

Victoria Police Manual – Procedures and Guidelines

Public interest disclosures

Source Policy

These Procedures and Guidelines support and must be read in conjunction with the following:

- *Victoria Police Act 2013*
- *Public Interest Disclosures Act 2012*
- *Public Administration Act 2004*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- VPMP Complaints and discipline
- IBAC Guidelines for making and handling Public Interest Complaints
- Victoria Police Guidelines for investigating Public Interest Complaints
- IBAC Guidelines for public interest disclosure welfare management

Application

Procedures and Guidelines are provided to support the interpretation and application of rules and responsibilities. They include recommended good practices and assessment tools to help employees make lawful, ethical and professional decisions. Employees should use the **Professional and ethical standards** to inform the decisions they make to support interpretation of Procedures and Guidelines.

Procedures and Guidelines are not mandatory requirements on their own. However, where rules and responsibilities state that employees must have regard to Procedures and Guidelines, the Procedures and Guidelines must be used to help make decisions in support of the rules.

Procedures and Guidelines

1. Obligation to report complaints

1.1 Overview

- All Victoria Police personnel must comply with the *Public Interest Disclosures Act 2012* in relation to the reporting of improper conduct and the proper handling of a disclosure.
- Police officers and protective services officers (PSOs) must also report misconduct under section 167(3) of the *Victoria Police Act 2013*.
- The table provides a summary of the requirements under these two Acts, with further instruction provided below.

Victoria Police Act (s. 167(3))	Public Interest Disclosures Act
Made by: • police officer • PSO	Made by: • Public, Victoria Police personnel
Actions of: • police officer/PSO	Actions of: • Victoria Police personnel/contractor
About: • misconduct	About: • Has, is or proposes to engage in: – Improper conduct – Detrimental action
Report to: • IBAC • police officer/PSO more senior in rank	Report to: • IBAC • A/Sgt or above • Direct/indirect manager/supervisor of discloser, including VPS

1.2 Victoria Police Act 2013

- Section 167(3), *Victoria Police Act* places an obligation on police officers and PSOs to make a complaint to a more senior police officer, senior PSO or to the Independent Broad-based Anti-corruption Commission (IBAC) where they have a reason to believe that another officer is guilty of misconduct.
- If the more senior police officer/PSO considers the complaint may be a complaint of misconduct, they must refer it to the Police Conduct Unit in accordance with **VPMP Complaints and discipline**.
- A complaint under the VPA offers protections as per Part 6 (detrimental action) and Part 7 (confidentiality) of the *Public Interest Disclosures Act*.
- Any police officer/PSO can lodge a complaint directly to the Police Conduct Unit.

- A complaint under this section is known as a police complaint disclosure as per section 22, *Public Interest Disclosures Act*.

1.3 **Misconduct – Victoria Police Act**

Misconduct, in relation to a police officer or PSO, means:

- conduct which constitutes an offence punishable by imprisonment
- conduct which is likely to bring Victoria Police into disrepute or diminish public confidence in it; or
- disgraceful or improper conduct (whether in the member's official capacity or otherwise).

1.4 **Public Interest Disclosures Act**

- Section 9 of the *Public Interest Disclosures Act* provides for any person to disclose:
 - information that shows or tends to show, or the person reasonably believes shows or tends to show –
 - a person has engaged, is engaging or proposes to engage in improper conduct; or
 - a person has taken, is taking or proposes to take detrimental action in reprisal for a public interest disclosure.
- 'Victoria Police personnel' includes police officers, PSOs, police custody officers, recruits and Victorian Public Service (VPS) employees.
- A disclosure by Victoria Police personnel under the *Public Interest Disclosures Act* (as opposed to s.167(3) *Victoria Police Act*) must be made to IBAC, an acting sergeant or above or a direct or indirect manager or supervisor of the discloser including VPS employees.
- The disclosure must also be more than a mere suspicion, allegation or conclusion. There must be information, facts or circumstances disclosed which would lead a reasonable person to believe that the information shows, or tends to show, improper conduct or detrimental action.
- This section applies to all Victoria Police personnel. For further information refer to **VPM Management of misconduct (VPS employees)** and the *Public Administration Act 2004*.

1.5 **Improper conduct –Public Interest Disclosures Act**

Improper conduct – for the purposes of the *Public Interest Disclosures Act* means:

- corrupt conduct; or

- conduct in their capacity of as Victoria Police personnel that constitutes:
 - a criminal offence
 - serious professional misconduct
 - dishonest performance of public functions
 - intentional or reckless breach of public trust
 - misuse of information or material acquired in the course of the performance of the functions of Victoria Police personnel or Victoria Police
 - a substantial mismanagement of public resources
 - a substantial risk to the health or safety of one or more persons
 - a substantial risk to the environment.

In addition to the definition under the *Public Interest Disclosures Act*, improper conduct may also include conduct that:

- adversely affects the honest of Victoria Police personnel or Victoria Police of their functions as a public officer or public body
- is intended to adversely affect the effective performance and results in a person, or an associate of the person obtaining:
 - a licence, permit, approval, authority or other entitlement under any Act, financial benefit real or personal; or
 - any other direct or indirect monetary or proprietary gain that would otherwise not be obtained.
- constitutes or involves the dishonest performance of an employee's functions
- constitutes or involves knowingly or recklessly breaching public trust
- involves the misuse of information or material acquired in the course of their duty, whether or not for the benefit of themselves or anyone else
- could constitute a conspiracy or an attempt to engage in any of the above conduct.

Conduct that is trivial does not constitute improper conduct.

Detrimental action (s. 43) – includes taking, or threatening to take action (or inciting or permitting another person to take, or threaten to take) that results in:

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

To constitute detrimental action, the adverse action must have been taken in the belief that a person has made, or intends to make, a public interest disclosure; or a person has cooperated, or intends to cooperate, with a public interest disclosure investigation.

1.6 *Receiving a public interest disclosure*

- If the disclosure is made in accordance with s.167(3), *Victoria Police Act* follow **VPMP Complaints and discipline** as far as appropriate, bearing in mind confidentiality for receiving a complaint under the *Public Interest Disclosures Act* (see section 3 for further information).
- Public interest disclosures made under the *Public Interest Disclosures Act*:
 - must be made by Victoria Police personnel to an acting sergeant or above, a direct or indirect supervisor or manager of the discloser or to the IBAC
 - may be made anonymously
 - if made in writing can be:
 - delivered personally or sent by post directly or electronically to an acting sergeant or above, a direct or indirect supervisor or manager of the disclosure (including VPS employees) or direct to the Police Conduct Unit (acting sergeant or above) or the PBEA): PSC-POLICE CONDUCT UNIT [COMPLAINTS AND COMPLIMENTS]
 - submitted on VP Form 918 ensuring the public interest disclosure section is fully completed
 - delivered personally or sent by post directly to the office of IBAC; emailed directly to the office of IBAC or a prescribed member of IBAC; or submitted using the IBAC online form.
 - if made verbally must be done in private either by telephone, in person or by another form of electronic communication (not involving writing), to an acting sergeant or above or to a direct or indirect supervisor or manager of the discloser or to IBAC.
- The employee receiving the disclosure under the *Public Interest Disclosures Act* must:
 - ensure confidentiality of the information and identity of the person making the disclosure
 - take initial action as detailed in **VPMP Complaints and discipline** only as far as necessary to prevent further harm or risk to property
 - not notify other persons, such as the divisional patrol supervisor, unless immediate action is required to prevent harm or risk to property
 - forward all information about the complaint on a Complaint/Incident Form [VP Form 918] to the Police Conduct Unit or direct to the Deputy Public Interest Disclosure Coordinator
 - report to PSC any matters that are required to be immediately reported according to **VPMP Complaints and discipline**.

1.7 Opt out provision

Persons making a disclosure may state in writing that the disclosure is not a public interest disclosure. This can be done in writing at the time of making the complaint, by acknowledging that it is not a public interest disclosure on VP Form 918 or in writing within 28 days to the Public Interest Disclosure Co-ordinator or Deputy.

2. Assessment of Public Interest disclosure

2.1 Role of the Police Conduct Unit

All possible disclosures must be forwarded to the Police Conduct Unit for:

- recording on the Register of Complaints, Serious Incidents and Discipline (ROCSID)
- forwarding to the Public Interest Disclosure Coordinator where a public interest complaint assessment is required.

2.2 Role of the Public Interest Disclosure Coordinator

The Chief Commissioner has delegated responsibility under the *Public Interest Disclosures Act* to the Public Interest Disclosure Coordinator and Deputy. The Public Interest Disclosure Coordinator must:

- assess all possible police complaint or public interest disclosures and notify IBAC of the disclosure in accordance with s.21 or s.22 of the *Public Interest Disclosures Act*. Notify the person making the disclosure in accordance with s.24 of the *Public Interest Disclosures Act*
- notify the Internal Witness Support Unit (IWSU) where appropriate
- secure the file on ROCSID
- facilitate assessment and investigation of the complaint in accordance with **VPMG Complaint management and investigations**.

2.3 Role of IBAC

IBAC must:

- determine whether a disclosure they receive or have been notified of is a public interest complaint, in accordance with s.26, *Public Interest Disclosure Act*
- dismiss the disclosure, investigate the complaint or refer it to another investigating agency, such as Victoria Police, to investigate

- notify the person who has made the disclosure and the investigating agency about the outcome of the assessment.

3. Protections and confidentiality

3.1 Protections

- The *Public Interest Disclosures Act* provides protections to persons who make a disclosure. These protections apply whether or not the Public Interest Disclosure Coordinator has referred the disclosure to IBAC for assessment or whether or not IBAC has determined the disclosure to be a public interest complaint.
- Protections include:
 - immunity from civil and criminal liability and disciplinary action for making a disclosure
 - immunity from liability for breaching confidentiality provisions
 - protection from defamation
 - the right to sue for damages or to seek an injunction to stop action in reprisal.
- These protections also apply to further information provided by a discloser relating to a public interest complaint.
- A person's liability for their own conduct is not affected by their disclosure of that conduct. Accordingly, a disclosure does not provide a complainant with immunity for their own wrongdoing.
- It is a criminal offence to provide information that a person knows is false or misleading intending that the information be acted on as a public interest complaint or as further information relating to a public interest complaint. In these cases, confidentiality protections no longer apply.

3.2 Confidentiality

Assessable disclosure – made under the *Public Interest Disclosures Act* or s.167(3), *Victoria Police Act* which shows improper conduct or detrimental action for a disclosure that may be considered as a public interest disclosure and notified to IBAC for determination as a public interest complaint.

- It is an offence to disclose the content or information about the content of disclosure
- It is an offence to disclose information likely to lead to the identification of a person who has made a disclosure
- Exceptions under s 54 *Public Interest Disclosures Act* include:
 - where necessary for the purpose of the exercise of functions under this Act for example the receipt, recording and assessment of disclosures to conduct a criminal or disciplinary investigation

- obtaining legal advice or representation related to witness summons, confidentiality notices and a person's rights and obligations under an act
- to seek advice or support from the following bodies:
 - registered health practitioner
 - TPAV or Trade Union
 - employee assistance program
 - Victorian Workcover for the purpose of compensation or proceedings
 - Fair Work Commission where it relates to a hearing.

Public interest complaint– further confidentiality requirements apply to an assessable disclosure that IBAC has determined to be a public interest complaint. When a public interest complaint is under investigation by police:

- it is an offence under the *Victoria Police Act* to directly or indirectly disclose any information acquired during the investigation of a public interest complaint
- exceptions are in the *Victoria Police Act* and are similar to those for an assessable disclosure.

Restricted matter – is defined in s.183, *Victoria Police Act* and includes:

- information given under s.176, *Victoria Police Act* direction
- the subject matter of a public interest complaint investigation
- any information that could identify a person who has been or is to be interviewed or has participated in a public interest complaint investigation.

It is an offence to disclose a restricted matter. Exceptions are in the *Victoria Police Act* and include:

- seeking legal advice
- discussing with a partner or spouse
- as necessary to conduct a discipline or criminal investigation
- to advise a supervisor to enable participation in an investigation.

Further advice – employees are advised to seek advice regarding the confidentiality provisions before disclosing any information concerning a police complaint or public interest disclosure, an assessable disclosure, or public interest complaint.

3.3 ***Security of files***

- The Public Interest Disclosure Coordinator will mark all assessable disclosure and public interest complaint files as such.
- Any person who handles the complaint must ensure the confidentiality of the content and identity of the person making the disclosure. This includes:
 - ensuring files are secured when not in use, e.g. locked filing cabinet
 - only discussing the file with other members in compliance with the statutory confidentiality obligations referred to in this policy, and on a “need to know” basis
 - adhering to the protective security handling requirements as dictated by the protective marking selected for the file.

4. **Wellbeing**

4.1 ***Internal Witness Support Unit***

The Public Interest Disclosure Coordinator will notify the IWSU of all relevant disclosures. The IWSU will provide wellbeing support to the person making the public interest disclosure and any witnesses, see **VPMP Complaints and discipline**.

Taskforce Salus will provide welfare for disclosers and witnesses in relation to their investigations.

4.2 ***Workplace support***

- Detrimental action in reprisal for a public interest disclosure is a criminal offence. Victoria Police personnel must report detrimental action to an acting sergeant or above; a direct or indirect supervisor or manager of the discloser (this includes VPS employees), or to IBAC.
- Local and Senior Managers are responsible for:
 - ensuring detrimental action is not taken or threatened to be taken against a person who has made, or is intending to make, a disclosure or where others believe that person has made, or is intending to make, a disclosure or has cooperated, or intends to cooperate, with an investigation
 - preventing the spread of gossip and rumours about a complaint and/or investigation
 - providing support to persons who may be known to have made a disclosure, or are subject to detrimental action.
- Where detrimental action has been taken or is suspected, communicating to all employees under their command:
 - the lawful obligations of making a disclosure
 - that detrimental action is a criminal offence.

4.3 Wellbeing of the subject employee

Investigators– must be aware of the wellbeing needs of the person who is subject of a public interest complaint and direct them to appropriate areas for assistance and support. Employee Support and Welfare Services Unit provides support for the subject employee. PBEA: WELFARE SERVICES-OIC

Senior Managers – are responsible for ensuring there are no adverse consequences for the employee subject of the disclosure where the allegation has been determined as: False Report, Not Substantiated, Exonerated or Unfounded. This is particularly crucial where information has been publicly disclosed that has identified the person or where information has become well-known in the workplace.

5. Investigation

5.1 Role of Independent Broad-based Anti-Corruption Commission (IBAC)

IBAC determine whether a disclosure is a public interest complaint.

- Where the disclosure is determined to be a public interest complaint, IBAC must:
 - dismiss the complaint where there are grounds to do so
 - investigate the complaint (only IBAC can investigate a complaint against the Chief Commissioner or a Deputy or Assistant Commissioner); or
 - refer the complaint to an investigating entity (Victoria Police) for investigation.
- Where the complaint is determined not to be a public interest complaint, IBAC may:
 - advise the person making the disclosure that they may make their complaint to Victoria Police to be dealt with by Victoria Police's usual complaint handling processes.

5.2 Criminal investigation

A public interest complaint may relate to criminal offences. The criminal investigation must be concluded prior to conducting a discipline investigation. Follow, as applicable, **VPMG Complaint management and investigations**.

5.3 Discipline investigation

- Where IBAC has determined under s.26, *Public Interest Disclosures Act* that a disclosure is a public interest complaint and has referred the complaint to Victoria Police to investigate, the investigation against a member of the police force must occur in accordance with Part 10, *Victoria Police Act*.

- Discipline investigations against VPS employees are conducted according to **VPM Management of misconduct (VPS employees)**.

5.4 *Natural justice*

- All employees under investigation must be:
 - informed of the substance of the allegations against them
 - given the opportunity to answer the allegations before a final decision is made
 - informed about the substance of any adverse comment that may be included in any report arising from an investigation
 - have their defence set out fairly in any report
 - advised of the outcome of any investigation.
- The subject of a disclosure need not be informed of the disclosure if an assessable disclosure or public interest complaint is dismissed without investigation.

5.5 *Direction to answer questions*

- **Section 176(1), Victoria Police Act direction** – for the purposes of an investigation of a public interest complaint relating to a member of the police force, a delegated member may direct any police officer or PSO to:
 - give any relevant information
 - produce any relevant document
 - answer any relevant question.
- **Delegated member** – the following are delegated:
 - police members of or above the rank, or acting rank, of senior sergeant
 - all Executive Directors or Directors, or acting in that position, of Departments
 - police members of or above the rank of senior constable performing duties as detectives within the Investigations Group Division, PSC
 - all substantive sergeants who have qualified at the Discipline Investigation Course or Integrity Management Program.
 - all Victoria Police employees working at Workplace Relations Division, HRD who hold the following positions:
 - Manager
 - Senior Review Officer
 - Senior HR Consultant.

Refer to Guidelines for making, handling and investigating public interest disclosures, available on the PSC intranet page.

- **Obligation of police officer/PSO under direction** – failure to comply with a direction made under s.176(1) is a breach of discipline under s.125(1)(i), *Victoria Police Act*.

- Use of information – any information, document or answer given under an s.176(1) direction is not admissible in evidence except for:
 - perjury or giving false information
 - breach of discipline under s.125(1), *Victoria Police Act*
 - failure to comply with a direction of the Chief Commissioner.
- **Process** – as far as applicable, follow the process for the conduct of an s.171(1) direction as detailed in **VPMG Complaint management and investigations**.
- **Advice** – in addition to any other requirement, the person giving the direction must advise the police officer/PSO of the additional obligation under the *Public Interest Disclosures Act* relating to confidentiality may apply and the nature of those obligations. Factsheets are to be handed to the subject employee being interviewed.

5.6 **Person who made the disclosure**

- A person's liability for their own conduct is not affected by their disclosure of that conduct. The Assistant Commissioner, PSC decides whether disciplinary or other action will be taken against the person making the disclosure. In some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.
- Taking disciplinary or other action against a person who has made a public interest disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The employee recommending and authorising the action must be able to clearly demonstrate:
 - the fact that a person has made a public interest disclosure is not a reason for taking the action against the employee
 - there are sufficient grounds that would fully justify disciplinary action against any other person in the same circumstances
 - there are sufficient grounds that justify exercising any discretion to institute disciplinary or other action.
- The process should be documented including reasons why the disciplinary or other action is being taken and the reasons why the action is not in retribution for making the disclosure (i.e. detrimental action).

6. Reports

6.1 **Investigator's final report**

The allocated investigator must complete a final report in accordance with **VPMG Complaint management and investigations**.

6.2 **Updates and outcomes**

Person who made the disclosure – the person who made the disclosure:

- may request information about the investigation; and
- must be informed of the outcome of the investigation
- information must be provided unless disclosure would:
 - not be in the public interest or in the interests of justice
 - put a person's safety at risk
 - cause unreasonable damage to a person's reputation
 - prejudice a discipline or IBAC investigation
 - be likely to lead to the disclosure of any secret investigative methods
 - otherwise contravene any applicable statutory secrecy obligations; or
 - involve the unreasonable disclosure of information relating to the personal affairs of any person.

IBAC – on completing an investigation, IBAC must be advised in writing of:

- the findings of the investigation
- the steps (if any) taken or proposed to be taken to –
 - prevent the conduct from continuing or occurring in the future
 - remedy any harm or loss arising from the conduct.

The Public Interest Disclosure Coordinator will facilitate this advice to IBAC.

Premier or Minister – if considered necessary, the Chief Commissioner may give the Premier or Minister information, in writing, about a matter relating to or arising out of a public interest disclosure investigation.

- This information must not be provided where:
 - the Chief Commissioner considers it would cause unreasonable damage to a person's reputation; or
 - that it is likely to lead to the identification of the person who has made a disclosure.
- The Chief Commissioner must notify IBAC in writing where any information has been given to the Premier or Minister.

6.3 ***Annual Report***

The Public Interest Disclosure Coordinator is responsible for collating statistics for the Annual Report in accordance with s.69, *Public Interest Disclosures Act*.

Further Advice and Information

For further advice and assistance regarding these Procedures and Guidelines, contact the Deputy Public Interest Disclosure Coordinator, Professional Standards Command.

Update history

Date of first issue	23/12/13	
Date updated	Summary of change	Force File number
01/07/14	Legislative references updated due to commencement of <i>Victoria Police Act 2013</i>	FF-084067
03/08/15	Inclusion of reference to the Integrity Management Program	FF – 095972
09/09/19	Changes to reflect Mental Health Review and minor administrative amendments	FF-134804
31/12/19	Integration of the <i>Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019</i> amending the <i>Protected Disclosure Act 2012</i> to the <i>Public Interest Disclosures Act 2012</i> .	FF - 101355