

NOTES FOR COMPLAINANTS

Persons wishing to lodge a complaint with the Victorian Inspectorate are requested to read these Notes carefully before completing the Complaint Form.

Please note that this document does NOT apply to a person who wishes to make a protected disclosure (previously called a "whistleblower complaint").

GENERAL

The Victorian Inspectorate is established under the *Victorian Inspectorate Act 2011*. A copy of that Act incorporating all current amendments may be found at <http://www.legislation.vic.gov.au>

Under section 43 of that Act, complaints may be lodged with the Inspectorate in respect of the Independent Broad-Based Anti-Corruption Commission (IBAC) and its officers, the Ombudsman and his officers, the Victorian Auditor-General and his officers, or the Chief Examiner or an Examiner. Under clauses 8 and 9 of the Schedule to the *Victorian Inspectorate Act 2011* a complaint may also in certain circumstances be made to the Victorian Inspectorate in relation to the Office of Police Integrity.

The power of the Victorian Inspectorate to receive and investigate complaints against these bodies is not unlimited. In relation to each body the complaint must comply with certain specified requirements. If the complaint does not comply with those requirements then the Victorian Inspectorate has no power to receive or investigate it.

The requirements in relation to each body are set out in the *Victorian Inspectorate Act 2011* and are summarised below.

The powers of the Victorian Inspectorate commenced on 10 February 2013 (the Commencement Day). Complaints may be made in respect of conduct occurring after the Commencement Day. In some cases complaints may be made in respect of earlier conduct: these are specified below.

DISCRETION REGARDING INVESTIGATION OF COMPLAINTS

Even if the Victorian Inspectorate has power to investigate a complaint against one of the bodies named, it is not bound to conduct the investigation. The Victorian Inspectorate has a discretion whether to investigate a complaint or not.

The discretion of the Victorian Inspectorate to decide whether or not to investigate a complaint is unlimited. Every complaint is separately considered and assessed. In making the decision whether or not to investigate a complaint, the Victorian Inspectorate may take into account any relevant matter, including (but not limited to) -

- the subject-matter of the complaint

- whether it appears to be frivolous or vexatious or not made in good faith
- whether it appears to lack substance or credibility
- whether it has already been investigated or dealt with by some other person or body having authority to investigate or deal with it
- whether there has been any significant delay between the time when the conduct occurred and the time the complaint was made, and, if so, whether there was adequate explanation for the delay.

COMPLAINT FORM

The Victorian Inspectorate has developed a Complaint Form to assist persons who wish to make complaints. The form is not compulsory, but complainants are strongly urged to use it. The form directs attention to matters that are necessary in order for a complaint to be assessed. A complainant who does not use the form is likely to omit highly relevant items of information. This will inevitably delay the process and cause the matter to be 'put on hold' until the Victorian Inspectorate obtains the additional information needed to complete a proper assessment.

In some cases a complainant may not have one or more necessary pieces of information, and may not be able to complete all sections of the Complaint Form. In such cases the complainant should state in the Complaint Form that he or she does not have the information and, if possible, explain the reasons why the information is unavailable. The Victorian Inspectorate may in such a case be able to assist the complainant to obtain the missing items.

COMPLAINTS AGAINST IBAC AND IBAC PERSONNEL

The Victorian Inspectorate may receive and investigate a relatively wide range of complaints against IBAC and IBAC personnel.

Under section 43(1) of the *Victorian Inspectorate Act 2011* a person may make a complaint to the Victorian Inspectorate about the conduct of the IBAC or IBAC personnel in respect of the performance or exercise of their duties, functions or powers. A complaint may also be made about the non-performance of, or failure to exercise, their duties, functions or powers.

Examples of grounds on which a complaint of the type described may be made are that the conduct of IBAC or IBAC personnel was -

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

As stated above, the Victorian Inspectorate has a discretion to decide whether or not to investigate a complaint against IBAC or IBAC personnel.

COMPLAINTS AGAINST THE OMBUDSMAN AND OMBUDSMAN OFFICERS

The Victorian Inspectorate may receive and investigate a far more limited range of complaints against the Ombudsman and Ombudsman officers. Under section 43(5) of the *Victorian Inspectorate Act 2011*, a person may make a complaint to the Victorian Inspectorate about the exercise or purported exercise of coercive powers by the Ombudsman or an Ombudsman officer, or compliance by the Ombudsman or an Ombudsman officer with procedural fairness requirements in the performance of functions under the *Ombudsman Act 1973* or any other Act, including in the conduct of enquiries and investigations and the making of reports and recommendations.

Such a complaint may be made on the basis that specified conduct was -

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

The Victorian Inspectorate may receive and investigate such complaints about the Ombudsman and Ombudsman officers where the conduct occurred up to one year before the Commencement Day, i.e. conduct occurring on or after 10 February 2012.

Again, as previously stated, if such a complaint is received, the Victorian Inspectorate has a discretion to decide whether or not to investigate it.

COMPLAINTS AGAINST THE CHIEF EXAMINER AND EXAMINERS

The range of conduct by the Chief Examiner or an Examiner that may be the subject of a complaint to the Victorian Inspectorate is limited in a similar way to that which applies in relation to the Ombudsman and Ombudsman officers. Under section 43(7) of the *Victorian Inspectorate Act 2011* a person may make a complaint to the Victorian Inspectorate about the exercise or purported exercise of coercive powers by the Chief Examiner or an Examiner, or compliance by the Chief Examiner or an Examiner with the *Major Crime (Investigative Powers) Act 2004*.

A complaint of the type described may be made on the basis that specified conduct was –

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

Once again, if such a complaint is received, the Victorian Inspectorate has a discretion to decide whether or not to investigate it.

COMPLAINTS AGAINST THE AUDITOR GENERAL AND VAGO OFFICERS

The power of the Victorian Inspectorate to receive a complaint against the Auditor-General or members of the Victorian Auditor-General's Office (VAGO) are also strictly limited. Under section 43(3) of the *Victorian Inspectorate Act 2011* a person may make a complaint to the Victorian Inspectorate about the exercise or purported exercise by the Auditor-General or a VAGO officer of coercive powers in relation to any matter, or compliance by the Auditor-General or a VAGO officer with sections 11(1A), 11A, 11B, 11C, 11D, 11E, 11F and 20(1) and (3) of the *Audit Act 1994*.

A complaint of the type described against the Auditor-General or a VAGO officer may be made on the basis that specified conduct was –

- (a) contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) based on improper motives; or
- (d) an abuse of power; or
- (e) otherwise improper.

The Victorian Inspectorate may receive and investigate such complaints about the Auditor-General and VAGO officers where the conduct occurred up to one year before the Commencement Day, i.e. conduct occurring on or after 10 February 2012

Again, as previously stated, the Victorian Inspectorate has a discretion to decide whether or not to investigate a complaint against the Auditor-General or a VAGO officer.

COMPLAINTS AGAINST FORMER OPI PERSONNEL

The Office of Police Integrity (OPI) was abolished by legislation that came into force on the Commencement Day. Broadly speaking, the functions that had until then been performed by the OPI are now performed by IBAC.

The Victorian Inspectorate has certain limited power to investigate complaints regarding certain conduct of the OPI that occurred before the Commencement Day. Those limited powers are described in clause 8 of the Schedule to the *Victorian Inspectorate Act 2011*.

In addition, the Victorian Inspectorate under clause 9 of the Schedule to the *Victorian Inspectorate Act 2011*, may investigate a complaint about any administrative action taken in the OPI before the Commencement Day that could have been the subject of a complaint to the Ombudsman, or an investigation on the Ombudsman's own motion, under the *Ombudsman Act 1973* before that day, whether or not such a complaint or investigation had been made or conducted.

Once again, where such a complaint is made, the Victorian Inspectorate has a discretion to decide whether or not to investigate such a complaint.