

# Guide to Protected Disclosures

## Protected Disclosure Act 2012 (Vic)

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# GUIDE TO PROTECTED DISCLOSURES

## Protected Disclosure Act 2012 (Vic)

### FUNDAMENTAL CONCEPTS

The Protected Disclosure Act 2012 (Vic) (PD Act) provides protection to people who make disclosures about improper conduct in the public sector without fear of reprisal. These disclosures are called 'protected disclosures'.

Commercial Passenger Vehicles Victoria (CPVV) does not tolerate corrupt conduct or misconduct, or reprisals against persons who disclose such conduct. It is committed to transparency and accountability.

The purposes of the PD Act are to:

- encourage and facilitate disclosures of:
  - i. improper conduct by public officers and/or public bodies; and
  - ii. detrimental action taken in reprisal of a person making a protected disclosure.
- provide protections to ensure that those making disclosures are not subject to detrimental action taken in reprisal against them.
- provide for the confidentiality of protected disclosures and the identity of persons making disclosures.

CPVV is not an entity that can receive protected disclosures but may be the subject of a disclosure.

If you wish to report that CPVV has engaged in improper conduct or that you are being subjected to detrimental action by CPVV or its staff in reprisal for disclosing such conduct, you must report such conduct to the Independent Broad-based Anti-corruption Commission (IBAC) directly.

Please note that for your disclosure to be a protected disclosure it must be made in accordance with the PD Act. You are encouraged to refer to the IBAC website <<https://www.ibac.vic.gov.au>> for information and guidance on making and handling protected disclosures.

Pursuant to section 58(5) of the PD Act, CPVV must establish procedures for the protection of persons from detrimental action taken in reprisal for making a protected disclosure.

This Guide to Protected Disclosures (Guide) explains the key concepts and procedures that apply to protected disclosures.

### WHAT IS A PROTECTED DISCLOSURE?

A protected disclosure is a report about public bodies and/or public officers engaging in 'improper conduct' in the course of their work or that 'detrimental action' has been taken in reprisal for reporting such conduct. Public officers include all CPVV staff (Commissioners, employees and contractors). Table 1 in this Guide sets out the definition of protected disclosures provided in the PD Act.

If the relevant conduct you wish to make a complaint or report about does not fall within the definition of a 'protected disclosure', you can make a complaint to CPVV through CPVV's standard complaints handling procedure (see <https://cpv.vic.gov.au/about-us/feedback-form>).

Prior to taking any action, you should read this Guide (and seek independent legal advice if required) to determine whether you wish to make a protected disclosure.

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**TABLE 1: TYPE OF PROTECTED DISCLOSURES**

**Improper conduct includes corrupt conduct or other specified conduct**

*Corrupt conduct is defined in the Independent Broad-based Anti-corruption Commission Act 2011 as conduct:*

- of any person adversely affecting the honest performance by a public officer or public body of their functions
- of a public officer or public body constituting or involving the dishonest performance of their functions
- of a public officer or public body constituting or involving knowingly or recklessly breaching public trust
- of a public officer or public body involving the misuse of information or material acquired in the course of the performance of their functions, whether or not for the benefit of the public officer or public body or any other person
- of a person intended to adversely affect the effective performance or exercise by a public officer or public body of their functions or powers and resulting in the first mentioned person or his or her associate obtaining certain benefits that they would not have otherwise obtained
- that would constitute a conspiracy or an attempt to engage in any of the above corrupt conduct.

The conduct must be serious enough to constitute an indictable offence, or perverting or attempting to pervert the course of justice, bribery of a public official or misconduct in public office.

*Other specified conduct is defined in the PD Act as conduct:*

- of any person that adversely affects the honest performance of functions by a public officer or public body
- of a public officer or public body that involves the dishonest performance of functions by that officer or body
- of a public officer or public body that involves a knowing or reckless breach of public trust
- of a public officer or public body that involves misuse of information acquired by that officer or body in the performance of functions as a public officer or public body
- of any person intended to adversely affect the effective performance of a public officer or public body which leads to a benefit as described in the PD Act
- that could constitute a conspiracy or an attempt to engage in any of the above conduct; or
- a public officer or public body that involves:
  - a substantial mismanagement of public resources
  - a substantial risk to public health or safety
  - a substantial risk to the environment.

**Detrimental action**

Detrimental action under the PD Act is action taken by a public officer or public body including:

- action causing injury, loss or damage
- intimidation or harassment
- 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 must take or threaten the detrimental action (or incite or permit another person to take or threaten the detrimental action) because, or in the belief that:

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

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### MAKING A PROTECTED DISCLOSURE

A protected disclosure can only be made by an individual and may be made anonymously.

If you wish to make a protected disclosure, you should make it directly to IBAC:

**Online:** <https://www.ibac.vic.gov.au/reporting-corruption/report/complaints-form>

**By phone:** 1300 735 135

**In writing:** North Tower, Level 1, 459 Collins St, Melbourne VIC 3000.

If IBAC decides that your complaint or disclosure is not a protected disclosure, IBAC may refer you back to CPVV for your complaint to be dealt with in accordance with CPVV's standard complaints handling procedure.

If you have made a complaint or disclosure to IBAC about CPVV or its staff, you do not need to let CPVV know. In fact, it may be in your own interests to keep the contents of the disclosure (and the fact of it being made) confidential by only discussing it with IBAC. IBAC may decide to notify CPVV that a protected disclosure has been made.

### YOUR WELFARE

CPVV is committed to ensuring the welfare of Disclosers or a Cooperator. It is a criminal offence to take or threaten detrimental action against another person in reprisal for making a protected disclosure.

Protecting the welfare of a person making a protected disclosure is essential for effective implementation of the PD Act and is relevant to CPVV's duties to create a safe working environment under the *Occupational Health and Safety Act 2004*, the Charter of Human Rights and *Responsibilities Act 2006* and the *Public Administration Act 2004*.

If CPVV is notified by IBAC of the identity of a Discloser or Cooperator, it will take all reasonable steps to keep the information confidential, and look after the welfare and provide protection to the person from detrimental action that might be taken in reprisal for making a protected disclosure.

#### *Appointing a welfare manager*

CPVV may consider appointing a dedicated 'welfare manager' to coordinate welfare support or it may appoint an internal person or contractor to assume this role. CPVV may consider referring an employee to its Employee Assistance Program.

In deciding whether to appoint a 'welfare manager', CPVV will consider whether:

- there are any real risks of detrimental action taken against the person, taking into account their particular circumstances
- it can ensure the person will be taken seriously and treated with respect
- it can ensure that the person will be given effective support – including keeping them informed of the status of the disclosure
- it can protect the person from suffering repercussions by dealing with the matter discreetly and confidentially
- it can respond swiftly and fairly to any allegations the person has suffered retribution.

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### *Role of a welfare manager*

The 'welfare manager' will be responsible for:

- monitoring the specific needs of a Discloser/Cooperator or person who is the subject of an investigation
- providing immediate welfare and support to the needs of the Discloser/Cooperator
- informing the Discloser/Cooperator or person subject to an investigation what legislative or administrative protections are available under the PD Act
- providing practical advice and a supportive work environment to the Discloser/Cooperator or person subject to an investigation
- listening to any concerns of the Discloser/Cooperator about harassment, intimidation and victimisation in reprisal for their actions and recording detail of any reported incidents
- maintaining confidentiality of the identity of the Discloser and the subject matter of the disclosure as required
- responding to detrimental action being taken in reprisal in accordance with the PD Act.

A welfare manager (if appointed) cannot be expected to go beyond what is reasonable for a public body in providing support to the Discloser/Cooperator or person who is the subject of an investigation.

The 'welfare manager' should discuss the issue of reasonable expectations with the Discloser/Cooperator or person being investigated.

### *Management action*

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.

Management action that may be taken in relation to an employee who has made a protected disclosure includes any action that may or is required to be taken:

- in respect of performance development, conditions of employment or discipline; or
- to ensure the safety of the workplace.

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

## **PRIVACY AND CONFIDENTIALITY**

If CPVV is aware that you have made or are involved in a protected disclosure (whether as a Discloser/Cooperator, or as the subject of an investigation into a protected disclosure), CPVV will ensure your privacy and confidentiality to the fullest extent possible.

The following measures are intended to assist in ensuring the confidentiality of any communications regarding protected disclosures:

- All printed material will be kept in files that are clearly marked as a 'Protected Disclosure' matter.
- CPVV will ensure that all files, whether paper or electronic, are kept securely and can only be accessed by authorised personnel.

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- All contact with the 'welfare manager' should be discrete and private. If required, the 'welfare manager' can meet and communicate with you offsite.
- The 'welfare manager' will maintain a secure electronic and paper filing system.
- The documents that relate to a protected disclosure or that are likely to lead to the identification of the Discloser are not required to be produced by CPVV in response to a request under the *Freedom of Information Act 1982 (Vic)*.
- Make a record of reports of harassment, discrimination or adverse treatment that may amount to detrimental action and not disclose any details of the report to any person other than to IBAC.
- Confidentiality should be maintained in relation to the subject's identity, as well as the result of any investigations, even after the protected disclosure is resolved (either by dismissing or investigating it).

It is a criminal offence for a person who knows that a protected disclosure has been made (such as the welfare manager) to disclose any information about the protected disclosure to anyone else except in extremely limited circumstances. CPVV may only disclose information about the subject of a protected disclosure if direction or authority to do so has been given by IBAC or for the purpose of taking disciplinary action. CPVV must not disclose information that would reveal the identity of a Discloser, unless the Discloser provides written consent to do so.

If you have any concerns about your privacy or confidentiality, you should raise them with IBAC or with the welfare manager.

Any statistical information published by CPVV in relation to protected disclosures will not reveal the identity of any person involved in a protected disclosure nor will it reveal the contents of a protected disclosure.