Guidelines for making a protected disclosure complaint against police employees

Protected Disclosure Act 2012
# Table of contents

About these guidelines ........................................................................................................... 3  
Who should use these guidelines ......................................................................................... 3  

Making a protected disclosure ................................................................................................. 4  
Making a complaint about police employees ........................................................................... 4  
When will your complaint be considered to be a protected disclosure? ......................... 4  
What happens if your complaint is not a protected disclosure? .......................................... 5  
What is improper conduct? ......................................................................................................... 6  
  What conduct is considered as being improper? ................................................................. 6  
What is detrimental action? ....................................................................................................... 6  
The things we will also consider ............................................................................................... 7  

What we do with protected disclosures .................................................................................. 8  
What we do with complaints .................................................................................................... 8  
Protected disclosure assessment .............................................................................................. 8  
  What happens when we assess your complaint .................................................................... 8  
IBAC assessment .................................................................................................................... 9  
  Actions IBAC may take with a protected disclosure complaint .......................................... 9  

Investigating a protected disclosure complaint ...................................................................... 10  
Protections for persons making a protected disclosure .......................................................... 10  
Confidentiality ........................................................................................................................ 10  
Natural justice ......................................................................................................................... 11  
Providing information at the conclusion of an investigation .................................................. 11  

Welfare .................................................................................................................................... 13
About these guidelines

Victoria Police is committed to the aims and objectives of the Protected Disclosure Act 2012 (PD Act). We do not tolerate improper conduct by our employees.

We recognise the value of transparency and accountability in our administrative and management practices and we support the making of disclosures that reveal corrupt or improper conduct.

We will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. We will also afford natural justice to the person who is the subject of the disclosure.

These guidelines:
- Outline how you can make a protected disclosure complaint to Victoria Police and what happens to that complaint;
- Have been prepared in accordance with the PD Act;
- Should be read in conjunction with IBAC’s Guidelines for making and handling protected disclosures, which are available on IBAC’s website (www.ibac.vic.gov.au); and
- 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 PD Act might apply to or affect you in specific circumstances.

Who should use these guidelines?

These guidelines are about making a protected disclosure of improper police conduct. They are a resource for:
- Anyone who wants to make a protected disclosure about improper conduct by a member of police personnel; and
- Those involved in an investigation of a protected disclosure complaint by Victoria Police.
Making a protected disclosure

Making a complaint about members of Victoria Police personnel

Anyone may make a complaint about the conduct of a member of Victoria Police personnel, which includes police officers, protective service officers (PSO), police custody officers, recruits and public service employees.

You can make your complaint to IBAC or to any police officer or PSO. If your complaint is about the Chief Commissioner of Police you must make it to IBAC.

Complaints made to Victoria Police are sent to our Professional Standards Command for recording, assessment, classification and allocation for investigation or other action.

The process on how to make a complaint is explained on our Victoria Police internet site (www.police.vic.gov.au). Please read that information or contact our Police Conduct Unit:

- Telephone on 1300 363 101; or
- Email at police compliments and complaints

In some circumstances your complaint may be considered to be a protected disclosure. This is explained later in these guidelines.

If you are a sworn police officer or protective services officer you may also make your complaint under the Victoria Police Act 2013 (the VPA) and you should read further specific instructions available internally.

When will your complaint be considered to be a protected disclosure?

Only IBAC can determine that your complaint is a protected disclosure. If you make your complaint to Victoria Police, we must assess it and notify it to IBAC if we consider it may be a protected disclosure.

For your complaint to be considered as a protected disclosure it must be:

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

If your complaint is about something that is already in the public domain it will not normally be a protected disclosure, for example if the matter has already been in the media or other public commentary. In simple terms, a ‘disclosure’ is something that is a ‘revelation’ to the person receiving it.
Making a protected disclosure about police under the Protected Disclosure Act

<table>
<thead>
<tr>
<th>Who can make a disclosure</th>
<th>• Any person</th>
</tr>
</thead>
<tbody>
<tr>
<td>How to make a disclosure</td>
<td>• In person, in writing, or in some cases, online; and&lt;br&gt;• In accordance with specific procedures</td>
</tr>
<tr>
<td>Who to make a disclosure to</td>
<td>• A police officer of or above the rank of sergeant (including an acting sergeant); or&lt;br&gt;• To the IBAC</td>
</tr>
<tr>
<td>Who disclosures can be made about</td>
<td>• The conduct of any member of Victoria Police personnel or Victoria Police as a body</td>
</tr>
<tr>
<td>What disclosures can be made about</td>
<td>• Improper conduct; or&lt;br&gt;• Detrimental action</td>
</tr>
</tbody>
</table>

If you make your complaint in person we will ensure we take your complaint in privacy. The only persons who will be present or able to hear will be:
• You and any other person making a joint disclosure with you;
• Your lawyer (if present);
• An interpreter, independent third person, parent or guardian; and/or
• Other police officers who may receive a protected disclosure

We may take notes and if we electronically record the conversation we will let you know we are doing this.

If you make your complaint in writing it must be addressed to the Police Conduct Unit (see the compliments and complaints form on the Victoria Police internet site) or to a police sergeant or someone of higher rank. You cannot fax your complaint.

You can remain anonymous; however, this creates potential difficulties in being able to assess whether your complaint may be considered to be a protected disclosure.

What happens if your complaint is not a protected disclosure?

If we do not consider that your complaint is a protected disclosure we will still investigate your complaint or take other action but not as a protected disclosure complaint.

All complaints are recorded and actioned by the Police Conduct Unit, Professional Standards Command. Please see our internet site for more information about what happens with your complaint.
What is improper conduct?

A protected disclosure complaint must be about improper conduct engaged in, 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 must be either corrupt conduct, or certain specified conduct, which, if proven, could constitute criminal conduct or conduct serious enough to result in a person’s dismissal.

What conduct is considered as being improper?

The types of behaviours that may be considered improper include conduct that, if proved, would constitute a criminal offence or grounds for dismissal and:

- Adversely affects the honest performance by a member of Victoria Police personnel of their functions;
- Involves dishonest performance of their official functions;
- Involves knowingly or recklessly breaching public trust;
- Involves misuse of information or material that was obtained in their official capacity;
- Is intended by a person to adversely affect the effective performance of the functions or powers of a member of Victoria Police personnel which leads to a benefit to that person; or
- Could constitute a conspiracy or attempt to engage in any of the above conduct.

It may also include conduct by a member of Victoria Police personnel in their official capacity that:

- Involves substantial mismanagement of public resources;
- Involves substantial risk to public health or safety; or
- Involves substantial risk to the environment.

What is detrimental action?

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

Detrimental action includes:

- Action causing injury, loss or damage;
- 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:

- Includes a threat to carry out detrimental action;
- Includes inciting someone else to take or threaten detrimental action; and/or
- Can be against any person, not necessarily the person who made the complaint.
To be considered detrimental action, the person (or the person they have incited) must take or threaten the action, because, or in the belief that the person or anyone else has:

- Made, or intends to make the disclosure; 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 protected disclosure if it is taken substantially as a result of the making, or proposal to make the protected disclosure, or as a result of a person cooperating, or intending to cooperate with an investigation of the disclosure.

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

- A manager may take management action against an employee who has made a protected disclosure, in circumstances where the management action is not related to the protected disclosure;
- 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.

**The things we will also consider**

When considering whether your complaint is a protected disclosure complaint we also consider how much evidence there is to support your belief that the conduct did happen or is going to happen. You do not have to have actual proof but there must be some information supporting this belief.

In deciding this we might look at:

- What is your connection to the alleged conduct – are you a victim, a witness or a participant?
- How did you come to know about the conduct – were you directly involved, did you see it happening or did someone else tell you about it?
- How much detail can you provide – is there sufficient information for us 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”.

---

*Victoria Police: Guidelines for making, handling and investigating protected disclosures - Community*

Date of issue: April 2018
What we do with protected disclosures

What we do with complaints

All complaints about the conduct of a member of Victoria Police personnel, including protected disclosures, are sent to the Professional Standards Command for recording, assessment, classification and allocation for investigation or other action.

Complaints are treated in-confidence, and recorded and filed in a secure environment according to internal procedures and in accordance with the PD Act.

Professional Standards Command will acknowledge, in writing, receipt of your complaint.

Please see our internet site for more information about what happens with your complaint.

Protected disclosure assessment

When we receive your complaint the Chief Commissioner of Police must assess it to consider whether it may be a protected disclosure. This function has been delegated to the Protected Disclosure Coordinator and Deputy who are nominated senior police attached to the Professional Standards Command.

If you are making the disclosure you do not need to ask that it be considered as a protected disclosure as we make our assessment on the nature of the complaint and the information you have given.

What happens when we assess your complaint?

If we consider that your complaint is a protected disclosure, we are required to write to you within 28 days to let you know that:

- We have notified your complaint to IBAC for determination as a protected disclosure; and
- It is an offence under s.74 of the PD Act for you to disclose that this has happened

When we send your complaint to IBAC we generally send them all the information you have given to us.

Your complaint is known as an ‘assessable disclosure’ and you are afforded the protections found in Part 6 of the PD Act. The confidentiality provisions found in Part 7 of the PD Act also apply and continue to apply unless IBAC determines that your complaint is not a protected disclosure complaint. The protections and confidentiality provisions are explained later in these guidelines.

IBAC will assess your complaint and determine how it should be dealt with. This process is further explained in the next section ‘IBAC assessment’.
If we consider that your complaint is not a protected disclosure, we will write to you within 28 days to let you know that:

- We do not consider your complaint to be a protected disclosure;
- We have not notified your complaint to IBAC for determination as a protected disclosure; and
- You still receive the protections found in Part 6 of the PD Act

We do not send this information unless you have indicated you wish to receive the protections or it otherwise appears to us that you wish to receive the protections.

**IBAC assessment**

Only IBAC can decide that your complaint is a protected disclosure complaint. If we consider your complaint to be an assessable disclosure, we tell IBAC. If IBAC is of the view that the assessable disclosure is a protected disclosure, then it must determine that the protected disclosure is a ‘protected disclosure complaint’.

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

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

**Actions IBAC may take with a protected disclosure complaint**

Once 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 IBAC can investigate a complaint about the Chief Commissioner or an Assistant or Deputy Commissioner.

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

If you make your complaint direct to IBAC and IBAC determines that it is not a protected disclosure complaint they may advise you to make your complaint to Victoria Police if it is about the conduct of a member of Victoria Police personnel.

More information about how IBAC handle protected disclosure complaints is in the [Guidelines for making and handling protected disclosures](http://www.ibac.vic.gov.au) available at www.ibac.vic.gov.au
Investigating a protected disclosure complaint

Victoria Police must investigate every protected disclosure complaint that the IBAC has referred to Victoria Police for investigation.

We will investigate protected disclosure complaints according to our internal procedures and in accordance with Part 10 of the VPA.

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 we may commence an investigation without waiting for IBAC to determine that it is a protected disclosure complaint and refer it to us for investigation.

Protections for persons making a protected disclosure

If you have made a complaint that we have considered and notified to IBAC for protected disclosure determination you receive protections as detailed in Part 6 of the PD Act.

These protections include:

- Immunity from any civil or criminal liability or administrative action (including disciplinary action) for making the disclosure;
- 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;
- Immunity from breaching any other obligation (made by oath, rule of law or practice) requiring confidentiality or otherwise restricting disclosure of information; and
- Protection from an action of defamation in relation to information included in a protected disclosure

It is a criminal offence for you to give false or misleading information intending that it be acted on as a protected disclosure. 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 and you will not be protected from the consequences that flow from your involvement.

Confidentiality

Strict confidentiality provisions pertain to protected disclosures. These are set out in Part 7 of the PD Act.

We take all reasonable steps to ensure that information about your complaint or that may lead to your identity being disclosed is kept confidential.
We keep all information in a secure environment, including the exchange of information with IBAC or other investigating entity.

We only disclose your identity or information about your complaint when the law permits. For example, we 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 take action in relation to the disclosure.

**Natural justice**

Victoria Police will afford the person who is subject of the protected disclosure complaint 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 complaint unless you allow us to do that and you give this permission in writing. However, if your complaint is about something police did to you, in order to advise the person who is the subject of the investigation the substance of the allegations against them, information may be provided which would enable the person to identify you as the person who made the complaint. For example, if your complaint is that police have unlawfully accessed your criminal record and given that information to someone else, the investigator will need to tell the police member your name.

**Providing information at the conclusion of an investigation**

When we have finished our investigation we will tell you what happened. However, we may not tell you if we consider that this 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

We must write to IBAC to tell them the findings of our investigation and what we have done or intend to do to prevent the conduct from continuing or occurring in the future and action we have taken to remedy any harm or loss arising from the conduct.
In some circumstances, Victoria Police may also write to the Premier or Minister and inform them about a matter relating to or arising out of the investigation. If we do this, we will advise IBAC.
Welfare

Victoria Police is committed to the protection of persons making a protected disclosure complaint about a member of Victoria Police personnel. It is recognised that detrimental action is a criminal offence and Victoria Police will not tolerate this type of conduct. We will take all necessary action to prevent detrimental action and will take immediate steps to stop this conduct if it occurs or it is believed it may occur.

We may arrange suitable 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 an investigation of a protected disclosure complaint.

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

If at any time you consider you may be subject to detrimental action for making your complaint please contact the allocated investigator, Professional Standards Command or the IBAC.