of a protected disclosure complaint, Part IVB of that Act".

**103 Special reports**

For section 86(8) of the **Independent Broad-based Anti-corruption Commission Act 2011** substitute—

5 "(8) The IBAC must not include in a report under this section any information that—

(a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—

10 (i) Division 1 of Part 7 of this Act;

(ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

(b) is likely to lead to the identification of a person who has made an assessable disclosure.

15 (8A) However, the IBAC may in a report under this section include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

20 **104 Advice to a complainant and other persons**

(1) For section 87(2) of the **Independent Broad-based Anti-corruption Commission Act 2011** substitute—

25 "(2) Subject to subsection (4), the IBAC must provide a complainant with the information referred to in subsection (1) if the investigation relates to—

(a) a corrupt conduct complaint or police personnel conduct complaint in relation to a member of the police; or

30 (b) a protected disclosure complaint."

(2) In section 87(3) of the **Independent Broad-based Anti-corruption Commission Act 2011**, for "subsection (4)" **substitute** "subsections (4) and (5)".

5

(3) After section 87(4) of the **Independent Broad-based Anti-corruption Commission Act 2011** **insert—**

10

"(5) The IBAC must not provide any information under subsection (3) that is likely to lead to the identification of a person who has made an assessable disclosure.

15

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

(7) This section does not apply to a police personnel conduct complaint if—

20

(a) the complaint has been investigated as a protected disclosure complaint under Part IVB of the **Police Regulation Act 1958**; and

(b) the IBAC has, in relation to, or in relation to a matter arising out of, an investigation, decided not to—

25

(i) take further action; or

(ii) request the Chief Commissioner of Police to take action."

**105 Matters to be included in annual report**

For section 89(8) of the **Independent Broad-based Anti-corruption Commission Act 2011** substitute—

- 5 "(8) The IBAC must not include in its annual report any information that—
- 10 (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—
    - (i) Division 1 of Part 7 of this Act;
    - (ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or
  - 15 (b) is likely to lead to the identification of a person who has made an assessable disclosure.
- 20 (9) However, the IBAC may in an annual report include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

**Note**

See also section 67 of the **Protected Disclosure Act 2012** for additional matters that are to be included in the IBAC's annual report."

**Division 3—Victorian Inspectorate Act 2011**

**106 Definitions**

In section 3(1) of the **Victorian Inspectorate Act 2011** insert the following definitions—

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

*protected disclosure complaint* means—

- (a) a disclosure that the Victorian Inspectorate has determined under section 31 of the **Protected Disclosure**

25 See:  
Act No.  
70/2011  
and  
amending  
Act Nos  
70/2011,  
19/2012,  
28/2012 and  
30 52/2012.  
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**Act 2012** to be a protected disclosure complaint; or

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

**107 New section 3A inserted**

After section 3 of the **Victorian Inspectorate Act 2011** insert—

**"3A Protected disclosure complaint taken to be complaint**

For the purposes of this Act—

- (a) a protected disclosure complaint that would not otherwise constitute a complaint is taken to be a complaint under section 29; and
- (b) the person who made the protected disclosure complaint is taken to be the complainant in relation to the complaint."

**108 Functions of the Victorian Inspectorate**

(1) After section 9(2)(a) of the **Victorian Inspectorate Act 2011** insert—

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

- (2) At the foot of section 9 of the **Victorian Inspectorate Act 2011 insert—**

**"Note**

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

**109 Unauthorised disclosures**

- (1) In section 28A(1) of the **Victorian Inspectorate Act 2011—**

- (a) after paragraph (b) **insert—**

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

- (b) in paragraph (c), after "this Act" **insert** "or the **Protected Disclosure Act 2012**".

- (2) At the foot of section 28A(1) of the **Victorian Inspectorate Act 2011 insert—**

**"Note**

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

**110 Victorian Inspectorate may provide or disclose information for specified purposes**

- (1) In section 28C of the **Victorian Inspectorate Act 2011** after "section 28B" **insert** "and subsection (2)".

- (2) At the end of section 28C of the **Victorian Inspectorate Act 2011 insert—**

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

body to whom the information is provided or disclosed is—

- (a) the subject of the assessable disclosure; or
- 5 (b) the employer of the person who is the subject of the assessable disclosure.
- 10 (3) However, the Victorian Inspectorate may provide or disclose under subsection (1) information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

**111 Restrictions on compelling production or disclosure**

For section 28D(1) of the **Victorian Inspectorate Act 2011** substitute—

- 15 "(1) A person who is, or was, a Victorian Inspectorate Officer cannot be required or be compelled in a court to—
  - 20 (a) produce any document or other thing that has come into his or her possession or control in the performance of the duties and functions or the exercise of powers of the person or the Victorian Inspectorate under this Act or the **Protected Disclosure Act 2012**; or
  - 25 (b) disclose any matter or thing of which the person has knowledge as a result of the performance of the duties and functions or the exercise of powers of the person or the Victorian Inspectorate under this Act or the **Protected**
  - 30 **Disclosure Act 2012**—



except—

- (c) for the purposes of proceedings for an offence or a disciplinary process or action brought as a result of an investigation conducted by the Victorian Inspectorate; or
- (d) for the purposes of proceedings for an offence against this Act or the **Protected Disclosure Act 2012**."

### 112 Confidentiality notice

After section 28E(2)(c) of the **Victorian Inspectorate Act 2011** insert—

"(ca) include a statement—

- (i) advising the person to whom the confidentiality notice is issued that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and
- (ii) directing the person to the provisions of that Act which impose those obligations;"

### 113 Disclosure subject to confidentiality notice

- (1) At the foot of section 28F(1) of the **Victorian Inspectorate Act 2011** insert—

**Note**

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

- (2) In section 28F(2)(c)(ii) of the **Victorian Inspectorate Act 2011**, after "Act" insert "or the **Protected Disclosure Act 2012**".

**114 Investigation of complaint**

(1) After section 30(1) of the **Victorian Inspectorate Act 2011 insert—**

"(1A) The Victorian Inspectorate must investigate a protected disclosure complaint."

(2) At the end of section 30 of the **Victorian Inspectorate Act 2011 insert—**

"(6) Despite subsections (2), (3), (4) and (5) but subject to subsection (7), the Victorian Inspectorate must not in any notice under those subsections include any information likely to lead to the identification of a person who has made an assessable disclosure.

(7) However, the Victorian Inspectorate may in a notice referred to in subsection (6) include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

**115 New section 30A inserted**

After section 30 of the **Victorian Inspectorate Act 2011 insert—**

**"30A Advice to person who made protected disclosure complaint**

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

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

(a) in the case of a protected disclosure complaint referred to in paragraph (a) of the definition of *protected disclosure*

*complaint*—the Victorian Inspectorate has determined that the disclosure is a protected disclosure complaint; or

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

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

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

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

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

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

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

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

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

In section 33L(1)(d) of the **Victorian Inspectorate Act 2011** after "the Act" insert "and, in the case of an investigation of a protected disclosure complaint, the confidentiality requirements under the **Protected Disclosure Act 2012**".

**117 New section 33LA inserted**

After section 33L of the **Victorian Inspectorate Act 2011** insert—

**"33LA Witness attending examination in relation to investigation of protected disclosure complaint to be informed of confidentiality obligations**

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

- (a) advise the person that obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the person; and
- (b) inform the person of the nature of those obligations."

**118 Privilege against self-incrimination abrogated for certain offences against the Protected Disclosure Act 2012**

Before section 33T(2)(d) of the **Victorian Inspectorate Act 2011** insert—

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

**119 New section 35G inserted**

Before section 36 of the **Victorian Inspectorate Act 2011** insert—

**"35G Recommendations must not include information likely to identify person who makes an assessable disclosure**

- (1) The Victorian Inspectorate must not include in a recommendation made to an entity under section 34, 35, 35A, 35B, 35C, 35D, 35E

or 35F any information that is likely to lead to the identification of a person who made an assessable disclosure, if the entity is—

- (a) the subject of the assessable disclosure; or
- (b) the employer of the person who is the subject of the assessable disclosure.

(2) However, a recommendation under a section referred to in subsection (1) may include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

### 120 Special reports

For section 36(5B) of the **Victorian Inspectorate Act 2011** substitute—

"(5B) The Victorian Inspectorate must not include in a report under this section any information that—

- (a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—

- (i) Division 1 of Part 7 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

- (ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

- (b) is likely to lead to the identification of a person who has made an assessable disclosure.

(5BA) However, the Victorian Inspectorate may in a report under this section include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

**121 Advice to a complainant**

After section 36A(1) of the **Victorian Inspectorate Act 2011** insert—

"(1A) Subject to subsection (2), the Victorian Inspectorate must provide a complainant with the information referred to in subsection (1) if the investigation or inquiry relates to a protected disclosure complaint."

**122 Matters to be included in annual report**

(1) After section 38(1)(c) of the **Victorian Inspectorate Act 2011** insert—

"(ca) details of the compliance by the IBAC with the **Protected Disclosure Act 2012** during the financial year;"

(2) For section 38(7) of the **Victorian Inspectorate Act 2011** substitute—

"(7) The Victorian Inspectorate must not include in its annual report any information that—

(a) discloses the identity of a person to whom, or in respect of whom, a direction has been given under—

(i) Division 1 of Part 7 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

(ii) Division 4A of Part IV of the **Police Regulation Act 1958**; or

(b) is likely to lead to the identification of a person who has made an assessable disclosure.

(7A) However, the Victorian Inspectorate may in an annual report include information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

(3) At the foot of section 38 of the **Victorian Inspectorate Act 2011** insert—

"Note

See also section 68 of the **Protected Disclosure Act 2012** for additional matters that are to be included in the Victorian Inspectorate's annual report."

### **123 Repeal of redundant amendment to Whistleblowers Protection Act 2001**

Section 48 of the **Victorian Inspectorate Act 2011** is repealed.

### **Division 4—Police Regulation Act 1958**

#### **124 Definitions**

In section 3(1) of the **Police Regulation Act 1958**—

(a) in the definition of *member of police personnel*, after "means" insert "(other than in Part IVB)";

(b) insert the following definition—

*"protected disclosure complaint* means a disclosure that is determined to be a protected disclosure complaint by the IBAC under section 26 of the **Protected Disclosure Act 2012**;"

See:  
Act No.  
6338.  
Reprint No. 14  
as at  
27 April 2012  
and  
amending  
Acts Nos  
13/2012 and  
35/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

**125 Breaches of discipline**

In section 69(1) of the **Police Regulation Act 1958**—

(a) paragraph (ab) is **repealed**;

(b) after paragraph (bb) **insert**—

"(bba) fails to comply with a direction under section 86Y; or".

**126 Testing of members in certain circumstances**

In section 85B(3)(a)(ii) of the **Police Regulation Act 1958**, for "or IVA" **substitute** ", IVA or IVB".

**127 Chief Commissioner may have regard to evidence in certain circumstances**

In section 85C(b) of the **Police Regulation Act 1958**, for "or IVA" **substitute** ", IVA or IVB".

**128 Admissibility of test result in certain proceedings**

In section 85E(2)(c) of the **Police Regulation Act 1958**, for "or IVA" **substitute** ", IVA or IVB".

**129 Annual report of Chief Commissioner must include matters related to protected disclosures**

At the foot of section 86AB(1) of the **Police Regulation Act 1958** **insert**—

"**Note**

See also section 69 of the **Protected Disclosure Act 2012** for other matters that must be included in the Chief Commissioner's report."



**130 Making of complaints**

- (1) At the foot of section 86L(2A) of the **Police Regulation Act 1958 insert—**

**"Note**

A complaint made in accordance with subsection (2A) is a protected disclosure under the **Protected Disclosure Act 2012**—see the definition of *protected disclosure* in section 3 of the Act."

- (2) For section 86L(2B) of the **Police Regulation Act 1958 substitute—**

"(2B) If a member of the force is required to make a complaint under subsection (2A) about the conduct of another member of the force, it is sufficient compliance for the purposes of that subsection if the member makes a disclosure in accordance with Part 2 of the **Protected Disclosure Act 2012**."

**131 New section 86LA substituted**

For section 86LA of the **Police Regulation Act 1958 substitute—**

**"86LA Certain complaints to be referred to the Chief Commissioner**

If a member of the force makes a complaint to a member of the force of a more senior rank about a member other than the Chief Commissioner, the member receiving the complaint must refer the complaint to the Chief Commissioner if that member considers the complaint may be a complaint under section 86L(2A)."

**132 Complaints made to a member of the force**

In section 86M(1) of the **Police Regulation Act 1958**, after "force" (where secondly occurring) **insert** "unless the subject-matter of the complaint could constitute a protected disclosure complaint".

**133 New Part IVB inserted**

After Part IVA of the **Police Regulation Act 1958**  
**insert—**

**"PART IVB—INVESTIGATION OF  
PROTECTED DISCLOSURE COMPLAINTS**

**Division 1—Preliminary**

**86W Definitions**

In this Part—

*police force* has the meaning given in  
section 3 of the **Protected Disclosure  
Act 2012**;

*police personnel* has the meaning given in  
section 3 of the **Protected Disclosure  
Act 2012**.

**Division 2—Investigations**

**86X Duty to investigate**

The Chief Commissioner must investigate, in  
accordance with this Part, every protected  
disclosure complaint that the IBAC has  
referred to the Chief Commissioner under  
Division 4 of Part 3 of the **Independent  
Broad-based Anti-corruption Commission  
Act 2011**.

**86Y Power to require answers etc. of specified  
members of police personnel in certain  
investigations**

- (1) For the purposes of an investigation of a  
protected disclosure complaint relating to a  
member of the police force, the Chief  
Commissioner may direct a member of the  
police force to—

- (a) give the Chief Commissioner any relevant information; or
- (b) produce any relevant document to the Chief Commissioner; or
- (c) answer any relevant question.

**Note**

Failure to comply with a direction of the Chief Commissioner under this subsection is a breach of discipline. See section 69(1)(bba).

- (2) Before directing a member of the police force under subsection (1), the Chief Commissioner must—
  - (a) advise the member that additional obligations under the **Protected Disclosure Act 2012** relating to confidentiality may apply to the member; and
  - (b) inform the member of the nature of those obligations.
- (3) Any information, document or answer given or produced in accordance with a direction under subsection (1) is not admissible in evidence before any court or person acting judicially, except in proceedings for—
  - (a) perjury or giving false information; or
  - (b) a breach of discipline by a member of the police force under section 69; or
  - (c) a failure to comply with a direction of the Chief Commissioner; or
  - (d) review proceedings under Division 1 of Part IV.
- (4) To avoid doubt, nothing in this section authorises the giving of a direction to the Chief Commissioner.

**86Z Person who made disclosure may request information about investigation**

- 5 (1) During an investigation under this Part, the person who made the protected disclosure complaint may request information about that investigation from the Chief Commissioner.
- 10 (2) Subject to section 86ZE, on receiving a request under subsection (1), the Chief Commissioner may give the person the requested information.

**Division 3—Action on investigation**

**86ZA Chief Commissioner must take action**

- 15 (1) If, on completing an investigation under this Part, the Chief Commissioner finds that the conduct that was the subject of the investigation has occurred, the Chief Commissioner—
- 20 (a) must take all reasonable steps to prevent the conduct from continuing or occurring in the future; and
- (b) may take action to remedy any harm or loss arising from the conduct.
- 25 (2) The steps to be taken under subsection (1)(a) may include the bringing of disciplinary proceedings against the person responsible for the conduct that was the subject of the investigation.

**86ZB Chief Commissioner must report to the IBAC and may give Premier and Minister information**

- 30 (1) Subject to this section, on completing an investigation under this Part, the Chief Commissioner—

- 5 (a) must report to the IBAC, in writing—
- (i) the findings of the investigation; and
  - (ii) the steps (if any) taken or proposed to be taken under section 86ZA(1)(a); and
- 10 (b) may, if he or she considers it necessary to do so, give the Premier or the Minister information, in writing, about a matter relating to or arising out of the investigation.
- 15 (2) The Chief Commissioner must not give the Premier or the Minister information under subsection (1)(b)—
- (a) that the Chief Commissioner considers would cause unreasonable damage to a person's reputation; or
  - (b) that is likely to lead to the identification of a person who has made an assessable disclosure.
- 20 (3) However, the Chief Commissioner may give the Premier or the Minister information under subsection (1)(b) that is information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.
- 25 (4) The Chief Commissioner must notify the IBAC, in writing, of any information given to the Premier or the Minister under subsection (1)(b).
- 30 **86ZC Premier and Minister may disclose information for purpose of obtaining advice**
- 35 The Premier or Minister may disclose any information given to him or her under section 86ZB(1)(b) for the purpose of

obtaining advice on the matter or matters to which the information relates.

**86ZD Chief Commissioner must inform person who made disclosure of outcome of investigation**

Subject to section 86ZE, on completing an investigation under this Part, the Chief Commissioner must inform the person who made the protected disclosure complaint of the outcome of the investigation.

**86ZE Chief Commissioner must not disclose information in certain cases**

The Chief Commissioner must not disclose any information under section 86Z or 86ZD if the Chief Commissioner considers that disclosure of the information would—

- (a) not be in the public interest or in the interests of justice; or
- (b) put a person's safety at risk; or
- (c) cause unreasonable damage to a person's reputation; or
- (d) prejudice—
  - (i) an investigation under this Part; or
  - (ii) an investigation under the **Independent Broad-based Anti-corruption Commission Act 2011**; or
  - (iii) an investigation by the police force; or
- (e) be likely to lead to the disclosure of any secret investigative method used by the Chief Commissioner or other members of police personnel; or

- (f) otherwise contravene any applicable statutory secrecy obligations; or
- (g) involve the unreasonable disclosure of information relating to the personal affairs of any person.

**Division 4—Disclosure of information**

**86ZF Definitions**

- (1) In this Division—

*applicable law* means—

- (a) the **Protected Disclosure Act 2012**; or
- (b) a provision of another Act that confers a function or power or imposes a duty on the Chief Commissioner in relation to a protected disclosure complaint;

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

*domestic partner* has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

*investigating entity* means—

- (a) the IBAC;
- (b) the Ombudsman;
- (c) the Victorian Inspectorate;

*investigation request* means a request from the Chief Commissioner for a person to give any information, produce any document or thing, answer any

question, or otherwise participate in an investigation under this Part;

*law enforcement agency* has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011** but does not include the Chief Commissioner;

*prosecutorial body* has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**;

*restricted matter* means—

- (a) any information given to the Chief Commissioner under a direction under section 86Y or in response to an investigation request; or
- (b) the contents of any document, or a description of any thing, produced to the Chief Commissioner under a direction under section 86Y or in response to an investigation request; or
- (c) the existence of, or any information about, a direction under section 86Y or an investigation request; or
- (d) the subject matter of a protected disclosure complaint being investigated under this Part; or
- (e) any information that could enable any of the following persons to be identified or located—



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(i) a person who has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part;

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(ii) a person who has otherwise participated, or will participate, in an investigation under this Part; or

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(f) the fact that a person—

(i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or

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(ii) has otherwise participated, or will participate, in an investigation under this Part;

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*spouse* has the meaning given in section 3(1) of the **Independent Broad-based Anti-corruption Commission Act 2011**.

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(2) For the purposes of this Division, a reference to the Chief Commissioner in the definition of *restricted matter* is to be read as including a reference to a member of police personnel acting on behalf of the Chief Commissioner under this Part.

**86ZG Disclosure of information by the Chief Commissioner and other police personnel**

- (1) A person who—
- (a) is or was a member of police personnel;  
and
  - (b) acquires or acquired information by reason of, or in the course of, the performance of duties or functions or the exercise of powers under this Part—

must not directly or indirectly disclose that information.

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

**Note**

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

- (2) Subsection (1) does not apply to a disclosure of information—
- (a) made for the purpose of performing duties or functions or exercising powers under this Part or an applicable law; or
  - (b) that is otherwise authorised or required to be made by or under this Part or an applicable law; or
  - (c) made for the purposes of—
    - (i) proceedings for an offence against this Part or the **Protected Disclosure Act 2012**; or
    - (ii) a disciplinary process or action instituted in respect of conduct that could also constitute an offence against this Part or the

**Protected Disclosure Act 2012;**  
or

(iii) proceedings for an offence or a disciplinary process or action instituted as a result of an investigation under this Part; or

(d) made by—

(i) the Chief Commissioner in the circumstances provided under subsection (3); or

(ii) a member of police personnel under the authority of the Chief Commissioner in the circumstances provided under subsection (3).

(3) Subject to subsection (4), if the Chief Commissioner considers it appropriate, he or she may disclose or authorise the disclosure of any information acquired by a member of police personnel by reason of, or in the course of, the performance of duties or functions or the exercise of powers under this Part to—

(a) an investigating entity; or

(b) a law enforcement agency; or

(c) a prosecutorial body.

(4) The Chief Commissioner may only disclose or authorise a disclosure of information under subsection (3) if he or she considers that the information is relevant to the performance of a duty or function or the exercise of a power by the investigating entity, law enforcement agency or prosecutorial body to which the information is proposed to be disclosed.

(5) Subsection (3) applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Act of the Commonwealth).

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(6) Nothing in this section affects the operation of section 86Y.

**86ZH Disclosure of restricted matter prohibited**

(1) A person must not disclose a restricted matter.

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

**Note**

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See also Part 7 of the **Protected Disclosure Act 2012** which imposes additional obligations in relation to confidentiality.

(2) Subsection (1) does not apply to the disclosure of a restricted matter—

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- (a) by the person in accordance with an authorisation under section 86ZI; or
- (b) for the purpose of obtaining legal advice or representation in relation to—
  - (i) a direction given to the person under section 86Y; or
  - (ii) an investigation request made to the person; or
  - (iii) the rights, liabilities, obligations and privileges of the person under this Part or the **Protected Disclosure Act 2012**; or

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- (c) by an Australian legal practitioner to whom a restricted matter has been disclosed in the circumstances specified paragraph (b), 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; or

5 (d) by the person to his or her spouse or domestic partner if the restricted matter disclosed is the fact that the person—

10 (i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or

(ii) has otherwise participated, or will participate, in an investigation under this Part; or

15 (e) by the person to his or her employer or manager or both in the circumstances specified under subsection (3); or

20 (f) to the IBAC for the purpose of making a complaint under the **Independent Broad-based Anti-corruption Commission Act 2011** about the conduct of a member of police personnel in the course of the performance of duties or functions or the exercise of powers under this Part or an applicable law; or

25 (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; or

30 (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; or

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(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; or

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(j) that is otherwise authorised or required by or under—

(i) this Part; or

(ii) the **Protected Disclosure Act 2012**; or

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(iii) the **Independent Broad-based Anti-corruption Commission Act 2011**; or

(iv) the **Victorian Inspectorate Act 2011**; or

(v) the **Ombudsman Act 1973**.

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(3) For the purposes of subsection (2)(e), the specified circumstances are—

(a) the restricted matter is the fact that the person—

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(i) has been, or is proposed to be, interviewed by, or has produced, or may produce, any document or thing to, the Chief Commissioner under this Part; or

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(ii) has otherwise participated, or will participate, in an investigation under this Part; and

(b) the disclosure is for the purpose of enabling the person to take the appropriate leave from his or her employment in order to—

(i) be interviewed by, or produce any document or thing to, the Chief Commissioner under this Part; or

(ii) otherwise participate in an investigation under this Part.

(4) Nothing in this section affects the operation of section 86Y.

**86ZI Chief Commissioner may authorise disclosure of restricted matter**

(1) Subject to this section, the Chief Commissioner may authorise a person to disclose a restricted matter to a person specified in the authorisation.

(2) The Chief Commissioner must not authorise a person to disclose a restricted matter under subsection (1) if—

(a) the Chief Commissioner considers that the disclosure of the restricted matter would be likely to prejudice—

(i) an investigation under this Part; or

(ii) the safety or reputation of any person; or

(iii) the fair trial of a person who has been charged with an offence; or

(b) the restricted matter is or contains information that is likely to lead to the identification of a person who has made an assessable disclosure.

(3) However, the Chief Commissioner may authorise a person to disclose a restricted matter under subsection (1) that is or contains information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.

- (4) An authorisation under subsection (1) must be in writing.

**Division 5—Investigation procedures**

**86ZJ Chief Commissioner must establish investigation procedures**

- (1) The Chief Commissioner must establish procedures for or with respect to the investigation of protected disclosure complaints under this Part.
- (2) Without limiting subsection (1), the procedures referred to in that subsection must provide for the following—
- (a) information about who may perform a duty or function or exercise a power of the Chief Commissioner under this Part or an applicable law and how they may be authorised do so; and
  - (b) how investigations under this Part will be conducted, including explaining—
    - (i) how procedural fairness will be accorded under Divisions 2 and 3; and
    - (ii) how arrangements for legal representation and other support and assistance for witnesses will be managed.
- (3) The Chief Commissioner must establish the procedures referred to in subsection (1) as soon as practicable after commencement of the **Protected Disclosure Act 2012**.
- (4) The procedures referred to in subsection (1) must be consistent with—
- (a) the **Protected Disclosure Act 2012**; and



(b) the guidelines in force for the time being under section 57 of that Act.

(5) The Chief Commissioner must ensure that the procedures referred to in subsection (1) are readily available to the public and to each member of police personnel.

**86ZK IBAC may review investigation procedures**

(1) The IBAC may review the procedures established under section 86ZJ, or the implementation of those procedures, at any time to ensure that the procedures are, or their implementation is, consistent with—

(a) the **Protected Disclosure Act 2012**; and

(b) the guidelines in force for the time being under section 57 of that Act.

(2) The IBAC may make any recommendation to the Chief Commissioner relating to the procedures or the implementation of the procedures that the IBAC thinks fit arising from a review under this section.

**86ZL Chief Commissioner must adopt recommendation or give the IBAC reasons for not doing so**

(1) On receiving a recommendation under section 86ZK(2), the Chief Commissioner must—

(a) adopt the recommendation; or

(b) report to the IBAC, in writing, stating his or her reasons for not adopting the recommendation.

(2) The IBAC may send a copy of a recommendation under section 86ZK(2) to the relevant Minister if—

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(a) it appears to the IBAC that insufficient steps have been taken by the Chief Commissioner to adopt a recommendation under subsection (1)(a) within a reasonable time after the making of the recommendation; or

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(b) the IBAC is not satisfied with any of the reasons given by the Chief Commissioner under subsection (1)(b).

**Division 6—Other matters**

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**86ZM Chief Commissioner may request the IBAC to withdraw protected disclosure complaint**

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The Chief Commissioner may request the IBAC to withdraw the referral of a protected disclosure complaint under section 49I of the **Independent Broad-based Anti-corruption Commission Act 2011**—

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(a) if he or she considers that the investigation of the protected disclosure complaint under this Part is being obstructed; or

(b) for any other reason.

\_\_\_\_\_".

**134 Retention and return of seized things**

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In section 100F(1)(b) and (2)(b) of the **Police Regulation Act 1958**, for "or IVA" substitute ", IVA or IVB".

**135 Magistrates' Court may extend 6 month period**

In section 100G(2)(c) of the **Police Regulation Act 1958**, for "or IVA" substitute  
", IVA or IVB".

**136 Things seized may be used in connection with investigations into conduct**

In section 100H of the **Police Regulation Act 1958**, for "or IVA" substitute ", IVA or IVB".

**137 Police reservists are police personnel for the purposes of new Part IVB**

At the foot of section 103(3) of the **Police Regulation Act 1958** insert—

"Note

Police reservists are members of the police force for the purposes of Part IVB—see the definition of *police force* in section 86W."

**138 Protective services officers are police personnel for the purposes of new Part IVB**

At the foot of section 118B(2) of the **Police Regulation Act 1958** insert—

"Note

Protective services officers are members of the police force for the purposes of Part IVB: see the definition of *police force* in section 86W."

**139 Restricting access to information about protected disclosures complaints and identity of makers of protected disclosures**

After section 127A(1B) of the **Police Regulation Act 1958** insert—

"(1BA) Subsection (1B) does not apply to protected disclosure information.

(1BB) In subsection (1BA), *protected disclosure information* means—

(a) information acquired by a member of police personnel by reason of, or in the course of, the performance of duties or functions or the exercise of powers under Part IVB;

(b) a restricted matter within the meaning of section 86ZF."

**140 Regulations for the purposes of new Part IVB**

After section 130(1)(g) of the **Police Regulation Act 1958** insert—

"(ga) investigations under Part IVB;"

**Division 5—Safe Drinking Water Act 2003**

**141 Officer to report known or suspected contamination**

Sections 22(3) and (4) of the **Safe Drinking Water Act 2003** are repealed.

See:  
Act No.  
46/2003.  
Reprint No. 1  
as at  
21 July 2011  
and  
amending  
Act No.  
17/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

**142 New Division 3 of Part 3 inserted**

After section 26 of the **Safe Drinking Water Act 2003** insert—

**"Division 3—Protection of officers reporting known or suspected contamination**

**26A Definition**

In this Division—

*officer* means an officer of a water supplier, water storage manager or council.

**26B Application**

- (1) This Division applies to a report if—
- (a) an officer has made the report to the Secretary under section 22(2); and
  - (b) the belief or suspicion referred to in section 22(1) in relation to the report is based on what the officer believes on reasonable grounds to be improper conduct on the part of a public officer or public body in their capacity as a public officer or public body.
- (2) For the purposes of this section, *improper conduct*, *public officer* and *public body* have the same meaning as they have in the **Protected Disclosure Act 2012**.

**26C Certain further information also protected**

If an officer who makes a report to which this Division applies provides to the Secretary further information relating to that report, that further information is to be treated as if it were a report to which this Division applies.

**26D Immunity from liability**

An officer who makes a report to which this Division applies is not subject to any civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the report.

**26E Confidentiality provisions do not apply**

Without limiting section 26D, an officer who makes a report to which this Division applies does not by doing so—

5 (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

10 (b) breach an obligation by way of oath or  
rule of law or practice or under an  
agreement requiring the officer to  
maintain confidentiality or otherwise  
restricting the disclosure of information  
with respect to a matter.

15 **26F Protection from defamation action**

Without limiting section 26D, in proceedings  
for defamation there is a defence of absolute  
privilege in respect of the making of a report  
to which this Division applies.

20 **26G Liability for own conduct**

Despite anything to the contrary in this  
Division, an officer's liability for his or her  
own conduct is not affected by the officer's  
disclosure of that conduct in a report to  
which this Division applies.

25 **26H Protection from reprisal**

(1) A person must not take detrimental action  
against an officer in reprisal for a report to  
which this Division applies.

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

30 (2) A person takes detrimental action in reprisal  
for a report to which this Division applies  
if—

- 5
- (a) the person takes or threatens to take the action because—
- (i) an officer has made, or intends to make, a report to which this Division applies; or
- (ii) the person believes that an officer has made or intends to make a report to which this Division applies; or
- 10
- (b) the person incites or permits another person to take or threaten to take the action for either of those reasons.
- (3) In determining whether a person takes detrimental action in reprisal it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.
- 15

**26I Proceedings for damages for reprisal**

- 20
- (1) A person who takes detrimental action against an officer in reprisal for a report to which this Division applies is liable in damages to that officer.
- (2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.
- 25
- (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.
- 30
- (4) The right of an officer to bring proceedings for damages does not affect any other right or remedy available to the officer arising from the detrimental action.

**26J Application for injunction or order**

5 An officer who believes that detrimental action has been taken or may be taken against him or her in reprisal for a report to which this Division applies may apply to the Supreme Court for—

- 10 (a) an order requiring the person who has taken the detrimental action to remedy that action; or
- (b) an injunction.

**26K Injunction or order**

15 (1) If, on receipt of an application under section 26J, the Supreme Court is satisfied that a person has taken or intends to take detrimental action against an officer in reprisal for a report to which this Division applies, the Court may—

- 20 (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.

25 (2) The Supreme Court, pending the final determination of an application under section 26J, may—

- (a) make an interim order in the terms of subsection (1)(a); or
- (b) grant an interim injunction."



**Division 6—Parliamentary Committees Act 2003**

**143 IBAC Committee**

5 See:  
Act No.  
110/2003.  
Reprint No. 1  
as at  
26 July 2006  
and  
amending  
Act Nos  
43/2006,  
4/2007,  
7/2011,  
10 8/2011,  
66/2011,  
70/2011,  
6/2012 and  
13/2012.  
LawToday:  
www.  
legislation.  
15 vic.gov.au

For section 12A(1A)(a), (b) and (c) of the  
**Parliamentary Committees Act 2003**  
substitute—

- "(a) investigate a matter relating to the particular  
conduct the subject of—
- (i) a particular complaint or notification  
made to the IBAC under the  
**Independent Broad-based Anti-  
corruption Commission Act 2011**; or
  - (ii) a particular disclosure determined by  
the IBAC under section 26 of the  
**Protected Disclosure Act 2012**, to be a  
protected disclosure complaint;
- (b) review any decision by the IBAC under the  
**Independent Broad-based Anti-corruption  
Commission Act 2011** to investigate, not to  
investigate or to discontinue the investigation  
of a particular complaint or notification or a  
protected disclosure complaint within the  
meaning of that Act;
- (c) review any findings, recommendations,  
determinations or other decisions of the  
IBAC in relation to—
- (i) a particular complaint or notification  
made to the IBAC under the  
**Independent Broad-based Anti-  
corruption Commission Act 2011**; or
  - (ii) a particular disclosure determined by  
the IBAC under section 26 of the  
**Protected Disclosure Act 2012**, to be a  
protected disclosure complaint; or

(iii) a particular investigation conducted by the IBAC under the **Independent Broad-based Anti-corruption Commission Act 2011**;

5 (ca) review any determination by the IBAC under section 26(3) of the **Protected Disclosure Act 2012**;

**Division 7—Ombudsman Act 1973**

**144 Definitions**

10 (1) In section 2(1) of the **Ombudsman Act 1973**—

(a) **insert** the following definitions—

"*assessable disclosure* has the meaning given in section 3 of the **Protected Disclosure Act 2012**;

15 *Cabinet information* means—

(a) a document that is an exempt document under section 28 of the **Freedom of Information Act 1982**; or

20 (b) information that if it were in the form of a document would be a document referred to in paragraph (a);

25 *protected disclosure complaint* means a disclosure determined to be a protected disclosure complaint under section 26 of the **Protected Disclosure Act 2012** that has been referred to the Ombudsman under section 49C of the **Independent Broad-based Anti-corruption Commission Act 2011**;

30

See:  
Act No.  
8414.  
Reprint No. 8  
as at  
7 March 2008  
and  
amending  
Act Nos  
65/2007,  
34/2008,  
27/2009,  
69/2009,  
29/2011,  
66/2011,  
70/2011,  
72/2011,  
6/2012,  
43/2012 and  
52/2012.  
LawToday:  
www.  
legislation.  
vic.gov.au

*protected disclosure entity* means—

- (a) a member of Parliament;
- (b) a Councillor;
- (c) a member of the teaching service within the meaning of the **Education and Training Reform Act 2006**;
- (d) a State funded residential care service within the meaning of the **Health Services Act 1988**;
- (e) a person or body prescribed by Rules of Parliament made under this Act;

*relevant protected disclosure complaint*

means a protected disclosure complaint that the Ombudsman is required to investigate under section 15C;"

(b) in the definition of *principal officer*, after paragraph (c) **insert**—

- "(d) in relation to a member of the teaching service, the Secretary within the meaning of the **Education and Training Reform Act 2006**;
- (e) in relation to a State funded residential care service, the chief executive officer of the service;
- (f) in relation to a person or body prescribed by Rules of Parliament made under this Act as a protected disclosure entity, the person prescribed by the Rules as the principal officer for that person or body;"

(c) in the definition of *responsible Minister*,  
after paragraph (c) **insert—**

"(d) in relation to a Councillor, the Minister  
administering Part 4 of the **Local  
Government Act 1989**;

(e) in relation to a member of the teaching  
service, the Minister administering  
Part 2.4 of the **Education and  
Training Reform Act 2006**;

(f) in relation to a State funded residential  
care service, the Minister administering  
section 6 of the **Health Services Act  
1988**;

(g) in relation to a person or body  
prescribed by Rules of Parliament made  
under this Act as a protected disclosure  
entity, the Minister prescribed by the  
Rules as the responsible Minister for  
that person or body;"

(2) After section 2(2) of the **Ombudsman Act 1973**  
**insert—**

"(3) In this Act, a reference to a person who made  
a protected disclosure complaint or to a  
person who made a relevant protected  
disclosure complaint is a reference to a  
person who made a disclosure that was  
determined to be a protected disclosure  
complaint under section 26 of the **Protected  
Disclosure Act 2012**."

**145 Section 13AAA inserted**

After section 13 of the **Ombudsman Act 1973**  
**insert—**

**"13AAA Function of Ombudsman to investigate  
protected disclosure complaints**

The Ombudsman has the function to  
investigate protected disclosure complaints  
about conduct by or in an authority or a  
protected disclosure entity."

**146 Other functions of Ombudsman**

In section 13AA of the **Ombudsman Act 1973**,  
after "section 13" **insert** "and the function in  
section 13AAA".

**147 Conducting of enquiries**

In section 13A(1)(a) of the **Ombudsman Act  
1973**, after "this Act" **insert** "(other than an  
investigation on a protected disclosure  
complaint)".

**148 Division 1A of Part IV inserted**

After Division 1 of Part IV of the **Ombudsman  
Act 1973 insert—**

**"Division 1A—Protected disclosure complaints**

**15C Ombudsman must investigate protected  
disclosure complaints**

Subject to sections 15D and 15E, the  
Ombudsman must conduct an investigation  
under this Act on a protected disclosure  
complaint about conduct by or in an  
authority or a protected disclosure entity.

**15D Ombudsman must refuse to investigate certain protected disclosure complaints**

- 5 (1) The Ombudsman must refuse to conduct an investigation on a protected disclosure complaint if conducting the investigation would be contrary to section 13AB.
- 10 (2) The Ombudsman must refuse to conduct an investigation on a protected disclosure complaint about conduct by or in an authority or a protected disclosure entity unless the Ombudsman is reasonably satisfied that the protected disclosure complaint shows or tends to show that—
- 15 (a) the authority or protected disclosure entity or a member, officer or employee of the authority or protected disclosure entity has engaged, is engaging or proposes to engage in improper conduct; or
- 20 (b) the authority or protected disclosure entity or a member, officer or employee of the authority or protected disclosure entity has taken, is taking or proposes to take detrimental action against a
- 25 person in contravention of section 45 of the **Protected Disclosure Act 2012**.
- (3) In this section, *improper conduct* has the meaning given in section 4 of the **Protected Disclosure Act 2012**.

30 **15E Ombudsman may refuse to investigate certain protected disclosure complaints**

- 35 (1) The Ombudsman may refuse to conduct an investigation on a protected disclosure complaint if the Ombudsman considers—
- (a) the subject-matter of the protected disclosure complaint is trivial; or

5

- (b) the protected disclosure complaint is frivolous or vexatious; or
- (c) the protected disclosure complaint lacks substance or credibility; or
- (d) the subject-matter of the protected disclosure complaint has already been investigated or otherwise dealt with by—

10

- (i) an integrity body within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**; or
- (ii) any other person or body (whether or not still in existence) with the power to require the production of documents or the answering of questions.

15

(2) The Ombudsman may refuse to conduct an investigation on a protected disclosure complaint if the person who made the protected disclosure complaint—

20

- (a) made the disclosure that was determined to be a protected disclosure complaint more than 12 months after becoming aware of the disclosed matter; and
- (b) fails to give a satisfactory explanation for the delay in making the disclosure.

25

**15F Person who made protected disclosure complaint to be informed of refusal to investigate**

30

If the Ombudsman refuses to conduct an investigation on a protected disclosure complaint, the Ombudsman, within a reasonable time after receiving the protected

35

disclosure complaint from the IBAC, must inform the person who made the protected disclosure complaint of—

(a) the refusal to conduct the investigation; and

(b) the reason for that refusal."

**149 What are referred complaints and referred matters?**

In section 16B(1) of the **Ombudsman Act 1973**—

(a) in paragraph (a), after "**Act 2011**" insert "(other than a protected disclosure complaint)";

(b) in paragraph (b), for "or otherwise." substitute "or otherwise); or";

(c) after paragraph (b) insert—

"(c) a protected disclosure complaint that the Ombudsman has refused to investigate under section 15D(2)."

**150 Notification to Victorian Inspectorate**

In section 16F(2) of the **Ombudsman Act 1973**, after "investigation" insert "or an investigation on a relevant protected disclosure complaint".

**151 Application of Division**

In section 16H of the **Ombudsman Act 1973**—

(a) in paragraph (c), for "**1982.**" substitute "**1982;** or";

(b) after paragraph (c) insert—

"(d) a complaint that is a referred complaint within the meaning of section 16B(1)(c)."



**152 Disclosure of information by the Ombudsman**

After section 16L(1) of the **Ombudsman Act 1973 insert—**

5 "(1A) Despite subsection (1), the Ombudsman must not provide or disclose any information to a person or body if—

(a) the person or body, or an employee of the person or body, is the subject of an assessable disclosure; and

10 (b) the information—

(i) would be likely to lead to the identification of a person who made the assessable disclosure; and

15 (ii) is not information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies.".

**153 Procedure relating to investigations**

20 (1) In section 17(1) of the **Ombudsman Act 1973—**

(a) in paragraph (a), after "complainant" **insert** "or the person who made the relevant protected disclosure complaint";

25 (b) in paragraph (b), after "authority" **insert** "or protected disclosure entity";

(c) for paragraph (c) **substitute—**

"(c) the responsible Minister (if any) for the authority or protected disclosure entity to which the investigation relates; and";

30 (d) in paragraph (d), after "a Council" **insert** "or a Councillor".

(2) After section 17(1) of the **Ombudsman Act 1973**  
**insert—**

5           "(1A) Information given under subsection (1)(a) to  
a person who made a relevant protected  
disclosure complaint must include a written  
statement advising the recipient that it is an  
offence under section 26FA to disclose the  
Ombudsman's intention to conduct an  
investigation.

10           (1B) The Ombudsman must not inform a person  
under subsection (1) if doing so would result  
in information being disclosed that—

15               (a) is likely to lead to the identification of a  
person who has made an assessable  
disclosure; and

              (b) is not information to which  
section 53(2)(a), (c) or (d) of the  
**Protected Disclosure Act 2012**  
applies."

20           (3) In section 17(4) of the **Ombudsman Act 1973**—

              (a) after "an authority" **insert** "or a protected  
disclosure entity";

              (b) after "the authority" **insert** "or protected  
disclosure entity".

25           (4) After section 17(4) of the **Ombudsman Act 1973**  
**insert—**

30           "(4A) If at any time during the course of an  
investigation on a relevant protected  
disclosure complaint about a Councillor it  
appears to the Ombudsman that there may be  
grounds for making a report adverse to the  
Councillor, the Ombudsman must, before  
making the report, give the responsible  
Minister or the Mayor of the relevant

Council the opportunity to comment on the subject-matter of the investigation."

(5) In section 17(5) of the **Ombudsman Act 1973**—

(a) after "after an investigation" **insert** "(other than an investigation on a relevant protected disclosure complaint about a member of Parliament)";

(b) for "a final opinion adverse to the administrative action concerned" **substitute** "an adverse opinion in relation to the administrative action concerned or, in case of an investigation of a relevant protected disclosure complaint, an adverse opinion in relation to the conduct".

(6) In section 17(5A) of the **Ombudsman Act 1973**—

(a) after "Council" (where first occurring) **insert** "or relates to a relevant protected disclosure complaint about conduct of a Councillor or a member of staff of a Council";

(b) in paragraph (b), after "administrative action" **insert** "or conduct".

(7) In section 17(6) of the **Ombudsman Act 1973**—

(a) for "authority or a member, officer or employee of an authority" **substitute** "authority or a protected disclosure entity, or a member, officer or employee of an authority or a protected disclosure entity";

(b) in paragraph (a), after "the authority" **insert** "or protected disclosure entity";

(c) in paragraph (b), for "authority is a member of staff of a Council" **substitute** "authority or protected disclosure entity is a member of staff of a Council or a Councillor".

(8) After section 17(6) of the **Ombudsman Act 1973** insert—

"(6A) The Ombudsman must not disclose any information under subsection (4), (4A), (5), (5A) or (6) that—

(a) is likely to lead to the identification of a person who has made an assessable disclosure; and

(b) is not information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

#### **154 Investigation powers and privileges**

In section 18(3) of the **Ombudsman Act 1973**, for "authority" substitute "an authority or a protected disclosure entity".

#### **155 Legal advice and representation**

In section 18C(1)(b) of the **Ombudsman Act 1973**, after "this Act" insert "or the **Protected Disclosure Act 2012**".

#### **156 Further provisions relating to appearances**

(1) For section 18E(2)(d) of the **Ombudsman Act 1973** substitute—

"(d) inform a legal practitioner who is representing the person of—

(i) any non-disclosure requirements that apply under this Act; and

(ii) in the case of an investigation on a protected disclosure complaint, the confidentiality requirements under Part 7 of the **Protected Disclosure Act 2012**; and".

(2) After section 18E(2) of the **Ombudsman Act 1973** insert—

"(2A) In an investigation on a protected disclosure complaint, before the person appearing is asked any questions or required to produce any document, the presiding officer must—

(a) advise the person that the person may be subject to further confidentiality obligations under Part 7 of the **Protected Disclosure Act 2012**; and

(b) advise the person of the nature of those requirements."

**157 Deliberations of Ministers and Parliamentary committees not to be disclosed**

For section 19(2) of the **Ombudsman Act 1973** substitute—

"(2) This section does not apply in relation to an investigation on a relevant protected disclosure complaint."

**158 New sections 19A to 19D inserted**

After section 19 of the **Ombudsman Act 1973** insert—

**"19A Cabinet information not to be disclosed—relevant protected disclosure complaints**

In relation to an investigation on a relevant protected disclosure complaint, a person is not required or authorised to—

(a) furnish any information that is Cabinet information; or

(b) answer any question that relates to Cabinet information; or

(c) produce or inspect any document that is Cabinet information.

**19B Deliberations of Parliamentary Committees not to be disclosed—relevant protected disclosure complaints**

5 In relation to an investigation on a relevant  
protected disclosure complaint, a person is  
not required or authorised to furnish any  
information or produce or inspect any  
document or answer any question that relates  
10 to any deliberation in private of the  
following—

- 15 (a) a Joint Investigatory Committee or the  
House Committee, within the meaning  
of the **Parliamentary Committees Act  
2003**;
- (b) a committee of the Legislative Council  
or Legislative Assembly on a private  
Bill;
- 20 (c) a committee consisting of members of  
Parliament established by resolution of  
either the Legislative Council or the  
Legislative Assembly, or the resolution  
of both the Legislative Council and the  
Legislative Assembly.

**19C Conclusive certificates**

- 25 (1) The Secretary to the Department of Premier  
and Cabinet may issue a certificate certifying  
that—
  - 30 (a) any information or question or  
document or part of a document relates  
to deliberations of Ministers or of a  
committee referred to in section 19; or

(b) any information or document or part of a document—

(i) is Cabinet information; or

(ii) would, if it existed, be Cabinet information; or

(c) any question relates to Cabinet information; or

(d) any information or question or document or part of a document relates to deliberations in private of a committee referred to in section 19B.

(2) A certificate issued under this section is conclusive of the facts certified.

**19D Disclosure of information subject to legal professional privilege or client legal privilege—relevant protected disclosure complaints**

Nothing in this Act entitles a person to disclose information that is the subject of legal professional privilege or client legal privilege in an investigation on a relevant protected disclosure complaint."

**159 Entry of premises**

(1) In section 21 of the **Ombudsman Act 1973**, after "under this Act" **insert** "(other than an investigation on a relevant protected disclosure complaint)".

(2) At the end of section 21 of the **Ombudsman Act 1973 insert**—

"(2) For the purpose of conducting an investigation on a relevant protected disclosure complaint, the Ombudsman or a member of Ombudsman staff authorised to do so by the Ombudsman may at any

reasonable time enter any premises occupied or used by an authority or a protected disclosure entity in its capacity as such and inspect those premises or anything for the time being in them or on them."

**160 Procedure on completion of investigation**

(1) In section 23(1) of the **Ombudsman Act 1973**, for "Division 2" **substitute** "Division 1A or 2".

(2) After section 23(2) of the **Ombudsman Act 1973** **insert**—

"(2A) On completion of an investigation on a relevant protected disclosure complaint (other than a relevant protected disclosure complaint about a member of Parliament) the Ombudsman—

(a) must report the findings of the investigation—

(i) to the principal officer (if any) of the appropriate authority or protected disclosure entity; or

(ii) if there is no principal officer, to the responsible Minister for the authority or protected disclosure entity; or

(iii) if the protected disclosure complaint is about a Councillor, to the Mayor of the appropriate Council; and

(b) may make recommendations as to the action to be taken as a result of the investigation."



(3) In section 23(3) of the **Ombudsman Act 1973**—

- (a) after "subsection (2)" **insert** "or (2A)";
- (b) in paragraph (a)(i), after "authority" **insert** "or protected disclosure entity".

5

(4) In section 23(4) of the **Ombudsman Act 1973**—

- (a) after "subsection (2)" **insert** "or (2A)";
- (b) after "an authority" **insert** "or a protected disclosure entity, or the Mayor of the appropriate Council";
- (c) after "responsible Minister" (where second occurring) **insert** "or Mayor".

10

(5) In section 23(5) of the **Ombudsman Act 1973**—

- (a) after "subsection (2)" **insert** "or (2A)";
- (b) after "responsible Minister" **insert** "or Mayor";
- (c) in paragraph (b), for "the Council—" **substitute** "the Council; and";
- (d) after paragraph (b) **insert**—

15

"(c) where the report relates to a relevant protected disclosure complaint about a Councillor or a member of staff of a Council, to the Mayor of the Council—".

20

(6) After section 23(6) of the **Ombudsman Act 1973** **insert**—

25

- "(6A) The Ombudsman must not include in a recommendation under subsection (2) or (2A) any information that—
- (a) is likely to lead to the identification of a person who has made an assessable disclosure; and

30

(b) is not information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

5 **161 New section 23A inserted**

After section 23 of the **Ombudsman Act 1973** insert—

10 **"23A Report on investigation—relevant protected disclosure complaints about members of Parliament**

On completion of an investigation on a relevant protected disclosure complaint about a member of Parliament, the Ombudsman must report the findings of the investigation—

- 15
- (a) to the President of the Legislative Council, if the complaint is about a member of the Legislative Council; or
  - 20 (b) to the Speaker of the Legislative Assembly, if the complaint is about a member of the Legislative Assembly."

**162 Complainant to be informed of result of investigation**

- 25 (1) **Insert** the following heading to section 24 of the **Ombudsman Act 1973**—

**"Complainant or person who made relevant protected disclosure complaint to be informed of result of investigation"**.

- 30 (2) For section 24(1) of the **Ombudsman Act 1973** **substitute**—

"(1) If the Ombudsman conducts an investigation on a complaint or a relevant protected disclosure complaint, or takes any other action on a complaint, the Ombudsman must

inform the complainant or person who made the relevant protected disclosure complaint of the following—

- (a) the result of the investigation or other action;
- (b) if the Ombudsman has made any recommendations under section 23(2) or (2A) and it appears that appropriate steps have not been taken within a reasonable time of making those recommendations—
  - (i) the recommendations; and
  - (ii) any comments on the recommendations that the Ombudsman thinks fit."

(3) In section 24(2) of the **Ombudsman Act 1973**, after "complainant" **insert** "or person who made a relevant protected disclosure complaint".

(4) After section 24(3) of the **Ombudsman Act 1973** **insert**—

"(4) Information disclosed under this section to a person who made a relevant protected disclosure complaint must include a written statement advising the recipient that it is an offence under section 26FA to disclose the information."

### **163 Annual and other reports to Parliament**

At the foot of section 25(1) of the **Ombudsman Act 1973** **insert**—

**"Note**

See also section 69 of the **Protected Disclosure Act 2012** for other matters that must be included in the Ombudsman's report."

**164 Content of reports**

(1) In section 25A(1)(b) of the **Ombudsman Act 1973**, for "section 19" **substitute** "section 19, 19A or 19B".

(2) After section 25A(1) of the **Ombudsman Act 1973** **insert**—

"(1A) The Ombudsman must not include in a report under this Act any information that—

(a) is likely to lead to the identification of a person who has made an assessable disclosure; and

(b) is not information to which section 53(2)(a), (c) or (d) of the **Protected Disclosure Act 2012** applies."

**165 Persons who receive proposed or draft reports or information in them**

In section 25B(3)(b) of the **Ombudsman Act 1973**—

(a) after "an authority" (where twice occurring) **insert** "or a protected disclosure entity";

(b) after "the authority" (where twice occurring) **insert** "or protected disclosure entity".

**166 Unauthorised disclosure**

(1) In section 26A(1) of the **Ombudsman Act 1973**—

(a) after paragraph (c) **insert**—

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

(b) in paragraph (d), after "this Act" **insert** "or the **Protected Disclosure Act 2012**".

- (2) At the foot of section 26A(1) of the **Ombudsman Act 1973 insert—**

**"Note**

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

**167 Confidentiality notice**

- (1) After section 26C(2)(c) of the **Ombudsman Act 1973 insert—**

"(ca) include a statement—

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

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

- (2) In section 26C(2)(d)(ii) of the **Ombudsman Act 1973**, after "authority" **insert** "or protected disclosure entity".

**168 Disclosure subject to confidentiality notice**

- (1) In section 26F(2)(c)(ii) of the **Ombudsman Act 1973**, after "this Act" **insert** "or the **Protected Disclosure Act 2012**".

- (2) At the foot of section 26F of the **Ombudsman Act 1973 insert—**

**"Note**

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

**169 Oversight by Accountability and Oversight Committee**

In section 26H(2) of the **Ombudsman Act 1973**, after "particular complaint," (wherever occurring) insert "protected disclosure complaint,".

**170 New Division 3 of Part VA inserted**

At the end of Division 2 of Part VA of the **Ombudsman Act 1973** insert—

**"Division 3—Confidentiality requirements—  
certain information received from the  
Ombudsman about relevant protected  
disclosure complaints**

**26FA Offence to disclose certain information  
received from the Ombudsman about  
relevant protected disclosure complaints**

- (1) A person who made a relevant protected disclosure complaint who is informed by the Ombudsman under section 17(1)(a) of the intention to conduct an investigation 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 made a relevant protected disclosure complaint who receives information under section 24(1) or (2) 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.

- 5 (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  
10 circumstances specified in subsection (5).

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

- 15 (5) For the purposes of this section, the specified circumstances are—

- 20 (a) disclosure to any person where necessary for the purposes of obtaining any information, document or other thing to comply with a witness summons or 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—

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

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

- 5 (iii) is a person who is illiterate or has  
a mental, physical or other  
impairment which prevents the  
person from understanding the  
witness summons, confidentiality  
notice, notice cancelling the  
confidentiality notice or order  
extending the confidentiality  
notice or this section without  
10 assistance, to an independent  
person;
- (b) disclosure for the purposes of obtaining  
legal advice or representation in  
relation to—
- 15 (i) an investigation conducted by the  
Ombudsman under this Act; or
- (ii) the person's rights, liabilities,  
obligations and privileges under  
this Act or the **Protected  
20 Disclosure Act 2012**;
- (c) disclosure by a legal practitioner who  
receives a disclosure in the  
circumstances specified in  
paragraph (b), for the purposes of  
25 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 purpose of making—
- 30 (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  
35 Inspectorate Act 2011**;



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(e) disclosure for the purpose 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 laid before a House of the Parliament in a report by the Ombudsman or has otherwise been made public in accordance with this 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 this Act.

(6) Proceedings may only be instituted for an offence against subsection (1), (2), (3) or (4)—

(a) by the Ombudsman; or

(b) by or with the consent of the Director of Public Prosecutions."

**171 Application to Supreme Court**

In section 27(3) of the **Ombudsman Act 1973**, after "authority" insert "or protected disclosure entity".

**172 Evidence**

In section 29B of the **Ombudsman Act 1973**—

(a) in paragraph (b), for "**1958.**" substitute "**1958; or**";

(b) after paragraph (b) **insert**—

"(c) an offence against section 45, section 72 or section 73 of the **Protected Disclosure Act 2012**; or

(d) an action for damages brought under section 47 of the **Protected Disclosure Act 2012**; or

(e) an application for an injunction or order under section 50 of the **Protected Disclosure Act 2012.**".

**173 Amendment to Schedule 2**

In Item 11 of Schedule 2 to the **Ombudsman Act 1973**, after "an authority" (wherever occurring) **insert** "or a protected disclosure entity".

**Division 8—Repeal of amending Part**

**174 Repeal of amending Part**

This Part is **repealed** on the first anniversary of the first day on which all of its provisions are in operation.

**Note**

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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**SCHEDULE 1**

Section 82

**TRANSITIONAL AND SAVINGS PROVISIONS**

**1 Definitions**

5 In this Schedule—

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

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

15 *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**;

20 *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;

25 *WPA* means the **Whistleblowers Protection Act 2001** as in force immediately before its repeal.

**2 General transitional provisions**

30 (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.

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- (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

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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.

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5 (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**.

10 (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**

15 (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.

20 (2) Despite the repeal of the WPA—

- 25 (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
- 30 (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 82L of the **Independent Broad-based Anti-corruption Commission Act 2011** in relation to that person.

## 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.



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(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 50 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

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(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

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(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—

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(a) the warrant remains in force in accordance with its terms; and

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(b) subject to any conditions or limitations on his or her appointment, an IBAC Officer appointed to be an authorised officer under section 50 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

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(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

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(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.

**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**.

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**14 Request for copy of thing or information seized**

- 5 (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—
- 10 (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 50 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and
- 15 (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 50 of the **Independent Broad-based Anti-corruption Commission Act 2011**.
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25 **15 Application for return of document or thing seized**

- 30 (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.
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**16 Claim of legal professional privilege made before commencement day**

(1) This clause applies if, before the commencement day—

5 (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

10 (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—

15 (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 50 of the **Independent Broad-based Anti-corruption Commission Act 2011**; and

20 (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

25 (c) the Magistrates' Court must make its decision under section 61BF of the WPA.

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

30 (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 69 of that Act.

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- (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**

5 (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 53(2) of the  
10 **Independent Broad-based Anti-corruption Commission Act 2011.**

15 (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 82L(1) of the  
**Independent Broad-based Anti-corruption Commission Act 2011.**

**19 Transmission of report to Parliament**

20 (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.

25 (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**

30 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

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(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**.

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**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.



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**25 Investigation by public body**

5 (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—

10 (a) complete the investigation of the disclosure under the WPA; and

(b) without limiting paragraph (a)—

15 (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

20 (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—

30 (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.

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**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 89 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

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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**

5 (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.

10 (2) On or after the commencement day, the complaint is taken to be a complaint made to the Victorian Inspectorate under section 29 of the **Victorian Inspectorate Act 2011** and must be dealt with in accordance with that Act.

15 (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  
20 produced in relation to the complaint before the commencement day.

**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  
25 repealed may, on and after the commencement day, be made to the Victorian Inspectorate.

**Note**

30 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.

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

For the purposes of clause 32 and 33—

- 5 (a) section 32 of the **Victorian Inspectorate Act 2011** (except subsection (1)(a)) applies as if—
- 10 (i) a reference to an investigation in relation to the IBAC or IBAC personnel were a reference to an investigation under this clause; and
- 15 (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;
- 20 (b) section 33(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;
- 25 (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;
- 30 (d) Divisions 3 and 4 of Part 3 of the **Victorian Inspectorate Act 2011** apply;
- 35 (e) section 34 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;

- 5 (f) section 35(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;
- (g) sections 36 and 36A of the **Victorian Inspectorate Act 2011** apply;
- 10 (h) section 37(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;
- 15 (i) section 37A of the **Victorian Inspectorate Act 2011** applies.

### **35 Reports to the Victorian Inspectorate**

- 20 (1) Section 82H 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
- 25 commencement day.
- 30 (2) Section 82ZA 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.

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5 (3) Section 82S of the **Independent Broad-based  
Anti-corruption Commission Act 2011** applies,  
on and from the commencement day, in relation to  
the video-recording, 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.

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15 (4) On and from the commencement day, the IBAC  
must comply with a requirement of the Victorian  
Inspectorate under section 28G 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  
25 commencement day.

**36 Annual report of Victorian Inspectorate**

30 (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 38(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  
35 year to which that report relates.

5 (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.

10 (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.

15 (4) For the purposes of subclause (2) or (3)—

20 (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

25 (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 38 of the  
30 **Victorian Inspectorate Act 2011.**



**ENDNOTES**

By Authority. Government Printer for the State of Victoria.

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