



VICTORIA POLICE

**External Guidelines for making a  
Public Interest Disclosure against  
Victoria Police Personnel**

***Public Interest Disclosures Act 2012***

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## Who should use these guidelines?

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These guidelines are about making a Public Interest Disclosure (PID) of improper conduct by police. They are a resource for:

- Any person making a PID alleging improper conduct or detrimental action by a member of Victoria Police personnel

A member of Victoria Police personnel includes: The Chief Commissioner of Police (the Chief Commissioner), Deputy Commissioners, Assistant Commissioners, other police officers, protective service officers (PSO), police recruits, police reservists, police custody officers and other Victoria Police employees (employed under Part 3 of the *Public Administration Act 2004* (Vic)).

## About these Guidelines

Victoria Police is committed to the aims and objectives of the [Public Interest Disclosures Act 2012](#) (PID Act). Victoria Police does not tolerate improper conduct by Victoria Police personnel.

Victoria Police recognises the value of transparency and accountability in our administrative and management practices and will support the making of disclosures that reveal [improper conduct](#)<sup>1</sup>.

Victoria Police will take all reasonable steps to protect people who make such disclosures from any [detrimental action](#)<sup>2</sup> in reprisal for making the disclosure. Victoria Police will also afford natural justice to the person who is the subject of the disclosure.

These guidelines:

- Outline how a PID can be made to Victoria Police and what happens to that disclosure;
- Have been prepared in accordance with the *PID Act*;
- Should be read in conjunction with the Independent Broad-Based Anti-Corruption Commission (IBAC) *Guidelines for making and handling public interest disclosures*, which are available on the IBAC's website ([www.ibac.vic.gov.au](http://www.ibac.vic.gov.au));
- Do not replace the legislation and should not be relied on as a replacement for legal advice. It may be necessary for you to seek your own legal advice to understand how the *PID Act* might apply to or affect you in specific circumstances; and
- Should be read in conjunction with the *Victoria Police Act* (VPA) where applicable.

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<sup>1</sup> s. 4 PID Act

<sup>2</sup> s. 3 PID Act

## What is improper conduct?

A PID must be about improper conduct or detrimental action taken, by a member of Victoria Police personnel in their capacity working for Victoria Police.

The conduct may have occurred in the past, be presently occurring, or be proposed to occur.

Improper conduct is<sup>3</sup>:

- corrupt conduct; or
- a criminal offence; or
- serious professional misconduct; or
- dishonest performance of public functions; or
- an intentional or reckless breach of public trust; or
- an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of Victoria Police personnel; or
- a substantial mismanagement of public resources; or
- a substantial risk to the health or safety of one or more persons; or
- a substantial risk to the environment; or

conduct of any person that—

- adversely affects the honest performance by a public officer or public body of their functions as a public officer or public body; or
- is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and results in the person, or an associate of the person, obtaining—
  - I. a licence, permit, approval, authority or other entitlement under any Act or subordinate instrument; or
  - II. an appointment to a statutory office or as a member of the board of any public body under any Act or subordinate instrument; or
  - III. a financial benefit or real or personal property; or
  - IV. any other direct or indirect monetary or proprietary gain— that the person or associate would not have otherwise obtained; or
  - V. conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred above.

### **Conduct that is trivial does not constitute improper conduct<sup>4</sup>**

A PID under the *PID Act* can be made by any person about information that shows or tends to show<sup>5</sup>:

- A member of Victoria Police personnel has engaged, is engaging or proposes to engage in improper conduct; or
- A member of Victoria Police personnel has taken, is taking or proposes to take detrimental action against a person.

The disclosure can relate to improper conduct or detrimental action that a person has engaged, is engaging or proposes to engage in.

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<sup>3</sup> s.4(1) PID Act

<sup>4</sup> s.4(2) PID Act

<sup>5</sup> s.9 PID Act

A disclosure can be made anonymously<sup>6</sup>.

A person can also make a disclosure in circumstances where they cannot identify the member of Victoria Police personnel they believe has, engaged, is engaging or proposes to engage in improper conduct or detrimental action.

A disclosure about the conduct of the Chief Commissioner or Deputy or Assistant Commissioners can only be made to the IBAC.

## Making a Public Interest Disclosure

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### Making a complaint about members of Victoria Police personnel

Anyone can make a disclosure about the improper conduct of a member of Victoria Police personnel.

To make a disclosure this can be done by visiting your local police station and speaking with a sergeant or a police member more senior in rank, on line to the Police Conduct Unit (PCU), Professional Standards Command (PSC) or to the IBAC directly. You can remain anonymous.

The process on how to make a complaint is explained on our Victoria Police internet site ([www.police.vic.gov.au](http://www.police.vic.gov.au)). Please read that information or contact the PCU:

- Telephone on 1300 363 101; or
- Email at [police](mailto:police.complaints@vic.gov.au) compliments and complaints

In some circumstances your disclosure may be assessed as a PID.

### When will your complaint be considered a Public Interest Complaint?

If you make your complaint to Victoria Police, Victoria Police must assess it and notify the IBAC if Victoria Police consider it may be a PID.

For your disclosure to be considered as a PID it must be:

- about improper conduct or detrimental action;
- made to a police officer of or above the rank of sergeant, to the PCU, or to the IBAC; and
- made in the correct way in person or in writing, including electronically

If your complaint is about something that is already in the public domain it will not normally be a PID, for example if the matter has already been in the media or other public commentary.

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<sup>6</sup> s.12A PID Act

### Making a public interest disclosure about police under the Public interest Disclosures Act

Who can make a disclosure	<ul style="list-style-type: none"> <li>Any person</li> </ul>
How to make a disclosure	<ul style="list-style-type: none"> <li>In person, in writing, or electronically; and</li> <li>In accordance with specific procedures<sup>7</sup></li> </ul>
Who to make a disclosure to	<ul style="list-style-type: none"> <li>A police officer of or above the rank of sergeant (including an acting sergeant); or</li> <li>By telephone or electronically to the PCU</li> <li>To the IBAC</li> </ul>
Disclosures can be made about	<ul style="list-style-type: none"> <li>The improper conduct or detrimental action of any member of Victoria Police personnel or Victoria Police as a body</li> </ul>

If you make your complaint in person Victoria Police will ensure confidentiality. The only persons who will be present or able to hear will be:

- Any person you consent to being present which includes your legal representation;
- An interpreter, independent third person, parent or guardian; and/or
- Other police officers who may receive a PID.

Victoria Police may take notes and electronically record the conversation. You will be informed if the conversation is recorded.

You can remain anonymous. If a disclosure is made anonymously Part 6 and Part 7 of the *PID Act* apply but other obligations like the obligation to communicate to the discloser does not apply. Other obligations may also not apply.

## What happens if your complaint is not a Public Interest Disclosure?

If Victoria Police does not consider that your disclosure is a PID, the matter will still be investigated, or other action may be taken but not as a PID.

<sup>7</sup> Part 2 PID Act

## What is detrimental action?

A person is not allowed to take detrimental action against someone else because they believe that person has made a PID.

Detrimental action includes<sup>8</sup>:

- Action causing injury, loss or damage; or
- Intimidation or harassment; or
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action

Detrimental action includes:

- a threat to carry out detrimental action; or
- inciting someone else to take or threaten detrimental action; and/or
- can be against any person, not necessarily the person who made the disclosure

To be considered detrimental action, the person (or the person they have incited) must take or threaten the action, because of, or in the belief that the person or anyone else has:

- Made, or intends to make the PID; and/or
- Cooperated, or intends to cooperate with an investigation of the disclosure

Action taken by a person will only be considered detrimental action taken in reprisal for a PID if it is taken as a result of the making, or proposal to make the PID, or as a result of a person cooperating, or intending to cooperate with an investigation of the PID.

If at any time you consider you may be subject to detrimental action for making a disclosure please contact the allocated investigator, PSC or the IBAC.

The following are examples of action that will **not** be detrimental action:

- A manager taking management action against an employee who has made a PID, in circumstances where the management action is not related to the PID;
- Action by a person against the disclosure is not detrimental action if the discloser has made a false disclosure or provided false further information relating to a disclosure

## What Victoria Police will consider

When considering whether your complaint is a PID, Victoria Police also considers how much evidence there is to support the belief that the conduct did happen or is going to happen. Actual proof is not required but there must be some information supporting this belief.

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<sup>8</sup> s.3 PID Act

Victoria Police may look at:

- What is the connection to the alleged conduct – a victim, a witness or a participant?
- How did the discloser come to know about the conduct – was the discloser directly involved, did the discloser see it happening or did someone else tell the discloser about it?
- How much detail is available – is there sufficient information to consider whether there is improper conduct or detrimental action?
- How reliable is the information – is it supported by other information?

Simply stating that improper conduct or detrimental action is occurring is not enough. For example, it would not be enough for you to just say “I know Constable X is corrupt”.



## What will Victoria Police do with Public Interest Disclosures

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All complaints are sent to the PCU, PSC for recording, assessment, classification and allocation for investigation or other action.

Disclosures are treated as sensitive, recorded and filed in a secure environment according to internal procedures and in accordance with the *PID Act*.

PSC will acknowledge, in writing, receipt of your complaint.

Please see our [internet](#) site for more information about what happens with your complaint.

## Public Interest Disclosure Assessment

When Victoria Police receive your complaint the Chief Commissioner of Police must assess it to consider whether it may be a PID. This function has been delegated to the Public Interest Disclosure Coordinator office.

If you are making the disclosure you do not need to ask that it be considered as a PID as Victoria Police make the assessment on the nature of the disclosure and the information you have given.

## What happens when Victoria Police assess your complaint?

If Victoria Police considers that your complaint is a PID, Victoria Police are required to write to you within 28 days to let you know that:

- Victoria Police have notified your disclosure to the IBAC for determination as a public interest complaint (PIC); and
- Your obligations and responsibilities.

When Victoria Police send your complaint to the IBAC, all the information you have given will also be sent.

Your complaint is then known as an 'assessable disclosure' and you are afforded the protections found in Part 6 of the *PID Act*. The confidentiality provisions found in Part 7 of the *PID Act* also apply and continue to apply unless the IBAC determines that your complaint is not a PIC.

If Victoria Police consider that your complaint is not a PID, Victoria Police will write to you within 28 days to let you know that:

- Victoria Police do not consider your complaint to be a PID;
- Victoria Police have not notified your complaint to the IBAC for determination as a PIC; and
- You still receive the protections found in Part 6 of the *PID Act*.

You can expressly state as the person making the disclosure (the discloser) in writing within 28 days after disclosing the information that you do not want your disclosure to be considered a PID<sup>9</sup>. This is an 'opt out' provision and the protections of Part 6 and Part 7 of the *PID Act* will not apply.

## IBAC assessment

Only the IBAC can decide that your disclosure is a PIC. If Victoria Police consider your complaint to be a PID, Victoria Police will notify the IBAC. If the IBAC is of the view that the disclosure is a PIC, then it must determine that the PID is a 'public interest complaint'.

In making its assessment, the IBAC may ask for more information about your disclosure.

The protections under Part 6 of the PID Act continue to apply regardless of whether the IBAC determines your complaint to be a PIC.

## Actions IBAC may take with a Public Interest Complaint

Once the IBAC has assessed your complaint it will also decide what action it might take. The actions available are:

- *Dismiss* – the complaint for any of the reasons outlined in s.68 of the IBAC Act;
- *Investigate* – the complaint if it suspects on reasonable grounds that the conduct constitutes corrupt conduct; or
- *Refer* – the complaint to a relevant investigating entity. If the complaint is about the conduct of a member of Victoria Police personnel, it will be referred to Victoria Police for investigation. However, only the IBAC can investigate a complaint about the Chief Commissioner or an Assistant or Deputy Commissioner.

The IBAC must notify you and Victoria Police of their action in relation to a PIC. They must do this within a reasonable time of the action being taken or the investigation being commenced.

More information about how the IBAC handles PIDs can be found in the [Guidelines for making and handling public interest disclosures](http://www.ibac.vic.gov.au) available at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

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<sup>9</sup> s.19 PID Act

## Investigating a Public Interest Complaint

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Victoria Police must investigate every PIC that the IBAC has referred to Victoria Police for investigation.

Victoria Police will investigate PICs according to our internal procedures and in accordance with legislation.

If the complaint is about improper conduct that may pose an immediate threat to health and safety of individuals, preservation of property, or may consist of serious criminal conduct Victoria Police may commence an investigation without waiting for the IBAC to determine that it is a PIC.

## Protections for persons making a Public Interest Disclosure

If you have made a complaint that Victoria Police have considered and notified to the IBAC for PIC determination you receive protections as detailed in Part 6 of the *PID Act*.

These protections include:

- Immunity from any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure<sup>10</sup>;
- Immunity from committing an offence against the *Constitution Act 1975 (Vic)* or any other Act that imposes obligations of confidentiality or any other restriction on the disclosure of the information<sup>11</sup>;
- Immunity from breaching any other obligation (made by oath, rule of law or practice) requiring confidentiality or otherwise restricting disclosure of information<sup>12</sup>; and
- Protection from an action of defamation in relation to information included in a public interest disclosure<sup>13</sup>

It is a criminal offence for you to give false or misleading information intending that it be acted on as a PIC. If you make a false disclosure or have given false information you will not receive the protections.

If you are involved in the improper conduct or detrimental action you will receive the protections; however, you are still liable for your conduct.

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<sup>10</sup> s.39 PID Act

<sup>11</sup> s.40 (a) PID Act

<sup>12</sup> s.40 (b) PID Act

<sup>13</sup> s.41 PID Act

## Confidentiality

Strict confidentiality provisions pertain to PIDs. These are set out in Part 7 of the *PID Act*.

Victoria Police take all reasonable steps to ensure that information about your complaint or that may lead to your identity being disclosed is kept confidential.

Victoria Police keep all information in a secure environment, including the exchange of information with the IBAC or other investigating entity.

Victoria Police will only disclose your identity or information about your complaint when the law permits. For example, Victoria Police may disclose information to relevant persons for the purpose of making an assessment or if necessary, for the purposes of conducting a relevant criminal or disciplinary investigation. This reasonable exchange of information is necessary to enable us to act in relation to the disclosure.

## Natural Justice

Victoria Police will afford the person who is subject of the PIC natural justice prior to a decision being made about their conduct. Natural justice means that if a decision is to be made about their conduct this person will:

- Be informed about the substance of the allegations against them;
- Be given the opportunity to answer the allegations before a final decision is made;
- Be informed about the substance of any adverse comment that may be included in any report arising from an investigation; and
- Have their defence set out fairly in any report

They will not be told that you made the disclosure unless you consent, or the law permits.

## Providing information at the conclusion of an investigation

When Victoria Police finalises the investigation, you will be informed of what happened. However, Victoria Police may not tell you if it may:

- 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 an investigation;
- Be likely to lead to the disclosure of any secret investigative method;
- Otherwise contravene any applicable statutory secrecy obligations; or
- Involve the unreasonable disclosure of information relating to the personal affairs of any person

Victoria Police must write to the IBAC to tell them the findings of our investigation and what Victoria Police have done or intend to do to prevent the conduct from continuing or occurring in the future and action Victoria Police have taken to remedy any harm or loss arising from the conduct.

## Victoria Police Welfare

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Victoria Police may arrange suitable Victoria Police welfare and support for the discloser, the member/s of Victoria Police personnel subject of the complaint and people who have cooperated or intend to cooperate with a PIC investigation.

Investigators are responsible for providing appropriate support, advice and/or referral to persons involved in the investigation. If necessary, a Victoria Police welfare manager may be appointed.

## FACT SHEET

### Public Interest Disclosures

#### Confidentiality Obligations and Protections

The *Public Interest Disclosures Act 2012* (**PID Act**) provides protections for persons who make public interest disclosures and obligations of confidentiality in relation to those disclosures.

The Chief Commissioner must investigate, in accordance with Part 10 of the *Victoria Police Act 2013* (**VP Act**), any such disclosures that are referred back from the Independent Broad-based Anti-Corruption Commission (**IBAC**) to Victoria Police for investigation. Additional obligations and protections are attached to these investigations.

This fact sheet provides a general overview of confidentiality obligations and protections under both Acts. This document should be used as a guide only and should not be used as a substitute for the provisions of the relevant legislation or legal advice.

#### CONFIDENTIALITY OBLIGATIONS

##### *Confidentiality obligations in the Public Interest Disclosures Act 2012*

The PID Act prohibits the disclosure of:

1. The **identity** of a person who has made a disclosure which has been referred to the IBAC (**discloser**) (for assessment as to whether it is a public interest complaint) or information likely to lead to the identification of a discloser; and
2. The **content** of a disclosure which has been referred to the IBAC for assessment as to whether it is a public interest complaint (**assessable disclosure**).

Breaches of these confidentiality obligations are criminal offences, punishable by up to 12 months' imprisonment.

##### *Exemptions to the confidentiality obligations in the Public Interest Disclosures Act 2012*

Limited exemptions to these confidentiality obligations exist and are set out in section 54 of the PID Act and include disclosure:

- where **necessary for the exercise of certain functions**, proceedings and processes under the PID Act and other relevant legislation
- for the **purpose of obtaining legal advice or representation** in relation to a witness summons, a confidentiality notice, or in relation to a person's rights, liabilities, obligations and privileges under relevant legislation (or in certain circumstances by an Australian legal practitioner to whom an assessable disclosure or information has been disclosed for this purpose)
- in certain circumstances, to other specified **persons to assist the person to understand and comply with their obligations**, including an interpreter, parent, guardian or independent person
- to the **Victorian WorkCover Authority** for the purpose of a workers' compensation claim and for the purpose of an application to the **Fair Work Commission**
- for the purposes of **assisting the discloser to seek support** in relation to the disclosure to a registered health practitioner, a trade union of which the discloser is a member, or an employee assistance program.

### *Confidentiality obligations in the Victoria Police Act 2012*

The VP Act imposes additional confidentiality obligations on information relating to Part 10 investigations. Breaches of these obligations are punishable by up to 12 months' imprisonment.

These obligations relate to material determined to be '**restricted matter**', which is defined in section 183 of the VP Act as:

- the **fact that a disclosure or related disclosure has been notified to IBAC** for assessment or has been determined to be a public interest complaint
- the **subject matter** of a public interest complaint being investigated under Part 10
- the existence of, or any information about an **investigation request or direction under section 176 of the VP Act**
- any information, or the description or contents of any **document or thing given to the Chief Commissioner** in response to either an investigation request or under a direction under section 176 of the VP Act
- Any information that could enable the identification or location of:
  - any **person who has or is proposed to participate in an investigation or interview under Part 10**
  - any person who has **produced, or may produce, any document or thing under Part 10**
- The fact that a person has been, or may be, **involved in an investigation or interview, or has produced, or may produce, a document** pursuant to a Part 10 investigation.

### *Exemptions to confidentiality obligations on disclosure of 'restricted matter' under the VP Act*

Limited exemptions to these obligations are located in s 185 of the VP Act and include disclosures:

- to a person's **spouse or domestic partner**
- to a person's **employer or manager**
- for the purpose of **obtaining legal advice or representation** in relation to an investigation request or a direction under section 176 of the VP Act, or the rights, liabilities, obligations and protections under relevant legislation (or in certain circumstances by an Australian legal practitioner who has been provided this information)
- to certain **professionals and bodies**, for the purpose of assisting a person to seek **advice or support** in relation to the investigation to which the restricted matter relates, including a **registered health practitioner**, a **trade union** of which the person is a member, an **employee assistance program**, the **WorkCover Authority** for the purpose of a workers' compensation claim, or for the purpose of an application to the **Fair Work Commission**
- to the **IBAC** for the purposes of making a complaint about the conduct of a member of Victoria Police personnel in the course of performing their functions under Part 10 of the VP Act or an applicable law
- in certain circumstances, **to other specified persons to assist the person to understand and comply with their obligations**, including an interpreter, parent or guardian or independent person
- in certain circumstances for the purpose of involvement in a **restorative engagement process**
- in accordance with **authority from the Chief Commissioner**
- **to the Chief Commissioner** by the person who has made a disclosure to which the restricted matter relates where the disclosure is made for the purposes of an investigation of the disclosure as a public interest complaint.

## PROTECTIONS

### Protections from liability

Disclosers are **protected from defamation action and from civil and criminal liability** or any liability arising by way of administrative process (including disciplinary action) for making the disclosure. However, disclosers are not protected from liability for their own conduct. Further, the protections do not apply to information that is false or misleading and it is an offence punishable by up to 12 months' imprisonment for a person to provide information that the person knows is false or misleading, intending that the information be acted on as a public interest disclosure.

### Prohibitions on taking detrimental action

Disclosers are also protected from '**detrimental action**'. Detrimental action is prohibited under both the PID and the VP Act, which make it a criminal offence for a person to **take, or threaten to take, or allow another person to take**, detrimental action against another person because the person **intends to, or has** (or is believed to have) made a public interest disclosure or assisted in, or intends to assist in, the investigation of a public interest disclosure. These protections extend to complaints made under section 167 of the VP Act.

'Detrimental action' is defined under each of the PID Act and the VP Act, and while the definition under the VP Act is broader, 'detrimental action' can be said to include intimidation, harassment, discrimination, disadvantage or adverse treatment, including the taking of disciplinary action, or any action causing injury, loss or damage. This does not include management action, where the fact that the person has made a disclosure is not a substantial reason for the manager taking that action.

The legislation also provides civil remedies for breaches on the prohibition on detrimental action, and provides for disclosers to request a transfer if they believe on reasonable grounds that detrimental action will be, is being, or has been taken against him or her.