**PURPOSE AND SCOPE**

This document facilitates the making of protected disclosures and protection of individuals against detrimental action taken in reprisal for making a protected disclosure against PTV, a PTV employee, officer or contractor (**PTV People**) in accordance with the *Protected Disclosures Act 2012* (**PD Act**).

This procedure does not apply to complaints made or matters raised under other internal complaint mechanisms which are dealt with in accordance with other procedures.

**POLICY STATEMENT / STATEMENT OF SUPPORT**

PTV is committed to the aims and objectives of the PD Act.

PTV does not tolerate improper conduct by PTV People nor the taking of reprisals against those who disclose such conduct or those who co-operate with an investigation of such conduct.

**ROLES AND RESPONSIBILITIES**

**All PTV People**

If a person contacts PTV and appears to be attempting to make a protected disclosure, they must be informed that under the PD Act:

1. PTV is not authorised to receive protected disclosures; and
2. a protected disclosure against PTV must be made directly to [IBAC](http://www.ibac.vic.au):
   * + **In person:** IBAC, Level 1, North Tower, 459 Collins Street, Melbourne, VIC 3001
     + **Postal address:** IBAC, GPO Box 24234, Melbourne, VIC 3001
     + **Phone:** 1300 735 135, **Fax:** (03) 8635 6444, **Online:** [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

IBAC will determine whether a disclosure is a protected disclosure or not. If IBAC determines that a disclosure is a protected disclosure, it must deal with the disclosure in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011* (**IBAC Act**)*.*

If PTV becomes aware of an IBAC investigation, PTV will take all reasonable steps to ensure that any internal investigation does not prejudice the IBAC investigation, so far as it does not impede on PTV meeting its legal obligations.

Definitions and examples of improper conduct and detrimental action can be found at Appendix A. More examples and information is available online in the [relevant IBAC guide](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures)lines.

Individuals, including PTV People, who do not seek the protections provided under the PD Act, are encouraged to raise or report matters directly with PTV consistent with other internal complaint handling procedures as appropriate.

**Protected Disclosure Coordinator**

The PTV Protected Disclosure Coordinator is the Head of Governance and Legal or a delegate of the CEO, where circumstances require.

The PTV Protected Disclosure Coordinator cannot receive or handle a protected disclosure, but can provide information about how or where to make a disclosure of improper conduct, or about detrimental action taken in reprisal for a disclosure to IBAC.

## Chief Executive Officer

The Chief Executive Officer (**CEO**) is required to notify IBAC if the CEO suspects corruption is occurring or has occurred.

The CEO may nominate an officer, employee, engage a contractor, including making use of the Employee Assistance Program, to act as a welfare manager, and provide welfare support.

In determining whether to appoint a welfare manager in any case, the CEO considers if there are any real risks of detrimental action against the person (discloser), taking into account their particular circumstances. If the answer to this question is ‘yes’ then the appointment of a dedicated welfare manager is probably appropriate.

PTV treats every person, both those who make or are subject, to a disclosure with respect and provides them with appropriate support, including updates on the status of disclosure permitted. In addition, PTV protects persons from suffering repercussions by dealing with the matter discreetly and confidentially and responding swiftly and fairly to any allegations the person has, in fact, suffered retribution.

## Welfare Manager (where appointed)

The welfare manager’s role is to monitor the specific needs of the discloser or co-operator and provide them with practical advice and support.

In most circumstances, a welfare manager will only be required where a protected disclosure complaint proceeds to investigation. However, each case needs to be assessed on its own merits.

The welfare manager is not expected to go beyond what is reasonable for a public body in providing support to the discloser or co-operator. The welfare manager should discuss the issue of reasonable expectations with the discloser or co-operator.

The welfare manager must not divulge any details relating to the disclosed matter to any person other than the Protected Disclosure Coordinator, or the CEO. All meetings between the welfare manager and the person must be conducted discreetly to protect the person from being identified as being involved in the disclosure.

Please refer to Appendix B or the [relevant IBAC guide](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management)lines for the type of welfare support or services that may be provided by PTV.

**Protecting against detrimental action**

Under the PD Act, it is an offence for a person to take detrimental action against another person in reprisal for a protected disclosure.

The person need not have actually taken the action, but can just have threatened to do so. The person does not need to have taken or threatened to take the action against the persons themselves, but can have incited or permitted someone else to do so.

The detrimental action need not be taken against a discloser, but against any person.

Detrimental action can be taken by any person. However, a disclosure under the PD Act can only be made about detrimental action by a public officer or public body.

**What is detrimental action?**

Some examples of detrimental action could be intimidation or harassment, causing personal injury, threatening or prejudicing someone’s safety, or damaging a person’s property.

It can also be detrimental action if PTV discriminates or disadvantages a person in their career, profession, employment, trade or business.

A manager may take management action in relation to an employee who has made a protected disclosure, provided the making of the disclosure is not a substantial reason for the management action.

In determining whether something is a detrimental action, consideration must be given both in relation to the nature of the detrimental action and whether it is being taken in reprisal for a protected disclosure.

To be detrimental action, the person must take or threaten the action (or incite or permit another person to take or threaten the action) because, or in the belief that:

* the other person (or anyone else) has made, or intends to make, the disclosure;
* the other person (or anyone else) has cooperated, or intends to cooperate, with an investigation of the disclosure.

The reason for the person taking action in reprisal must be a ‘substantial’ reason.

**Recording details and advising of rights**

If anyone reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action, the welfare manager, if appointed, or Protected Disclosure Coordinator must record details of the incident and advise the person of their rights under the PD Act to make a disclosure to IBAC.

A person can make a protected disclosure about detrimental action taken against them in reprisal for making an earlier disclosure. If this occurs, it will be treated as a new disclosure under Part 2 of the PD Act.

**Transfer of employees**

An employee who has made a protected disclosure and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, may request a transfer of employment.

Employees can be transferred internally or to certain other public bodies on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following conditions apply:

* The CEO has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee.
* The CEO considers that the transfer will avoid, reduce or eliminate the risk of detrimental action.
* If transfer to another public body is proposed, the head of that public body consents to the transfer.

The transfer can be temporary or permanent. If the employee is moved to another public body, the employee’s service in the new body is regarded as continuous with their pre-transfer service.

**Referring serious instances of detrimental action**

Where the detrimental action is of a serious nature that is likely to amount to a criminal offence, PTV will report the matter to Victoria Police or IBAC.

If the PTV CEO or Protected Disclosure coordinator report the matter to Victoria Police or IBAC, they must be careful about making preliminary enquiries or gathering information about the allegation. Doing so may compromise the integrity of any evidence that might be later relied on in a criminal prosecution.

**If discloser is implicated in the improper conduct or detrimental action**

The discloser is not subject to criminal or civil liability simply for making the disclosure (section 39 of the PD Act). However, section 42 of the PD Act specifically provides that a person’s liability for their own conduct in relation to their disclosure is not affected by having disclosed that conduct under the PD Act. In other words, a discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct.

The management of the welfare of a discloser may therefore become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

Care should be taken to thoroughly document the process of any action taken against a discloser. This includes recording why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for making the disclosure.

The discloser should be clearly advised of the proposed action to be taken and of any mitigating factors that have been taken into account.

**Meeting the welfare needs of the subject of a protected disclosure**

Until a protected disclosure complaint is resolved (either by dismissing or investigating it) the information about the person who is the subject of the disclosure is only an allegation.

PTV needs to meet the welfare needs of the subject of the disclosure as they may need support once they become aware an allegation has been made against them.

PTV will consider each matter on a case-by-case basis, taking into account the particular circumstances of the person. A referral to PTV’s Employee Assistance Program may be appropriate.

**Informing the subject of a disclosure**

Whether the person who is the subject of a disclosure is informed about the allegation made against them depends on the circumstances. It is possible the subject may never be told about the disclosure if it is not determined to be a protected disclosure complaint, or a decision is made to dismiss the matter.

The PD Act restricts the release of information about the content of disclosures that would be likely to identify a discloser. This generally means PTV cannot reveal this information to the person who is the subject of a disclosure.

However, PTV may give information to the subject of the disclosure about the allegation made against them in some circumstances, such as:

* if it is directed or authorised to do so by IBAC or the entity investigating the disclosure,
* for the purpose of taking action with respect to the alleged conduct, including disciplinary action.

These exceptions do not allow PTV to reveal information that would be likely to identify the discloser.

Investigating entities may also inform the subject of the disclosure for the purposes of conducting their investigation or taking action as a result of the investigation.

## Confidentiality

PTV will take all reasonable steps to ensure the person’s confidentiality during the assessment and any ensuing investigation.

PTV will take all reasonable steps to ensure confidentiality will be maintained in relation to the subject’s identity, as well as the fact of the investigation and any results, where the disclosure is dismissed or investigations do not substantiate the allegations.

Unless authorised by law or IBAC, disclosure of information in breach of the Act is a criminal offence. To prevent a breach of confidentiality and to reduce the potential of detrimental action, PTV must keep all records, whether paper or electronic, securely in accordance with PTV’s Information Security Classification System. Access is permitted by the welfare manager (in relation to welfare matters). No records are to be stored in TRIM or network systems where others may have access.

**Natural justice**

In relation to employees who are the subject of an allegation of misconduct, and are covered by the PTV Enterprise Agreement, the Management of Misconduct Policy will also apply. This is particularly important should a PTV investigation lead to a disciplinary outcome.

Subject to the law and particular circumstances of each case, PTV will afford the subject of an allegation natural justice before a decision is made about their conduct. Natural justice means the person 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/finding that may be included in any report arising from an investigation,
* have his/her defence set out fairly in any report.

If the matter has been investigated, the investigating entity (IBAC, the Victorian Inspectorate, Victoria Police or the Victorian Ombudsman) is responsible for carrying out this consultation.

**If allegations are wrong or unsubstantiated**

If someone has been the subject of allegations that are wrong or unsubstantiated, then PTV and the investigating entity need to take all reasonable steps to ensure there are no adverse consequences for the subject arising out of the disclosure or its investigation.

**RELEVANT DOCUMENTS**

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| --- | --- |
| **Document Name/Title** | **TRIM No:** |
| Guidelines for protected disclosure welfare management | [IBAC publication - external website](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-protected-disclosure-welfare-management) |
| Guidelines for making and handling protected disclosures | [IBAC publication - external website](http://www.ibac.vic.gov.au/publications-and-resources/article/guidelines-for-making-and-handling-protected-disclosures) |
| Fraud and Corruption Control Plan | [PTV Intranet](http://ptvintranet/pnp/Pages/fraud-and-corruption-control-plan.aspx)  DOC/14/177303 |

**APPENDIX A – WHAT IS DISCLOSURE AND IMPROPER CONDUCT?**

(Source: IBAC, *Guidelines for making and handling protected disclosures*, October 2016*)*

**WHAT IS DISCLOSURE?**

A disclosure is a report about the improper conduct of public bodies (e.g. PTV) or public officers (e.g. PTV People) that a person makes to any of the organisations specified in Part 2 of the PD Act.

A disclosure can also be made about detrimental action that a public officer or public body takes against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected disclosure. The disclosure can relate to conduct or action that:

* may have already taken place (including conduct that occurred before 10 February 2013 when the PD Act came into effect)
* may be occurring now, or
* may happen in the future.

A complaint or allegation that is already in the public domain will not normally be a protected disclosure – for example, if the matter has already been subject to media or other public commentary.

**WHAT IS IMPROPER CONDUCT?**

Improper conduct must, at its lowest threshold level, be either criminal conduct or conduct serious enough to result in a person’s dismissal. Improper conduct is defined in section 4 of the PD Act to mean corrupt conduct (as defined in the IBAC Act) or specified conduct.

**Corrupt conduct**

Under the IBAC Act, corrupt conduct is conduct of a certain type that would constitute a relevant offence. Relevant offences are:

* indictable offences against an Act
* the common law offences of attempting to pervert the course of justice, perverting the course of justice, bribery of a public official or misconduct in public office.

Offences punishable by imprisonment for five years or more are presumed to be indictable offences. The types of conduct that can be corrupt conduct are:

* conduct of any person that adversely affects the honest performance by a public officer or public body of their official functions
* conduct of a public officer or public body that:
  + constitutes or involves a dishonest performance of their official functions
  + constitutes or involves knowingly or recklessly breaching public trust
  + involves misuse of information or material that was obtained in their official capacity
* conduct that could constitute a conspiracy or attempt to engage in any of the above conduct
* conduct intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the Act.

**Specified conduct**

By contrast, specified conduct under the PD Act covers a broader range of conduct where that conduct would, if proved, constitute a criminal offence or reasonable grounds for dismissal. The types of conduct that can be specified conduct are:

* all types of corrupt conduct, and
* conduct of a public officer or public body 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.

**APPENDIX B – PROVIDING WELFARE SERVICES**

(Source: IBAC, *Guidelines for protected disclosure welfare management*, October 2016*)*

Welfare support should be provided by the organisation for the discloser or co-operator on an ongoing basis, even if a welfare manager has not been appointed.

**Table 1: Welfare support**

|  |  |
| --- | --- |
| **Inform** | At a minimum:  • Confirm the disclosure has been received.  • Outline the legislative or administrative protections available.  • Describe the action you propose be taken.  • If action has been taken, provide details about the results.  • How long processes are expected to take. |
| **Provide active support** | • Acknowledge the person for having come forward.  • Provide the person with assurance they have done the right thing and PTV appreciates it.  • Make a clear offer of support.  • Assure them that all reasonable steps will be taken to protect them.  • Keep them informed and provide regular updates of how the process is progressing, including advising them if there are delays. |
| **Manage expectations** | Have an early discussion with them:  • What outcome do they want?  • Are their expectations realistic?  • What will PTV be able to deliver?  • What timelines are realistic for going through the process? |
| **Maintain confidentiality** | The identity of the discloser and the subject matter of their disclosure need to be kept confidential:  • Make sure other staff cannot infer the identity of the discloser or a person cooperating with the investigation from any information they receive.  • Remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser.  • Make sure that hard copy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures and persons affected by them in PTV. |
| **Assess the risks**  **of detrimental**  **action being**  **taken in reprisal** | • Be proactive and do not wait for a complaint of victimisation.  • Actively monitor the workplace, anticipate problems and deal with them before they develop. |
| **Protect the discloser /**  **Co-operator** | • Examine the immediate welfare and protection needs of the person and foster a supportive work environment.  • Listen and respond to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions.  • Assess whether the concerns the person may have about harassment, intimidation or victimisation might be due to causes other than those related to a protected disclosure. |
| **Manage the impact of any investigation** | Prevent the spread of gossip and rumours about an investigation into the disclosure by reminding employees of their duties and obligations under the legislation. |
| **Keep records** | Keep contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action |