

PROCEDURE

Protected Disclosures

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Policy Statement

The Victorian Ombudsman is a key part of Victoria's integrity framework. We encourage people to report improper conduct in the public sector, and support action to investigate and address that conduct.

We also expect the highest standards of integrity on the part of our own officers. We will facilitate reports about improper conduct by our officers and cooperate with lawful investigations. We will also take appropriate steps to protect people from reprisals.

Scope

These procedures constitute the Victorian Ombudsman's procedures for the purposes of section 58 of the *Protected Disclosure Act 2012*.

They explain the steps we take to:

- facilitate disclosures about other public bodies and public officers under the Protected Disclosure Act
- handle disclosures and notify the Independent Broad-based Anti-corruption Commission (IBAC)
- assess and investigate matters referred to us by IBAC, subject to the powers and discretions in the *Ombudsman Act 1973*.

They also set out our procedures for dealing with protected disclosures made about Ombudsman officers, and protecting people from 'detrimental action' taken in reprisal for disclosures.

About Victoria's protected disclosure regime

The Protected Disclosure Act is Victoria's public sector whistleblower legislation. Its purposes are to:

- encourage and facilitate disclosures about improper conduct in the public sector, and detrimental action taken in reprisal for disclosures
- provide protections for people who make disclosures, and people who may suffer detrimental action
- provide for the confidentiality of the content of disclosures and the identity of people who make disclosures (Protected Disclosure Act, section 1).

Guide to key terms

<i>Assessable disclosure</i>	A 'disclosure' that our office is required to notify to IBAC (see pages 13-15 for more information).
<i>Detrimental action</i>	See pages 7-8
<i>Discloser</i>	A person who makes a disclosure
<i>Disclosure</i>	A report about improper conduct or detrimental action. See page 5.
<i>IBAC</i>	Independent Broad-based Anti-corruption Commission
<i>Improper conduct</i>	See pages 6-7
<i>Protected disclosure</i>	A disclosure made in accordance with Part 2 of the Protected Disclosure Act
<i>Protected disclosure complaint</i>	A disclosure that has been assessed by IBAC and determined to be a protected disclosure complaint
<i>Public body</i>	See page 6
<i>Public officer</i>	See page 6

Roles and responsibilities

IBAC provides a clearinghouse for protected disclosures. It determines whether a disclosure is a 'protected disclosure complaint' for the purposes of the Act, and how it will be dealt with.

The Victorian Ombudsman is one of a number of other bodies that can receive and, depending on IBAC's decision, investigate disclosures. Our role is to:

- to receive disclosures about most public bodies and public officers (see page 12)
- notify IBAC of disclosures that meet the thresholds in the Protected Disclosure Act (see pages 13-15)
- investigate matters referred by IBAC, subject to the powers and discretions in the Ombudsman Act (see pages 16-18)
- collate and publish certain statistics about disclosures (see page 25).

What is a disclosure?

'Disclosure' is the term used in the Protected Disclosure Act to describe a report about:

- 'improper conduct' by a person, public officer or public body
- 'detrimental action' by a public officer or public body in reprisal for a disclosure.

A disclosure can be about conduct that has already taken place, is occurring now, or may happen in the future.

We interpret the term 'disclosure' in the ordinary sense of the word to mean information that is a 'revelation' to the person receiving it. Information may not be a disclosure if it is already publicly known. For example, it is unlikely that a person who merely repeats information from a media report will have made a disclosure. It may be different if the person provides new, additional information that is not public.

Who can make a disclosure?

Any person or group of people can make a disclosure. They can be an employee of the public body, a contractor or tenderer, a client or a member of the public.

Disclosures cannot be made by companies or businesses. The Protected Disclosure Act only provides for 'a natural person' to make a disclosure (Protected Disclosure Act, section 9). Any disclosure needs to be made by an officer or employee of the company or business.

People can make a disclosure anonymously (Protected Disclosure Act, section 12(2)(b)). However, this may limit our ability to assess or investigate the disclosure e.g. if we need to contact the discloser for more information.

Who can a disclosure be about?

People can make disclosures about:

- public bodies or public officers
- another person whose conduct adversely affects the honest performance of a public body's or public officer's official functions, or intends to adversely affect their effective performance e.g. a person who tries to bribe a public officer.

Public bodies include government departments and statutory authorities, government-owned companies, local councils, universities and TAFEs, public hospitals and bodies performing public functions on behalf of the state (see Protected Disclosure Act, section 6 and *Independent Broad-based Anti-corruption Commission Act 2011*, section 6).

Public officers include ministers, members of parliament, statutory officeholders, public servants, teachers, local government councillors and employees, and police (see Protected Disclosure Act, section 6 and IBAC Act, section 6).

There are only a handful of public bodies and officers that *cannot* be the subject of a disclosure – a Public Interest Monitor, the Special Investigations Monitor, the Office of the Special Investigations Monitor, the Victorian Inspectorate and its officers, and a court (Protected Disclosure Act, section 9(3)).

A person making the disclosure does not need to be able to identify the person or body to whom the disclosure relates (Protected Disclosure Act, section 10).

What is improper conduct?

The Protected Disclosure Act defines 'improper conduct' (see section 4) to mean:

- corrupt conduct. This is conduct that involves an indictable offence (an offence punishable by imprisonment for five years or more) or the common law offences of attempting to pervert the course of justice, bribery of a public official, perverting the course of justice or misconduct in public office (see IBAC Act, section 4).
- specified conduct. This is conduct that, if proved, would constitute a criminal offence, or reasonable grounds for dismissal.

Only certain types of conduct can amount to improper conduct, namely:

- conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions e.g. offering or taking a bribe
- conduct of a public officer or public body that:
 - constitutes or involves a dishonest performance of their official functions e.g. misusing a corporate credit card
 - constitutes or involves knowingly or recklessly breaching public trust e.g. assaulting a client or publishing false data
 - involves misuse of information or material obtained in their official capacity e.g. insider trading
- conduct of a person intended to adversely affect the effective performance of a public officer or body, leading to a benefit described in the Act
- conduct that could constitute a conspiracy or attempt to engage in any of the conduct described above
- in the case of specified conduct, conduct of a public officer or public body that involves substantial mismanagement of public resources, substantial risk to public health or safety, or substantial risk to the environment e.g. ignoring major safety problems with public infrastructure.

What is detrimental action?

Detrimental action includes (see Protected Disclosure Act, section 3):

- action causing injury, loss or damage e.g. assaulting a person or damaging their property
- intimidation or harassment e.g. sending threatening letters
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, employment, trade or business, including disciplinary action e.g. overlooking a person for promotion or cancelling a contract.

Detrimental action includes threats to take such action, and inciting or permitting someone else to take action (Protected Disclosure Act, section 43).

The reason for the person taking action in reprisal must be a 'substantial reason' for the action (Protected Disclosure Act, section 43(3)).

The detrimental action provisions do not just protect disclosers. They also protect a person who is believed to have made a disclosure (even if this belief is mistaken), and a person who has or intends to cooperate with an investigation of a disclosure e.g. a potential witness (Protected Disclosure Act, section 43(1)).

Who can a disclosure be made to?

This depends on which public body or public officer the disclosure is about.

The Protected Disclosure Act requires disclosures about some bodies and officers to be made to specific agencies. These are set out in the table on page 9.

Disclosures about other bodies can be made to IBAC.

The Victorian Ombudsman can also receive a disclosure about a public body or public officer if, were IBAC to determine the disclosure to be a protected disclosure complaint, we would be authorised to investigate the subject matter of that disclosure (Protected Disclosure Act, section 13(2)(b)). In practice, this means government departments, most statutory authorities, public servants, councillors and council employees.

How are disclosers protected?

The Protected Disclosure Act protects disclosers by shielding them from legal consequences that might otherwise attach to disclosing information about improper conduct. It provides that disclosers:

- are not subject to civil or criminal liability or any administrative liability arising by way of administrative process (including disciplinary action) for making the disclosure (Protected Disclosure Act, section 39)
- do not commit an offence under the *Constitution Act 1975* or any other Act that imposes a duty to maintain confidentiality, or any other restrictions on disclosure of information (Protected Disclosure Act, section 40)
- do not breach any other obligation requiring them to maintain confidentiality, such as an oath (Protected Disclosure Act, section 40)
- cannot be liable for defamation in relation to the information included in the disclosure (Protected Disclosure Act, section 41).

If disclosure is about ...	it must be made to ...
Chief Commissioner of Police Director of Public Prosecutions Chief Crown Prosecutor Solicitor-General Governor Lieutenant-Governor or Administrator Director, Police Integrity Electoral Commissioner Commissioner or member of a Board of Inquiry under the <i>Inquiries Act 2014</i> A judicial officer A member of VCAT who is not a judicial officer A judicial employee A Ministerial Officer A Parliamentary adviser An electorate officer A Parliamentary officer Minister who is not a member of parliament	IBAC
Councillor Freedom of Information Commissioner Commissioner for Privacy and Data Protection Health Complaints Commissioner	IBAC or the Victorian Ombudsman
Chief Examiner or an Examiner appointed under section 21 of the <i>Major Crimes (Investigative Powers) Act 2004</i> Victorian Ombudsman officer Victorian Auditor-General's Office officer	IBAC or the Victorian Inspectorate
IBAC and its officers	Victorian Inspectorate
Member of police personnel (other than the Chief Commissioner)	IBAC or a prescribed member of police personnel
Member of Parliament (Legislative Assembly)	Speaker of the Legislative Assembly
Member of Parliament (Legislative Council)	President of the Legislative Council

The Act also deals with reprisals by:

- making it an offence to take detrimental action in reprisal for a protected disclosure (Protected Disclosure Act, section 45)
- allowing the victim to sue the person who takes detrimental action for damages (Protected Disclosure Act, section 47). If the person who takes detrimental action is an employee or agent of a public body, the public body will be vicariously liable unless it can show it reasonable precautions to prevent the detrimental action (Protected Disclosure Act, section 48)

- allowing them, and certain investigating bodies, to seek a court order that the person remedy the action, or an injunction (Protected Disclosure Act, section 49 and 50)
- allowing some public officers who make a disclosure to apply for a transfer of employment (Protected Disclosure Act, section 51).

Disclosers should note that there are some limits to these protections:

- The protections do not apply to a discloser who provides information that they know is false or misleading in a material particular (Protected Disclosure Act, sections 39(2), 40(2), 41(2) and 43(2)).
- If the discloser has engaged in some kind of misconduct themselves, they remain liable for that conduct (Protected Disclosure Act, section 42). People cannot escape liability for their own improper conduct by disclosing it under the Act.
- The Protected Disclosure Act does not prevent the discloser's manager from taking management action, provided that the fact that the person made the disclosure is not a substantial reason for the action (Protected Disclosure Act, section 44).

What information is confidential?

One of the other ways that the Protected Disclosure Act protects disclosers and other people involved in protected disclosure investigations is by ensuring the confidentiality of information.

The confidentiality provisions are summarised in the table on page 11. Breach of these provisions is an offence.

The application of these provisions, and the exceptions to them, is complex and we encourage people to read the relevant legislation and seek legal advice about their obligations if necessary.

Type of information	Who does the restriction apply to?	Exceptions
<p>Information likely to lead to identification of a person who has made an assessable disclosure (section 53)</p>	<p>Any person or body. This restriction does <u>not</u> apply to the discloser.</p>	<p>Exceptions apply (see sections 53(2) and 54), including where the information is revealed:</p> <ul style="list-style-type: none"> to exercise functions under the Protected Disclosure Act by the investigating body with the written consent of the discloser after IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure complaint.
<p>Content, or information about the content, of an assessable disclosure (see section 52)</p>	<p>A person or body:</p> <ul style="list-style-type: none"> to whom the assessable disclosure was made who receives an assessable disclosure in the performance of duties or functions under the Act to whom IBAC or the Victorian Inspectorate provides information in the course of assessing the disclosure to whom information is disclosed, including disclosures made in breach of the Act. <p>This restriction does <u>not</u> apply to the discloser.</p>	<p>Exceptions apply (see sections 53(2) and 54), including where the information is revealed:</p> <ul style="list-style-type: none"> to exercise functions under the Protected Disclosure Act after IBAC or the Victorian Inspectorate has determined that the disclosure is not a protected disclosure complaint in accordance with a direction or authorisation given by the body investigating the disclosure because it is necessary to take lawful action in relation to the conduct, such as disciplinary action.
<p>Certain information about what happens to a disclosure, including that:</p> <ul style="list-style-type: none"> the disclosure has been notified to IBAC for assessment (PD Act, section 74) IBAC or the Inspectorate has determined the disclosure to be a protected disclosure complaint (PD Act, section 74) IBAC has referred the protected disclosure complaint to another body for investigation (IBAC Act, section 184) the Ombudsman intends to investigate (Ombudsman Act, section 26FA(1)) the result of the Ombudsman investigation (Ombudsman Act, section 26FA(2)). 	<p>Disclosers and other people who receive information in circumstances set out in the provisions</p>	<p>Exceptions apply (see relevant provisions), including where information is revealed:</p> <ul style="list-style-type: none"> to obtain legal advice or representation to the person's spouse or partner to the person's employer or manager.

How we deal with disclosures about other public bodies and officers

Public bodies and officers we can receive disclosures about

The Victorian Ombudsman can receive a disclosure about a public body or public officer if, were IBAC to determine the disclosure to be a protected disclosure complaint, we would be authorised to investigate the subject matter of that disclosure (Protected Disclosure Act, section 13(2)(b)). In practice, this means government departments, most statutory authorities, public servants, councillors and council employees.

If someone tries to make a disclosure to us about a public body or public officer and we cannot receive the disclosure, we will advise them how to make their disclosure to the correct body.

How to make a disclosure to us

Disclosures can be made to any Ombudsman officer in the following ways (*Protected Disclosure Regulations 2013*, regulation 7(2)):

- Orally:
 - in person
 - by telephone
 - by some form of electronic communication not involving writing e.g. a voicemail message.

Oral disclosures must be made in private. This means that the person or group of people making the disclosure must reasonably believe that the only people who are present or able to listen to the disclosure are themselves, our officers and a lawyer (if any) (*Protected Disclosure Regulations*, regulations 5 and 7). Disclosers should avoid making disclosures in public spaces or where people can overhear them. Our officers will ask people if they are in private before the discussion proceeds.

- In writing:
 - by delivering it personally
 - by post addressed to Level 2, 570 Bourke Street, Melbourne VIC 3000
 - by email to ombudvic@ombudsman.vic.gov.au or to one of our officers
 - via our online complaint form at www.ombudsman.vic.gov.au.

Disclosures cannot be made by fax.

It is helpful if disclosers provide:

- a description of the alleged improper conduct or detrimental action
- their grounds for believing the conduct occurred
- any supporting documentation.

What we do with disclosures

Receiving disclosures

We allocate disclosures to officers in our investigations area to assess if we should refer or 'notify' them to IBAC (Protected Disclosure Act, section 21).

Sometimes people complain to us about issues involving improper conduct without expressly stating that they want to make a disclosure or asking for protection under the Protected Disclosure Act e.g. they make a general complaint about an assault in care. We also assess these complaints under the Protected Disclosure Act. If a person makes broad or unclear references to corruption, we may clarify the issues with them first to check that they are genuinely raising concerns about such conduct.

If a person does not want us to treat their complaint as a disclosure, they must expressly state this, in writing, at the time the disclosure is made (Protected Disclosure Act, section 20(1)). We will advise the person of this and give them 24 hours to write to us.

People contacting our office should be aware, however, that we have separate obligations to notify IBAC about matters involving corrupt conduct and may still need to notify IBAC under those provisions (Ombudsman Act, section 16E).

Assessing disclosures

The table on page 14 lists the issues we consider when assessing a disclosure.

We may ask the person to provide more information or documents to assist our assessment.

We have no power to obtain information from other organisations or persons. We will only contact other organisations if:

- the alleged conduct poses an immediate threat to the health and safety of an individual or the preservation of property e.g. the disclosure alleges that a public officer is lighting fires

- the alleged conduct involves serious criminal conduct e.g. a public officer is assaulting people in care, and should be reported to Victoria Police or the relevant agency so it can take appropriate management action
- an organisation needs to preserve evidence, such as CCTV footage, that maybe lost or destroyed while we assess the disclosure.

What we consider when we assess a disclosure

Are we able to receive the disclosure?

Was the disclosure made by a natural person or group of people?

Was the disclosure made orally (in private) or in writing, consistent with the requirements in the Protected Disclosure Regulations?

Is the information a 'disclosure', in the sense that it is a revelation to the person receiving it?

Is the disclosure about a public body or a public officer acting in their official capacity?

OR

Is the disclosure about a person:

- adversely affecting the honest performance of a public body's or public officer's official functions?
- intending to adversely affect the effective performance of a public body's or public officer's official functions, leading to a benefit described in the Protected Disclosure Act?

Is the disclosure about 'improper conduct' or 'detrimental action'?

Does the information show or tend to show that there is improper conduct or detrimental action?

OR

Does the discloser believe on reasonable grounds that the information shows or tends to show improper conduct or detrimental action?

IBAC guidelines state that the person must actually believe this, and that the belief must be 'reasonable' i.e. it must be based on facts that would be sufficient to make a reasonable person believe that there was improper conduct or detrimental action.

They state that:

- Reasonable belief does not have to be based on actual proof, but there must be some information supporting the belief i.e. the belief must be probable.
- The grounds for reasonable belief can leave something to surmise or conjecture, but the belief must be more than just a reasonable suspicion.
- Simply stating that improper conduct or detrimental action is occurring, without providing any supporting information, would not be a sufficient basis for a reasonable belief. A belief cannot be based on mere allegation or conclusion unsupported by further facts or circumstances.
- Other matters that can be considered are the reliability of the information provided by the discloser, even if it is second or third hand. We may consider how the person would have obtained the information and the amount of detail provided. We may also consider the credibility of the discloser, or of those people who have provided the discloser with information.

In light of the serious nature of disclosures and the consequences for those involved, the final decision about whether the disclosure meets the criteria for notification to IBAC is taken at a senior level i.e. Assistant Ombudsman or above.

Notifying IBAC and the discloser

If we consider that the disclosure may be a protected disclosure, we notify it to IBAC within 28 days (Protected Disclosure Act, section 21). We give IBAC:

- copies of relevant documents e.g. any correspondence or documents provided by the discloser and file notes of our discussions with the discloser
- the name and contact details of the discloser, if they have provided them to us.

We also advise the discloser that we have notified the disclosure to IBAC, unless the discloser is anonymous (Protected Disclosure Act 12(3) and 24(2)).

If we consider that the disclosure does not meet the criteria for notification to IBAC, we:

- we advise the discloser in writing within 28 days, unless the discloser person indicated or it otherwise appears that they do not want to receive protections under the Protected Disclosure Act (Protected Disclosure Act, sections 24(3) and 24(6))
- assess the matter as a 'complaint' under the Ombudsman Act instead (see our policies on our website at www.ombudsman.vic.gov.au).

A discloser who disagrees with our decision may make a complaint to us (see Complaints about the Ombudsman policy on our website at www.ombudsman.vic.gov.au) or approach IBAC to make the disclosure to them.

Can a disclosure be withdrawn?

As noted above, we must assess a disclosure under the Protected Disclosure Act unless the person expressly states, in writing at the time the disclosure is made, that it is not a disclosure for the purposes of the Protected Disclosure Act (Protected Disclosure Act, section 20(1)). It is not otherwise possible to withdraw a disclosure once it has been made.

What happens after we notify IBAC?

IBAC assesses the disclosure and determines if it is a protected disclosure complainant (Protected Disclosure Act, section 26).

IBAC advises us of its decision (Protected Disclosure Act, section 27). They also advise the discloser (Protected Disclosure Act, sections 28 and 29).

IBAC decides what happens to the disclosure from that point. It may (IBAC Act, sections 58 and 73):

- refer the matter back to our office, or to another body, for investigation
- investigate the matter itself
- dismiss the matter.

We take no further action in relation to the disclosure, unless it is referred back to us by IBAC.

What if IBAC refers the matter to us to investigate?

Assessing protected disclosure complaints

The Victorian Ombudsman must investigate protected disclosure complaints referred by IBAC, unless an exception applies (Ombudsman Act, section 15C).

Officers in our investigations area assess the protected disclosure complaint against the criteria in the Ombudsman Act to determine if we should investigate (Ombudsman Act, sections 15D and 15E). The table on page 17 summarises these criteria.

We may contact the discloser for further information or documents to assist our assessment. We can also make enquiries with other organisations at this point (Ombudsman Act, section 13A).

If we decide not to investigate, we inform the person who made the disclosure in writing of our decision and reasons (Ombudsman Act, section 15F).

What we consider when we assess a protected disclosure complaint referred by IBAC

Do we have jurisdiction to investigate the protected disclosure complaint?

Does the conduct which is the subject of the protected disclosure complaint amount to 'improper conduct' or 'detrimental action'?

Does the protected disclosure complaint show or tend to show that the subject of the disclosure engaged, is engaging or proposes to engage in improper conduct or detrimental action?

Would an investigation prejudice any criminal proceedings or investigations, or investigations by our office, IBAC or the Victorian Inspectorate?

Is the protected disclosure complaint 'trivial', 'frivolous' or 'vexatious' or lacking 'substance or credibility'?

Has the subject matter of the protected disclosure complaint already been investigated by another integrity body or body with coercive powers?

Did the person who made the disclosure make it more than 12 months after becoming aware of the matter, without a satisfactory explanation for the delay?

Conducting the investigation

We investigate protected disclosure complaints in the same way that we investigate other complaints under the Ombudsman Act. Our Investigations policy (available on our website at www.ombudsman.vic.gov.au) and procedure set out the processes we follow.

Given the broad range of matters that can be the subject of a protected disclosure complaint, it is difficult to know how long an investigation will take. It is not uncommon for complex matters, where significant evidence needs to be gathered, to take many months to complete.

What if new disclosures are made in the course of the investigation?

Sometimes witnesses make additional disclosures to our officers in the course of an investigation. If the disclosure concerns the same subject matter as the protected disclosure complaint we are investigating, this is known as a 'related disclosure' (Protected Disclosure Act, section 34). We treat these disclosures as follows:

- if the disclosure is made by the same person who made the original disclosure, we will investigate the matter as part of our investigation (Protected Disclosure Act, section 35)

- if the disclosure is made by another person, we assess whether it is a protected disclosure that should be notified to IBAC (Protected Disclosure Act, section 36). We advise the discloser of our decision in writing within 28 days (Protected Disclosure Act, section 37).

At the end of the investigation

At the end of the investigation, the Ombudsman reports the findings to the principal officer of the public body (e.g. the secretary of a department or the chief executive officer), the responsible minister and, in the case of an investigation involving a local council, the mayor (Ombudsman Act, sections 23 (2A) and (3)). She may make recommendations about action that should be taken as a result of the investigation (Ombudsman Act, section 23(2A)).

The Ombudsman may also decide to table the report in Parliament (Ombudsman Act section 25(2)).

We do not include any information in the report that could be used to identify the discloser (Ombudsman Act sections 25A(1A) and 23(6A)). This includes the person's name, position title and employer and other information that could be used to identify the person. There are some exceptions e.g. where the person has given written consent, or an investigating entity has already published the information in a report to Parliament (Ombudsman Act section 23(6A)).

We also inform the discloser about the result of the investigation and any recommendations we made. We can also provide any other information we think proper (Ombudsman Act, sections 24(1) and (2)). The only exception is where we consider that this would (Ombudsman Act, section 24(3)):

- 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 any criminal proceedings or investigations, or investigations by our office, IBAC or the Victorian Inspectorate
- otherwise contravene any certain secrecy obligations or involve the unreasonable disclosure of information relating to the personal affairs of any person.

Welfare support and protections during an investigation

The public body which is the subject of the investigation is responsible for looking after the welfare of the discloser and other people involved in the investigation e.g. witnesses, and the subject of the investigation.

The public body is also responsible for protecting people against possible detrimental action. All public bodies must establish procedures for protection of persons from detrimental action taken by it and its members, officers and employees (Protected Disclosure Act, section 58(5)). They must ensure that these procedures are available to the public and their members, officers and employees (Protected Disclosure Act, section 59(4)).

We may refer the discloser, witnesses or subject to the public body's Protected Disclosure Coordinator for support. They may also approach the Protected Disclosure Coordinator direct.

How we ensure the confidentiality of disclosures and investigations

The Victorian Ombudsman has secure storage arrangements for electronic and hard copy records relating to disclosures.

Our officers are bound by the confidentiality provisions in the Protected Disclosure Act (see pages 10-11), as well as confidentiality provisions under the Ombudsman Act (Ombudsman Act, sections 26A and 26B).

Documents in our possession are exempt from freedom of information laws to the extent that they contain information that relates to an assessable disclosure or a protected disclosure, or identify a person who has made a protected disclosure (Protected Disclosure Act, section 78).

How we deal with disclosures about our officers

How to make a disclosure about an Ombudsman officer

Disclosures about Ombudsman officers must be made to IBAC or the Victorian Inspectorate (*Protected Disclosure Act 2012*, section 15(b)). Anyone wishing to make a disclosure can find information about how to do this:

- on IBAC's website at www.ibac.vic.gov.au or by contacting IBAC on 1300 735 135, or
- on the Victorian Inspectorate's website at www.vicinspectorate.vic.gov.au or by contacting the Inspectorate on 03 8614 3225.

The Victorian Ombudsman is not able to receive disclosures about its own officers. A person who tries to make such a disclosure to our office will not receive any of the protections under the Protected Disclosure Act.

If a person tries to make a disclosure about an Ombudsman officer to us direct, our officers will refer them to our Protected Disclosure Coordinator. This includes where the person:

- expressly states that they want to make a disclosure
- complains that one of our officers engaged in conduct that could constitute 'improper conduct' or 'detrimental action' under the Protected Disclosure Act.

The Protected Disclosure Coordinator will inform the discloser that, if they want to receive the protections available under the Protected Disclosure Act, they must contact IBAC or the Victorian Inspectorate direct.

Our obligation to notify other bodies

If a person tries to make a disclosure about an Ombudsman officer to us, we may be required to notify IBAC or the Victorian Inspectorate. The Ombudsman Act states that, where we receive a complaint or become aware of a matter that appears to involve the conduct of an Ombudsman officer, we must notify:

- IBAC if the matter appears to involve corrupt conduct (Ombudsman Act, section 16E)
- the Victorian Inspectorate, if the matter involves misconduct that is not corrupt conduct (Ombudsman Act, section 16F).

The Protected Disclosure Coordinator will consider whether to notify IBAC or the Victorian Inspectorate. She will inform the person who tried to make the disclosure of any notification in writing (Ombudsman Act, section 16E(2) and 16F(3)).

How we protect people from detrimental action

The Victorian Ombudsman will not tolerate detrimental action, direct or indirect, against anyone in reprisal for a disclosure about one of our officers.

We will minimise the potential for detrimental action by keeping information about the disclosure as confidential as possible. The Protected Disclosure Coordinator will:

- store electronic and hard copy records securely so that they are not accessible to other officers
- remind officers who may be aware of the disclosure, or involved in an investigation, of their confidentiality obligations under the Protected Disclosure Act and the consequences of any detrimental action.

We will also act on any reports of detrimental action. The Protected Disclosure Coordinator will:

- record the details of the alleged detrimental action
- inform the victim of their rights under the Protected Disclosure Act, including their right to make a disclosure about the detrimental action to IBAC or the Victorian Inspectorate
- where the detrimental action may constitute a criminal offence, consider reporting the matter to Victoria Police
- if an Ombudsman officer has taken the detrimental action, consider whether to notify IBAC or the Victorian Inspectorate (Ombudsman Act, sections 16E and 16F) and initiate misconduct action under our employee misconduct policy.

Ombudsman officers who make a disclosure can request a transfer of employment if they believe on reasonable grounds that detrimental action has, is or will be taken against them (Protected Disclosure Act, section 51). The officer may be transferred to another part of VO or another public service body. Transfers are subject to:

- the officer requesting or consenting to the transfer

- the Ombudsman having reasonable grounds to suspect that detrimental action has, is or will be taken
- the Ombudsman considering that the transfer will avoid, reduce or eliminate the risk of detrimental action
- the head of the other public service body consenting to the transfer.

Requests can be made to the Protected Disclosure Coordinator.

Ombudsman officers who have been involved in misconduct in some way remain liable for that conduct, even if they are a discloser or cooperating with an investigation. We may also take management action against a discloser, provided that the fact that the person made the disclosure is not a substantial reason for that action (Protected Disclosure Act, sections 42 and 44).

We will clearly explain and document why we are taking disciplinary or other action, and why the action is not taken in retribution for making the disclosure.

Supporting the welfare of disclosers and others

We recognise that protected disclosure investigations can be highly stressful for everyone involved - the discloser, people who cooperate with an investigation e.g. witnesses, and the subject of the disclosure.

The Protected Disclosure Coordinator provides basic welfare support to the discloser and people who cooperate with an investigation, subject to the confidentiality requirements in the Protected Disclosure Act.

Welfare support provided by the Protected Disclosure Coordinator

Information about the legislative and administrative protections available to disclosers and people who cooperate with an investigation

Active support by proactively assuring the person that they have done the right thing, and about the steps that will be taken to protect them

Maintaining confidentiality by storing records securely, counselling the discloser not to identify themselves, and making sure officers cannot infer the identities of the discloser and people cooperating with the investigation from any information they receive

Assessing the risk of detrimental action and taking proactive steps to monitor the workplace and deal with problems before they develop

Protecting the discloser and other people cooperating with the investigation by examining their welfare and protection needs, fostering a supportive work environment and listening to and assessing any concerns about detrimental action

Managing the impact of any investigation by preventing the spread of gossip and rumours

Keeping records of welfare support provided, including all contact with a person and the action taken in response

The Protected Disclosure Coordinator will also consider whether to appoint a welfare manager for the discloser and other people cooperating with an investigation. The welfare manager's role is to monitor the specific needs of the person and provide them with practical advice and support.

The Protected Disclosure Coordinator is more likely to appoint a welfare manager where:

- the disclosure proceeds to investigation
- there is a real risk of detrimental action against the person.

There may be no need for a welfare manager if the Protected Disclosure Coordinator is satisfied she is able to:

- ensure that we take the person seriously and treat them with respect
- give the person effective support, including keeping them informed of the status of the disclosure
- protect the person from repercussions by dealing with matters discreetly and confidentially, and responding swiftly and effectively to allegations of detrimental action.

Ombudsman officers also have the option of using our Employee Assistance Program (EAP).

Where a welfare manager is appointed:

- All meetings between the welfare manager and the person will be conducted discreetly to protect the person from being identified as being involved in the disclosure.
- The welfare manager will speak to the person about their expectations and what support they can and cannot provide.
- The welfare manager must not disclose any details regarding the disclosure to any person other than the Protected Disclosure Coordinator or the Ombudsman.

Supporting the subject of the disclosure

We are also responsible for the welfare of officers who are the subject of disclosures.

In some cases, the subject may never learn of the disclosure. For example, IBAC or the Victorian Inspectorate may determine that the disclosure is not a protected disclosure complaint, or dismiss the matter.

In other cases, IBAC or the Victorian Inspectorate may inform the subject of the disclosure in the course of investigating the matter. They must afford the subject natural justice prior to a decision being made about their conduct. This means the subject has the right to:

- 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
- have their defence set out fairly in any report.

The Protected Disclosure Coordinator will only give information about a disclosure to a subject if directed or authorised to do so by IBAC or the Victorian Inspectorate. She will consider appointing a welfare manager for the subject, and may also refer the subject to our Employee Assistance Program.

If the disclosure is dismissed or not substantiated, we will ensure that there are no adverse consequences for the subject of the disclosure. We will take all reasonable steps to ensure that the allegations, the fact of the investigation, the outcome, and the identity of the subject remain confidential. If there has been publicity or speculation about the matter, we will remind officers about their confidentiality obligations and the importance of ensuring there are no adverse consequences for those involved.

Our Protected Disclosure Coordinator

The Victorian Ombudsman's Protected Disclosure Coordinator is Ms Megan Philpot, Deputy Ombudsman (Investigations and Portfolios).

Where the disclosure involves Ms Philpot in some way, the Victorian Ombudsman's General Manager, People & Finance, Ms Marcela Mandarino, will act as the Protected Disclosure Coordinator.

The Victorian Ombudsman's Principal Legal Adviser may provide advice about the Protected Disclosure Act and associated processes.

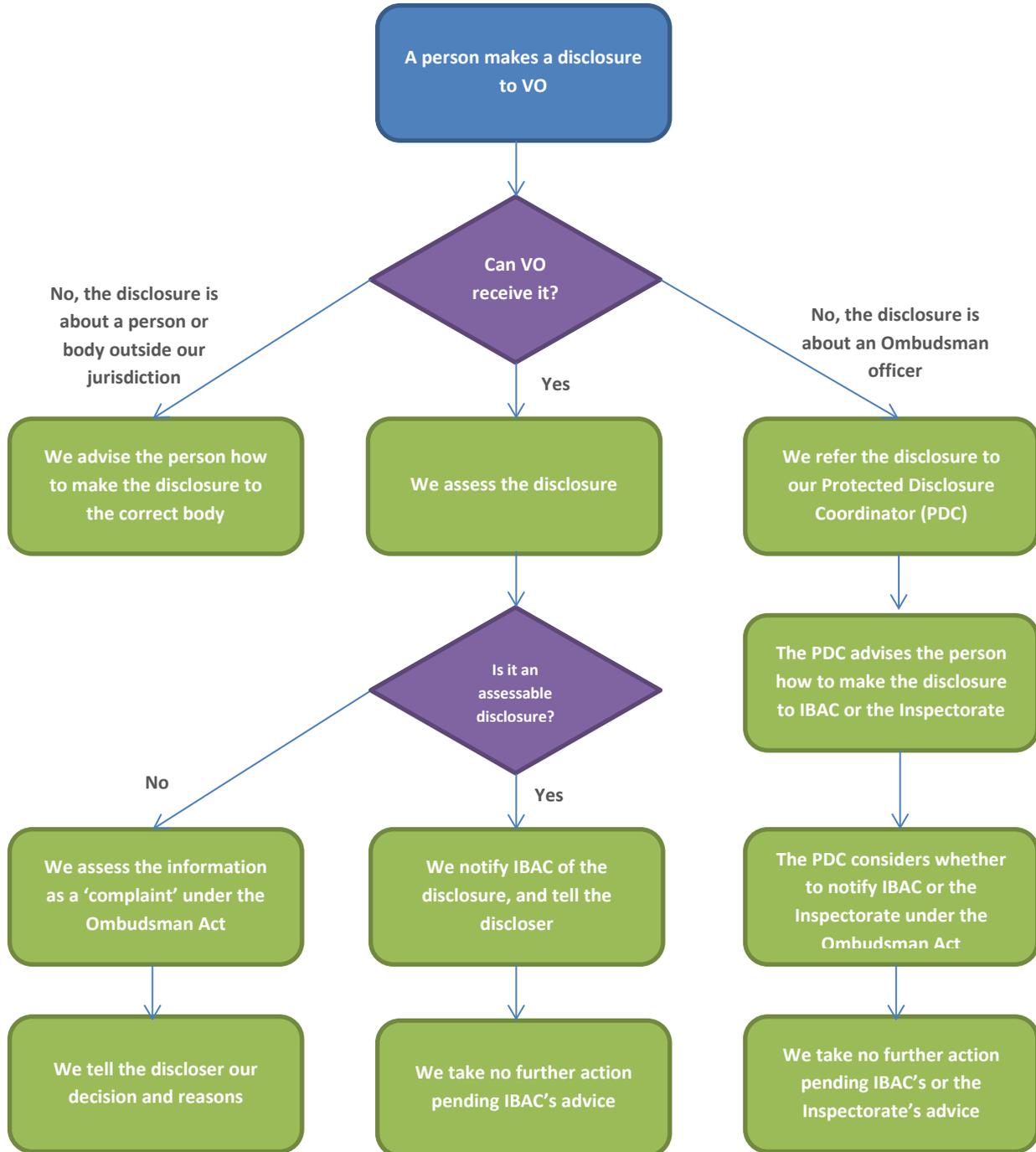
Reporting obligations

Each year in our annual report we provide information about (Protected Disclosure Act, section 69):

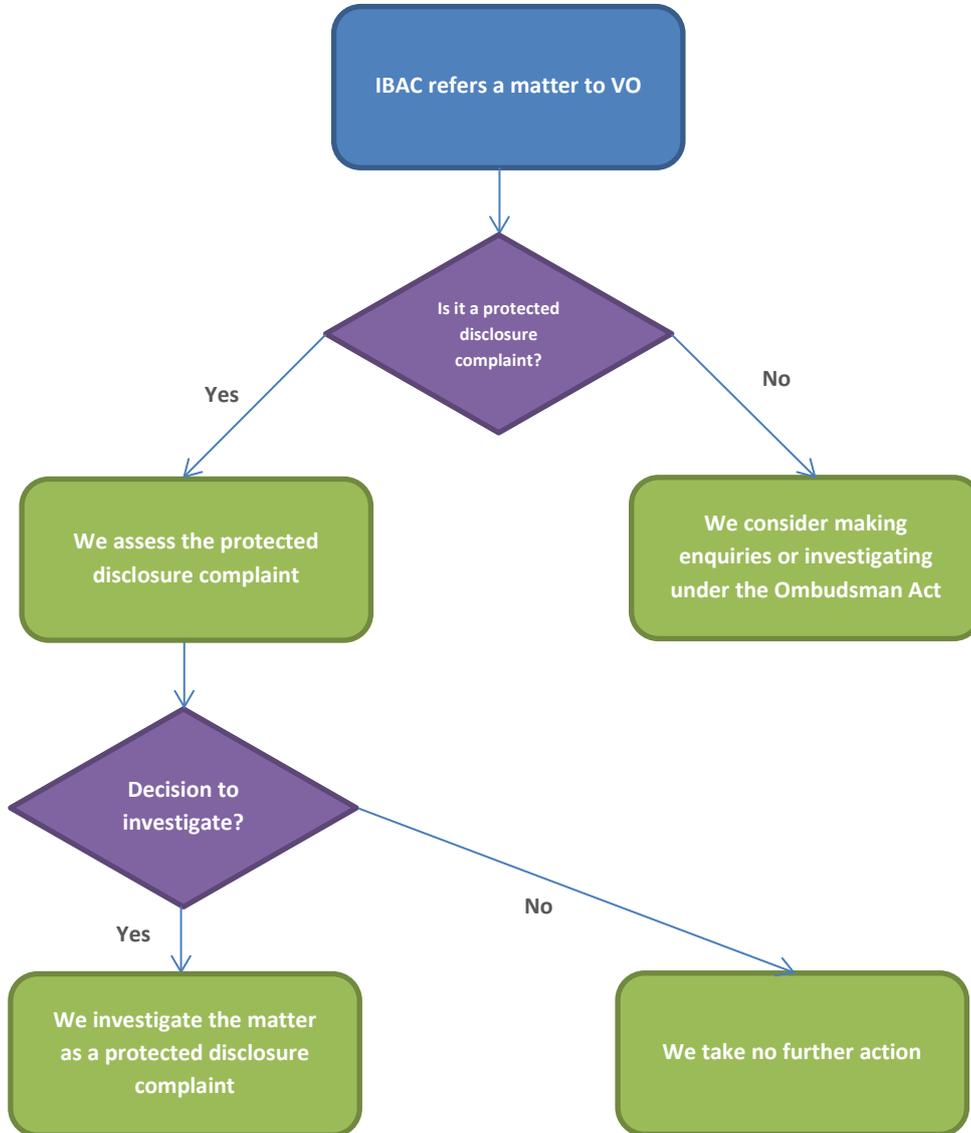
- how to access these procedures
- the number and types of disclosures we notify to IBAC in that financial year
- the number and types of protected disclosure complaints referred to us by IBAC
- the number and types of protected disclosure complaints we investigated or dismissed
- the number of injunctions we sought to prevent detrimental action.

As noted earlier, the Ombudsman may also decide to table a report regarding a protected disclosure investigation in Parliament (Ombudsman Act, section 25(2)). The Ombudsman determines this on a case by case basis. Most of our protected disclosure investigations are conducted in private and do not result in a public report.

Flowchart 1: How we deal with disclosures



Flowchart 2: How we deal with matters referred by IBAC



Roles and Responsibilities

Role	Responsibility
Deputy Ombudsman (Investigations and Portfolios)	<i>Owner</i> – Ultimately answerable for VO's protected disclosure obligations.
Principal Legal Adviser	<i>Legal Compliance</i> – Responsible for ensuring compliance of the policy and standards to the <i>Charter of Human Rights and Responsibilities 2006</i> and other legislation under which VO operates.
Assistant Ombudsman, Portfolios & Administrative Improvement	<i>Custodian</i> – Accountable for ensuring the drafting, maintaining and seeking authorisation of the policy and standards from a suitable Senior Leadership Committee.
Senior Leadership Committee (Governance Committee)	<i>Authorisation</i> – Authorises, leads, monitors and reports on information management activities.
All officers, contractors and third parties	<i>Implementation</i> – Responsible for acting in compliance with these procedures and associated documents.

Document Management

Compliance

VO maintains a compliance management system. Compliance to this policy, including use of information and systems, is subject to regular monitoring and reporting to the Senior Leadership Committee. For further details on compliance checks please refer to the compliance management system.

Document approval

This document was approved by the Executive Committee on 24 March 2017.

Document review

This document is due for review upon major changes or three years from the date of the last review.

Document control

Version	Date	Section	Brief Description of Change
0.1	24 March 2017	All	Policy approved by Executive Committee

APPENDIX A: Related documents

Title	Location
<i>Protected Disclosure Act 2012</i>	<i>Protected Disclosure Act 2012</i>
<i>Ombudsman Act 1973</i>	<i>Ombudsman Act 1973</i>
<i>Investigations policy</i>	VO's website
<i>Guidelines for making and handling protected disclosures</i>	IBAC's website
<i>Guidelines for protected disclosure welfare management</i>	IBAC's website