

Treasury Corporation of Victoria

Protected Disclosure Procedures

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1.0 Statement of support to persons making protected disclosures

Treasury Corporation of Victoria (TCV) is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the PD Act) which came into effect on 10 February 2013.

TCV does not tolerate improper conduct by its employees, officers or directors, nor the taking of reprisals against those who come forward to disclose such conduct. TCV recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

TCV will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure.

2.0 Purpose of these procedures

TCV has established these procedures to:

- make TCV employees and other persons aware that they can make disclosures under the PD Act directly to IBAC
- protect people against detrimental action that might be taken against them in reprisal for the making of protected disclosures or for cooperating with an investigation of a protected disclosure
- provide processes for looking after the welfare of persons who have made protected disclosures, those who are subject of protected disclosures and those who might be witnesses in the investigation of protected disclosures
- ensure as far as reasonably possible confidentiality of any such protected disclosures
- ensure TCV's nominated officers and TCV employees are aware of the criminal offences created by the PD Act and other legal action that may be taken against them for any breach of them.

3.0 How to make disclosures under the PD Act

TCV is a Victorian public sector organisation about which a disclosure can be made to IBAC or other investigating entities. Under the PD Act disclosures to TCV are not protected under the PD Act, as TCV is not able to receive disclosures under the PD Act.

If you make a disclosure about improper conduct on the part of TCV or an employee or officer or director of TCV and want that disclosure to be protected under the PD Act, you need to make the disclosure directly to the Independent Broad-based Anti-Corruption Commission (IBAC).

Online form

[Online complaint form](#)

Email

[Complaint form](#)

Download the form and email to:
info@ibac.vic.gov.au

Call

1300 735 135

You will be asked to complete a complaint form

Post

[Complaint form](#)

Print the form and post to:
GPO Box 24234,
Melbourne VIC 3001

For further information, refer to IBAC's Guidelines for making and handling protected disclosures and Guidelines for protected disclosure welfare management.

The procedures for making a disclosure of improper conduct or detrimental action under the PD Act to IBAC are additional to normal communication channels between TCV managers and TCV employees. TCV employees are encouraged to continue to raise appropriate matters at any time with their managers.

4.0 Objects of the Act

- There are three main purposes of the PD Act:
- to encourage and assist people to make a disclosure of improper conduct and detrimental action by public officers and public bodies
- to provide certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for a disclosure
- to ensure that certain information about a disclosure is kept confidential – the identity of the person making the disclosure, and the content of that disclosure.

5.0 Definitions of key terms

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

5.1. Improper conduct

A protected disclosure may be made about the improper conduct of a public body or public official.

Improper conduct is defined in the PD Act to mean corrupt conduct (as defined in section 4 of the *Independent Broad-based Anti-Corruption Commission Act 2011*) or specified conduct that is outside 'corrupt conduct' which includes:

- conduct of any person that adversely affects the honest performance of a public officer's or public body's functions
- conduct of a public officer or public body that constitutes or involves the dishonest performance of a public officer's or public body's functions
- conduct of a public officer, former public officer or a public body that amounts to knowingly or recklessly breaching public trust
- conduct by a public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or
- a conspiracy or attempt to engage in any of the above conduct

and specified conduct also includes conduct that involves

- a substantial mismanagement of public resources, or
- a substantial risk to public health or safety, or
- a substantial risk to the environment.

The specified conduct must be serious enough that if proven would constitute a criminal offence or reasonable grounds for dismissal.

5.2. Corrupt conduct

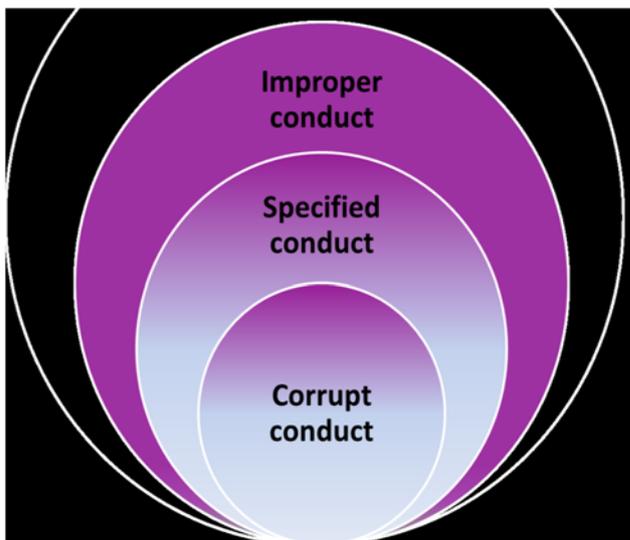
Corrupt conduct means conduct of any:

- person (whether or not a public official) that adversely affects the honest performance by a public officer or public body of their functions
- public officer or public body that constitutes or involves the dishonest performance of their functions
- public officer or public body that knowingly or recklessly breaches public trust
- public officer or public body that involves the misuse of information or material acquired in the course of the performance of their role or function, whether or not for the benefit of the public body or person
- public officer or public body who conspires or attempts to engage in the above corrupt activity,

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute an indictable offence or any of the following common law offences committed in Victoria-

- (i) attempt to pervert the course of justice;
- (ii) bribery of a public official;
- (iii) perverting the course of justice.

There is an overlap in the definitions of 'corrupt conduct' under the *IBAC Act*, and specified conduct under the *PD Act*. Essentially, all types of corrupt conduct are types of specified conduct, and improper conduct encompasses both corrupt and specified conduct (see diagram).



For further information refer to IBAC's Guidelines for making and handling protected disclosure.

5.3. Detrimental action

The PD Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

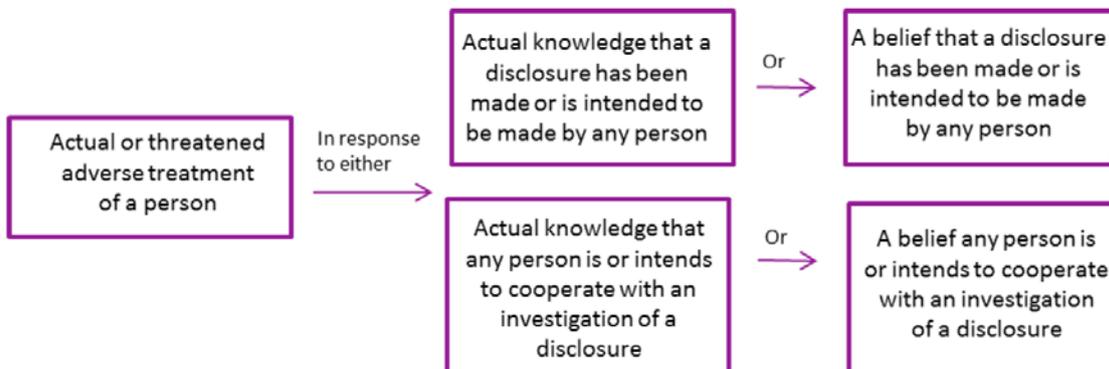
The person need not have actually taken the action, but can just have threatened to do so. The person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so. The detrimental action need not be taken against a discloser, but against any person.

The person (or the person they have incited) must 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

other person or anyone else has cooperated, or intends to cooperate with an investigation of a disclosure.

The essential elements linked to detrimental action



The reason for the person taking action in reprisal must be a 'substantial' reason, or it is not considered to be detrimental action (section 43(3) of the PD Act).

For further information and examples of what is/is not detrimental action refer to IBAC's Guidelines for making and handling protected disclosures and IBAC's Guidelines for protected disclosure welfare management.

5.4. Transfer of employees

An employee who has made a disclosure and who believes on reasonable grounds that detrimental action is being taken against them in reprisal for a disclosure may request a transfer of employment.

After making a disclosure an employee can be transferred internally to another part of a public service body, or to another public service body or public entity on similar terms and conditions of employment. This can only happen if they request, or consent to, a transfer and the following other conditions apply:

- the head of the public body has reasonable grounds to suspect detrimental action will be, is being, or has been taken against the employee
- the head of the public body 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, and 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.

5.5. Discloser implicated in improper conduct or detrimental action subject to disclosure

The discloser is not subject to criminal or civil liability for making the disclosure under section 39 of the PD Act. However section 42 of the PD Act specifically provides that a person's liability for his or her own conduct is not affected by the person's disclosure of that conduct under the PD Act.

A discloser is not protected from the reasonable consequences flowing from their involvement in any improper conduct, as section 42 of the PD Act sets out.

5.6. Civil and Criminal Penalties under the PD Act

Attached to this policy is a table from IBAC's Guidelines for making and handling protected disclosures setting out the civil and criminal penalties under the PD Act in respect of detrimental actions, disclosure of content of assessable disclosures, and disclosure of the identity of persons making assessable disclosures.

It is also an offence for a person to knowingly provide false information under the PD Act with the intention that it be acted on as a disclosed matter.

In addition, it is an offence for a person to falsely claim a matter is a protected disclosure knowing that claim to be false. The PD Act provides a maximum penalty of 120 penalty units or 12 months imprisonment or both.

6.0 Roles and responsibilities

6.1. Employees

Employees are encouraged to report to IBAC known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All employees of TCV have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure under the PD Act. Furthermore, they should protect and maintain the confidentiality of a person they know or

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suspect to have made a disclosure under the PD Act or to be cooperating with an investigation of a disclosure under the PD Act and be aware of the offences and penalties applicable under the PD Act referred to in section 5.6 above.

6.2. Disclosure Coordinator – Role

TCV's Disclosure Coordinator will:

- be the TCV contact point for general advice about the operation of the PD Act
- identify whether complaints, reports or allegations made to TCV might be protected disclosures by people whom TCV needs to re-direct to IBAC or another investigating entity
- where a report is made to TCV of an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, record details of the incident and advise the person of their rights under the PD Act to make a disclosure to IBAC
- where detrimental action is of a serious nature likely to amount to a criminal offence, give consideration to reporting the matter to the police or IBAC
- be the TCV contact point for integrity agencies/investigating entities such as IBAC /the Ombudsman
- be responsible for ensuring TCV carries out its responsibilities under the PD Act and Guidelines issued by IBAC
- liaise with IBAC with regard to the PD Act
- where TCV is advised of the identity of the discloser, arrange for appropriate welfare support for a person making a protected disclosure and arrange for the provision of protection against detrimental action for the discloser and those cooperating with an investigation of a disclosure
- establish and manage a confidential filing system
- take all necessary and reasonable steps to ensure the identity of the person making a protected disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- liaise with the chief executive officer of the public body (the Managing Director of TCV)
- where necessary, appoint a welfare manager to support the person making a protected disclosure and to protect him or her from any reprisals

6.3. Welfare manager

The Act provides for the protection of persons making genuine protected disclosures about improper conduct or detrimental action and extends the need for welfare management to those people who have cooperated or intend to cooperate with an investigation of a protected disclosure complaint and to those who are the subject of a protected disclosure. Where TCV becomes aware of the identity of a discloser, and/or the contents or their disclosure, TCV will be required to keep that information confidential.

The welfare manager is responsible for looking after the general welfare of:

- person making the disclosure
- any person cooperating with an investigation of such a disclosure
- any person the subject of such a disclosure
- examining the immediate welfare and protection needs of these persons and seeking to foster a supportive work environment

- where a report is made of an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, record details of the incident and advise the person of their rights under the PD Act to make a disclosure to IBAC
- where detrimental action is of a serious nature likely to amount to a criminal offence, give consideration to reporting the matter to the police or IBAC
- if a person has been the subject of allegations that are wrong or unsubstantiated, ensuring that no adverse consequences for this person arising out of the disclosure or its investigation
- provide welfare services as set forth in IBAC's Guidelines for protected disclosure welfare management including, informing, actively supporting, managing expectations, maintaining confidentiality, assessing the risks of detrimental action being taken in reprisal, protecting the discloser, cooperator, managing the impact of any investigation and keeping contemporaneous records of the case management of the person including all contact and follow-up action.

TCV's Disclosure Coordinator will appoint the welfare manager. TCV's General Manager Human Resources will be appointed unless TCV's Disclosure Coordinator is of the view that such an appointment would be inappropriate.

7.0 Confidentiality

TCV will take all reasonable steps to protect the identity of the person making the disclosure or persons cooperating with an investigation of a disclosure or the person about whom a disclosure is made.

Maintaining confidentiality is crucial in ensuring reprisals are not made against a person making a protected disclosure / persons cooperating with an investigation.

The PD Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of Part 7 of the Act constitutes an offence (see section 5.6 above).

The circumstances in which a person may disclose information obtained about a protected disclosure include:

- where exercising the functions of the public body under the PD Act
- when making a report or recommendation under the PD Act
- in criminal proceedings for certain offences in the PD Act.

However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making the protected disclosure. TCV will ensure all files, whether paper or electronic relating to disclosure matters, are kept in a secure room and can only be accessed by TCV's Disclosure Coordinator, an investigator or welfare manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Protected Disclosure Act matter and warn of the criminal penalties that apply to any unauthorised divulging information concerning a protected disclosure. All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on floppy disc.

TCV will not email documents relevant to a disclosure matter, ensure that faxes are not faxed to machines to which staff have access, and will ensure all phone calls and meetings are conducted in private. TCV will endeavour to arrange personal delivery of relevant documents.

TCV will take all reasonable steps to ensure the confidentiality of a person about whom a protected disclosure is made during the assessment and any ensuing investigation. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact of the investigation, its result, and the identity of the person subject of the disclosure will be kept confidential.

8.0 If allegations are wrong or unsubstantiated

TCV will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed or become well-known across the organisation, the chief executive officer (Managing Director of TCV) will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

9.0 Review

The procedures will be reviewed annually to ensure they meet the objectives of the PD Act and accord with IBAC's guidelines.

Appendix - Civil and criminal penalties under the PD Act

Specific offences	Penalties	
Detrimental action		
<p><i>Liability of an individual</i> It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> • another person has made or intends to make a protected disclosure • the person believes another person has made or intends to make a protected disclosure • another person has cooperated or intends to cooperate with the investigation of a protected disclosure • the person believes another person has cooperated or intends to cooperate with the investigation of a protected disclosure 	<ul style="list-style-type: none"> • Criminal penalty: 240 penalty units or two years' imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> • Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage 	
Criminal offences	<p><i>Vicarious liability of their employer</i> An employer may also be held to be liable for the detrimental action of their employee or agent</p>	<ul style="list-style-type: none"> • Criminal penalty: 240 penalty units or two years' imprisonment or both <p>AND (if person is convicted or found guilty of an offence)</p> <ul style="list-style-type: none"> • Civil penalty: Order of court for offender to pay appropriate level of damages to compensate for injury, loss or damage
	Disclosure of content of assessable disclosure	
<p>A person/body must not disclose content of assessable disclosure or information about its content</p>	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate) 	

Disclosure of identity of person making assessable disclosure		
A person/body must not disclose information likely to lead to the identification of a person who has made an assessable disclosure	<ul style="list-style-type: none"> • 120 penalty units or 12 months' imprisonment or both (person) • 600 penalty units (body corporate) 	
Disclosure of certain advice		
A person must not disclose that a disclosure has been notified to IBAC or determined to be a protected disclosure complaint	60 penalty units or six months' imprisonment or both	
Specific offences	Penalties	
Making false disclosure or providing false further information		
Criminal offences	A person must not provide information intending it be acted on as a protected disclosure, or further information that relates to a protected disclosure, knowing it to be false or misleading	120 penalty units or 12 months' imprisonment or both
	Falsely claiming disclosure is a protected disclosure or protected disclosure complaint	
	A person must not falsely claim a matter is the subject of a protected disclosure or the subject of a disclosure determined to be a protected disclosure complaint	120 penalty units or 12 months' imprisonment or both
Detrimental action		
Civil action	A person who takes detrimental action may be subject to proceedings in tort in any court of competent jurisdiction Injunction or interim injunction can be granted by the Supreme Court if the Court is satisfied that a person has taken or intends to take detrimental action against another person in reprisal for a protected disclosure	Civil penalty: Court order for damages for any injury, loss or damage, including exemplary damages