



Directions for making mandatory notifications of suspected corruption

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Directions for relevant principal officers

1. About these Directions

These Directions are made pursuant to section 57A of the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act), as amended, whereby the relevant principal officer of a public sector body must notify IBAC of any matter they suspect on reasonable grounds involves corrupt conduct.

The Directions set out the types of matters that must be notified, and the form, content and method of notification. The Directions also set out what IBAC does once a section 57 notification is received.

These Directions do not apply to the Auditor-General, a Departmental Head of a Department of the Parliament, the Electoral Commissioner, or the Ombudsman.

These Directions are effective 2 December 2016, following publication in the Victorian Government Gazette on 1 December.

2. Relevant principal officer obligations under the IBAC Act

A relevant principal officer must notify IBAC of any matter they suspect on reasonable grounds to involve corrupt conduct occurring or having occurred.

Who is a relevant principal officer?

A **relevant principal officer** is defined in the IBAC Act to include:

- the public sector body Head (as set out in the *Public Administration Act 2004*)
- the Chief Executive Officer of a council
- the Chief Executive Officer of Court Services Victoria.

Public sector bodies include government departments, and state government or statutory authorities and corporations.

Obligation to report suspected corrupt conduct

The obligation to report suspected corrupt conduct rests with the relevant principal officer. This obligation cannot be delegated. Where another person is acting as the relevant principal officer, the obligation applies to that person and vicariously the organisation.

The relevant principal officer must notify IBAC of all instances of suspected corrupt conduct occurring in their own organisation, and suspected corrupt conduct occurring in other organisations where it is connected with the relevant principal officer's duties, functions and exercise of powers.

There is no legislative obligation for relevant principal officers to search out corrupt conduct, only to report it when suspected.

Agencies should ensure that appropriate internal systems are in place so matters involving corrupt conduct reported by staff are forwarded to the relevant principal officer.

Protection of the relevant principal officer

Notifications of suspected corrupt conduct to IBAC, pursuant to section 57 of the IBAC Act, constitute a statutory obligation. The requirement to notify IBAC has effect despite any duty of secrecy or other restriction on disclosure.

Notifications made in good faith protect the relevant principal officer from any criminal or civil liability. This is the case even if the suspicion on which the report is based turns out to be untrue or unsubstantiated.

All notifications of suspected corrupt conduct to IBAC will be treated in the strictest confidence.

3. What is corrupt conduct?

Corrupt conduct definition

The IBAC Act (section 4) describes and defines corrupt conduct, summarised here as conduct, or an attempt or conspiracy to engage in conduct (whether it takes place inside or outside of Victoria), that:

- adversely affects the honest performance of the functions of a public officer or public body
- constitutes or involves the dishonest performance of the functions of a public officer or public body
- constitutes or involves knowingly or recklessly breaching public trust
- involves the misuse of information or material acquired in the course of the performance of the functions of a public officer or public body
- is intended to adversely affect the effective performance of the functions or powers of a public officer or public body and results in the person or their associate obtaining a specified benefit.

In order for conduct to be **corrupt conduct**, it must also be the case that the conduct would constitute a **relevant offence** which means an indictable offence against any Act, or the common law offences of attempt to pervert the course of justice, bribery of a public official, perverting the course of justice and misconduct in public office.

A **public officer** is any person working in the service of the Crown or a public body, or – importantly – a person who is performing a public function on behalf of a public officer or public body. This includes a person under contract.

Public officers include public servants, teachers, court employees, parliamentary officers, police personnel, council employees, judges and magistrates, and elected officials such as Members of Parliament and Councillors.

A **public body** is a public sector body within the meaning of the *Public Administration Act 2004*, a body established under an Act for a public purpose (such as a university), a council, or a body performing a public function on behalf of the state, a public body or a public officer. This includes bodies under contract performing public functions.

Misconduct in public office is a broad offence. The elements of misconduct in public office are established if:

- a public officer in the course of, or connected to, their public office wilfully misconducts themselves whether by act or omission, without any reasonable excuse or justification, and
- the misconduct is serious and meriting criminal punishment having regard to the responsibilities of the public office, the importance of the public objects they serve and the nature and extent of the departure from those responsibilities and objects.

Examples of misconduct in public office include:

- deliberately falsifying accounts to conceal or obtain a benefit
- entering into a secret commission or profit sharing arrangement with another person
- colluding to share profits with tender recipients and concealing the overvaluation of tenders
- using public office to deceive a member of the public to gain a financial advantage
- misusing power to harm, oppress or disadvantage a person.

Reasonable grounds for suspicion

The words '**suspects on reasonable grounds**' mean there is a real possibility of corrupt conduct.

'Suspicion' is something less than belief, but requires more than idle speculation. It must be based on facts and circumstances that would be sufficient to make a reasonable person suspect corrupt conduct had occurred or was occurring. However, proof is not necessary, nor is it required that an individual or individuals be identified.

When does conduct constitute suspected corrupt conduct?

It can be difficult to discern what constitutes corrupt conduct or at what point certain conduct gives rise to a reasonable suspicion of corrupt conduct. Relevant principal officers will have to exercise their judgement, and may need to seek independent legal advice before notifying IBAC.

IBAC encourages relevant principal officers or their representatives to seek clarification on any issue relating to the mandatory notification of suspected corrupt conduct. However, IBAC will not advise a relevant principal officer whether or not to notify a particular matter.

4. Making a section 57 notification to IBAC

When must a report be made?

Notifications of suspected corrupt conduct must be made as soon as practicable after the relevant principal officer has formed a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The IBAC Act does not provide for any delays in notifying suspected corrupt conduct to IBAC.

Delays in notifying suspected corrupt conduct, and in assessing such notifications by IBAC, can result in lost investigative and preventive opportunities. It follows that there is a mutual obligation to consider such conduct in a timely manner, not least to ensure due process and natural justice to all parties.

An assessment as to whether a matter must be notified to IBAC should be made based on the material available to the relevant principal officer. Where the available material is not sufficient to form a suspicion on reasonable grounds, a relevant principal officer may choose to gather further information. If doing so, the relevant principal officer should regularly re-assess the material and notify IBAC as soon as they form a suspicion on reasonable grounds that corrupt conduct has occurred or is occurring.

Where a notification of suspected corrupt conduct has been made to IBAC and further information becomes available or circumstances change and still gives rise to reasonable suspicion, the relevant principal officer must notify IBAC.

Actions by relevant principal officers before or after notification to IBAC

Certain actions – in particular any investigation – can prejudice a decision or action by IBAC. No action should be taken by the relevant principal officer until IBAC has assessed the matter and informed the relevant principal officer of its decision. Exceptions apply where the action is:

- necessary to lessen or prevent a serious threat to the life, health, safety or welfare of an individual or to public health or safety
- taken to comply with another legal obligation, such as a duty to report the matter under other legislation
- reporting the matter to Victoria Police.

These exceptions apply before a notification is made or while IBAC is assessing the notification.

If none of these exceptions apply and the relevant principal officer considers urgent action is required, they should consult with IBAC immediately.

Interaction with the *Protected Disclosure Act 2012*

The *Protected Disclosure Act 2012* (the PD Act) requires certain agencies to notify IBAC where they receive a disclosure that they consider may be a 'protected disclosure' (as defined in the PD Act). For those agencies that can receive disclosures, there may be overlapping obligations under the PD Act and section 57 of the IBAC Act to notify IBAC where they receive a disclosure alleging corrupt conduct.

Where an organisation receives a potential disclosure, it should first deal with the matter in accordance with the PD Act. If the matter is not notified to IBAC in accordance with the PD Act, the organisation should consider whether the relevant principal officer may be required to notify the matter to IBAC under section 57 of the IBAC Act.

All notifications and complaints to IBAC are assessed as potential protected disclosures under the PD Act. Where suspected corrupt conduct is notified to IBAC, it will similarly be assessed. Where suspected corrupt conduct has been notified to IBAC specifically as a potential protected disclosure, IBAC will also treat it as a suspected corrupt conduct notification and there is no need to further notify IBAC under section 57 of the IBAC Act.

More information on the PD Act and the processes for making a protected disclosure can be found in IBAC's *Guidelines for making and handling protected disclosures*.

What should be included in a notification?

A notification should describe the corrupt conduct and set out the grounds for reasonable suspicion, consistent with the definitions and meanings set out in the IBAC Act. The nature and seriousness of the allegations should be clear from the notification. The mandatory notification form for relevant principal officers is available at www.ibac.vic.gov.au

To the extent possible, the notification should include:

- a description of the suspected corrupt conduct, including specific allegations
- the approximate amount of money or value of resources (if any) involved
- the name and position of any public official/s suspected to be involved
- the name/s of the person/s who brought the suspected corrupt conduct to the attention of the relevant principal officer
- the name/s and role/s of any other person/s relevant to the matter
- the dates and/or timeframes in which the suspected corrupt conduct occurred, and in which it came to the attention of the relevant principal officer
- the actions taken or proposed by the relevant principal officer and/or public sector body in response to the suspected corrupt conduct
- a judgement as to the apparent seriousness or systemic nature of the suspected corrupt conduct
- any other information deemed relevant to the matter
- copies of any relevant documents, including policies and procedures which explain the organisational context of the allegation(s)
- the name of the relevant contact officer
- whether or not the matter is a possible protected disclosure under the PD Act.

Confidentiality in notifications

Notifications to IBAC must be made without advising the person(s) to whom the notification relates, and without publicity. All notifications of suspected corrupt conduct to IBAC will be treated in the strictest confidence.

Failure to handle notifications to IBAC confidentially may prejudice any subsequent investigation, whether by IBAC or the public sector body concerned, and may cause unnecessary reputational or other damage to individuals.

How is a notification submitted?

The mandatory notification form can be submitted by:

Email

info@ibac.vic.gov.au

Post

Attention: Manager Assessments and Review
IBAC Commissioner
GPO Box 24234
Melbourne VIC 3001

A notification should be made in writing using the mandatory notification form for relevant principal officers.

When you think the matter is serious and requires urgent attention, contact IBAC by telephone. A written report should then follow.

Further information and advice is available by telephoning IBAC on 1300 735 135 (business hours: 9am–5pm, Monday to Friday).

5. How notifications are assessed by IBAC

IBAC assesses all notifications of suspected corrupt conduct. In assessing a notification, IBAC may contact the relevant principal officer for additional information or clarification.

Section 58 of the Act requires that IBAC dismiss, investigate or refer notifications.

In considering a notification, IBAC may choose to make preliminary inquiries, prior to a decision to either refer, investigate or dismiss.

In a small number of notifications, IBAC will decide to investigate a matter. In deciding whether to investigate, IBAC will properly consider its legislated remit to prioritise the investigation of serious and/or systemic corrupt conduct.

However, many notifications will result in a referral back to the relevant principal officer for further action. IBAC may then choose to further consider and/or review the response of the agency.

6. IBAC's response

IBAC will acknowledge in writing all notifications of suspected corrupt conduct made pursuant to section 57 of the IBAC Act.

Once a notification is assessed, IBAC will write to the relevant principal officer outlining its decision and any further actions to be taken.

IBAC works to assess and finalise all notifications within 45 days of receipt. Most notifications are finalised earlier. When a matter requires more urgent attention, relevant principal officers are encouraged to contact IBAC.

7. The benefits of section 57 notifications

It is important that Victorian public sector bodies develop, implement and maintain systems and processes for meeting the statutory obligation to notify IBAC of suspected corrupt conduct.

Mandatory reporting of suspected corrupt conduct offers an opportunity for IBAC and the public sector to build an accurate picture of corrupt conduct and corruption risks, and respond accordingly in working to prevent such conduct from occurring.

IBAC uses the information in all complaints and notifications to improve its understanding of the nature and scope of corrupt conduct and corruption risks in the Victorian public sector.

This information helps IBAC identify practices and activities that public sector bodies can implement to prevent corruption occurring.

For more information, please go to www.ibac.vic.gov.au

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IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

To report corruption phone 1300 735 135 or visit www.ibac.vic.gov.au

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The corrupt conduct decision-making process

