

## Plumbing Industry Commission and Building Commission Whistleblowers Policy

Whistleblowing generally refers to an employee or member of the public speaking up in the public interest about the conduct of a public body or an official which is alleged to be 'improper'.

The purpose of this policy is to introduce you to the formal procedure operating in this area, specifically dealing with

- *Whistleblowers Protection Act 2001 (the Act)*  
[http://www.austlii.edu.au/legis/vic/consol\\_act/wpa2001322](http://www.austlii.edu.au/legis/vic/consol_act/wpa2001322); and
- This document which details the policy and procedures that will be applied in managing a disclosure (**the Procedure**).

The Plumbing Industry Commission (**PIC**) and Building Commission (**BC**) is committed to complying with its obligations under both the Act and the Procedures, and as such it is important that you understand your corresponding obligations.

This Procedure is designed to assist you in this task, and to explain to you the protection you are entitled to if you make a protected disclosure under the Act.

If you have any questions concerning the application of the Act, Procedures or PIC / BC policies generally, please contact the Protected Disclosure Coordinator.

### Contents

- Introduction to the whistleblowers policy and procedures and statement of support
- Analysing the definition – who is a whistleblower?
- Disclosing improper conduct or detrimental action – the reporting system
- Roles and responsibilities
- Confidentiality
- Collating and publishing statistics
- The investigation process
- Protecting the whistleblower
- Whistleblowers implicated in improper conduct
- Management of the person against whom a disclosure has been made
- Offences under the *Whistleblowers Protection Act 2001*; and
- Commonly asked questions and answers

## **Introduction to the whistleblowers policies and procedures**

### **Statement of support to whistleblowers**

The PIC / BC is committed to the aims and objectives of the Act. It does not tolerate improper conduct by its employees or officers, nor the taking of reprisals against those who come forward to disclose such conduct.

The PIC / BC 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.

The PIC / BC will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

### **Purpose of these Procedures**

These Procedures establish a system for reporting disclosures of improper conduct or detrimental action by the PIC / BC or its employees. The system enables such disclosures to be made to the Protected Disclosure Coordinator.

These Procedures are designed to complement normal communication channels between supervisors and employees. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors or by using the PIC / BC's usual grievance processes. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

The Procedures and the Act are designed to work in tandem with one another; the Procedures building upon, and clarifying the rights and obligations provided by and under the Act.

The Procedures apply to all staff, whether they are full-time, part-time, casual or temporary. However, not all complaints or disclosures will fall within the scope of the Act. This policy will provide you with information about when a disclosure falls within the scope of the Act.

### **Objects of the Act**

The *Whistleblower Protection Act 2001* commenced operation on 1 January 2002. The purpose of the Act is threefold, to:

- encourage and facilitate disclosures of improper conduct by public officers and bodies;
- protect individuals from reprisals in relation to a disclosure; and
- provide a system in which to investigate and deal with disclosures.

## Analysing the definition - who is a whistleblower?

A whistleblower is a person who discloses that he or she believes on reasonable grounds that a public officer or public body has:

- engaged, is engaging in, or proposes to engage in **improper conduct** in their capacity as a public officer or public body; or
- taken, is taking or proposes to take **detrimental action** against a person who has made a **protected disclosure**.

The types of activities about which whistleblowers have made disclosures include corruption and bribery, extreme and excessive waste, misuse of company funds, unsafe working conditions and serious environmental pollution.

There are 3 key terms in the definition of a whistleblower, each of which will be discussed in turn:

### 1. What is 'improper conduct'?

- (1) conduct that is **corrupt**;
- (2) conduct that involves a substantial mismanagement of public resources; or
- (3) conduct that poses a substantial risk to public health, public safety, or the environment.

To be ultimately defined as improper conduct, the conduct must, if proven, amount to a criminal offence, or form reasonable grounds for dismissal.

### 1.2 Corrupt conduct means:

- (1) conduct of a person (whether or not they are a public official) that adversely affects (or could adversely affect) directly or indirectly, the honest performance of a public officer or public body's functions;
- (2) the dishonest performance, or performance with an inappropriate partiality, by a public officer of his or her functions;
- (3) a breach of public trust by a public officer, former public officer, or a public body;
- (4) the misuse of information or material acquired by a public body in the course its functions, or information acquired by a public officer or former public officer in the performance of his or her functions, or a conspiracy or attempt to engage in such conduct.

### 1.3 Examples of improper conduct

- (1) to avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of the illegal dumping of harmful waste.
- (2) a university administrator shows preferential treatment to the child of a university board member in the allocation of a federally funded university place.

- (3) a public hospital administrator sells a pop star's medical records to a celebrity magazine.
- (4) a CEO accumulates a debt level of \$250 million by using fictitious equipment as collateral to obtain new loans to cover his personal debts.
- (5) a car manufacturer is aware of a design fault that makes a car more likely to ignite after a collision, but refuses to recall the car for 7 years subsequent to its release due to the company's precarious financial position.

## **2. What is 'detrimental action'?**

Detrimental action includes:

- (1) action causing injury, loss or damage;
- (2) intimidation; and/or
- (3) harassment, discrimination or adverse treatment,

in relation to a person's employment.

### **2.2 Examples of detrimental action**

- (1) refusing a deserved promotion of the person who made the disclosure
- (2) dismissal
- (3) demotion
- (4) transfer
- (5) pressure to resign
- (6) isolation in the workplace
- (7) threats, abuse and other forms of harassment
- (8) spreading rumours to damage the whistleblower's credibility

The 'detrimental action' can also be taken against the whistleblower's family, friends or those who support the disclosure.

**3. What is a 'protected disclosure'?**

To be a *protected* disclosure, a disclosure must:

- (1) be made by a natural person (i.e. an individual person, rather than a corporation);
- (2) relate to improper conduct, corrupt conduct or detrimental action by a public body, or a public officer acting in their official capacity; and
- (3) be made by a person who has reasonable grounds for believing that the alleged conduct occurred.

## Disclosing improper conduct or detrimental action – the reporting system

### Who should the disclosure be made to?

The formal channels outlined in the Procedures are designed to complement the PIC / BC's normal communication channels; staff members are encouraged to raise matters of concern at any time with their supervisors, or using our usual grievance processes.

There are three main points of contact for making a disclosure:

1. Independent Service Provider
2. Protected Disclosure Co-ordinator
3. Ombudsman

#### 1. *Independent Service Provider*

The STOPLine

Building Commission or Plumbing Industry Commission

C/o The STOPLine

Locked Bag 8, Hawthorn Victoria 3122

Email: [disclosure@stopline.com.au](mailto:disclosure@stopline.com.au)

Website: [www.stopline.com.au](http://www.stopline.com.au)

Tel: 1300 304 550

#### 2. *Whistleblower contact person within the PIC / BC*

The Procedures provide that improper conduct or detrimental action may be disclosed to the **Protected Disclosure Coordinator – Sarah McCann-Bartlett, Deputy Commissioner, 03 9285 6487**.

All correspondence, phone calls and emails from internal or external whistleblowers will be referred to the Protected Disclosure Coordinator.

#### 3. *Ombudsman*

A disclosure about improper conduct or detrimental action by the PIC / BC or its employees, may also be made directly to the Ombudsman:

The Ombudsman Victoria

Level 22, 459 Collins Street

Melbourne Victoria 3000

Email: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)

Website: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Tel: (03) 9613 6222

## Roles and responsibilities

### **The Protected Disclosure Coordinator (the Coordinator)**

The Coordinator fulfils a central clearinghouse role in the reporting system. She will:

- be a contact point for general advice about the operation of the Act for any person;
- receive any disclosures made orally or in writing;
- receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure;
- impartially assess each disclosure to determine whether it is a public interest disclosure, and if it is, refer it to the Ombudsman;
- coordinate an investigation, including appointing an investigator;
- appoint a welfare manager to support the whistleblower and to protect him or her from reprisal (if appropriate);
- advise the whistleblower of the progress of an investigation;
- establish and manage a confidential filing system;
- collate and publish statistics on disclosures made;
- take all necessary steps to ensure the identity of the whistleblower and the person the subject of the disclosure are kept confidential; and
- liaise with the human resources manager and/or CEO on general issues relating to this policy.

Where a disclosure is not assessed as a protected disclosure, it does not need to be dealt with under the Act, and it will be dealt with as a normal complaint.

### **The investigator**

The investigator will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman had referred a matter to a public body. An investigator may be a person from within the organisation or a consultant engaged for that purpose or someone appointed by the Ombudsman.

### **Welfare Manager**

The appointment of a Welfare Manager may also be appropriate.

The Welfare Manager is responsible for looking after the general welfare of the whistleblower. The Welfare Manager will:

- examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment;
- advise the whistleblower of the legislative and administrative protections;

- be available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure; and
- ensure the expectations of the whistleblower are realistic.

## Receiving and assessing disclosures

Where a disclosure has been received by the Protected Disclosure Coordinator, she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

### Does the disclosure contain the essential elements of a protected disclosure?

To be a protected disclosure, a disclosure must satisfy the following criteria:

- did a natural person (that is an individual person rather than a corporation) make the disclosure?
- does the disclosure relate to conduct of a public body or public officer acting in their official capacity?
- is the alleged conduct either improper conduct, corrupt conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- does the person making a disclosure have reasonable grounds for believing that the alleged conduct has occurred?

Where a disclosure is assessed to be a protected disclosure, the Protected Disclosure Coordinator will determine whether the disclosure is a **public interest disclosure**.

Alternatively, where the disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act.

### Is the disclosure a public interest disclosure?

Where the Protected Disclosure Coordinator has received a disclosure that has been assessed to be a protected disclosure, the Coordinator will determine whether the disclosure amounts to a **public interest disclosure**. **This assessment will be made within 45 days of the PIC / BC receiving the disclosure.**

To be a public interest disclosure the information must **show, or tend to show** that the public officer to whom the disclosure relates:

- has engaged, is engaging or proposes to engage in improper conduct and/or corrupt conduct in his or her capacity as a public officer; or

- has taken, is taking or proposes to take detrimental action in reprisal for the making of a protected disclosure.

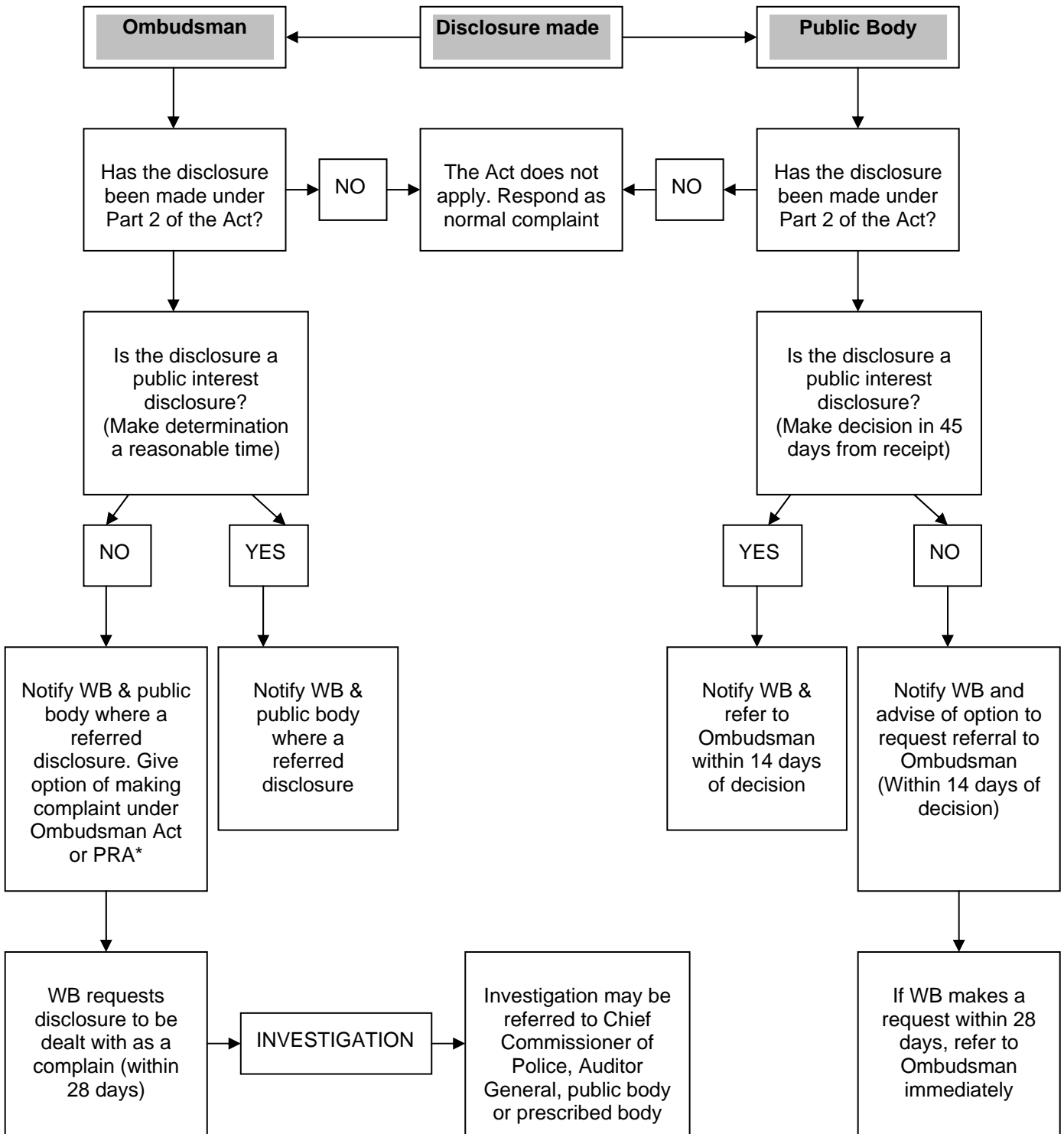
**If the matter is determined to be a public interest disclosure**, the Disclosure Coordinator will notify the person of that conclusion and refer the disclosure to the Ombudsman for formal determination as to whether it is in fact a public interest disclosure.

**If the matter is determined not to be a public interest disclosure**, then the Protected Disclosure Coordinator will notify the person of that conclusion and advise the person that he or she may request the public body to refer the disclosure to the Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure. This request must be made within 28 days of the notification.

In either case, the protected disclosure coordinator will make the notification and the referral within 14 days of the conclusion being reached by the public body.

Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

The flowchart below explains the process (WB stands for whistleblower)



## Confidentiality

A disclosure may be made anonymously and need not identify the person who is alleged to have engaged in the improper conduct or detrimental action. Any disclosure made anonymously will be referred to the Ombudsman.

The PIC / BC will take all reasonable steps to protect the identity of a whistleblower. The Act requires any person who receives information as part of an investigation not to disclose that information except in limited circumstances. **Any breach of this obligation constitutes an offence that is punishable by approximately \$7,000 and/or 6 months imprisonment.**

The information may only be released:

- as part of a report or recommendation made under the Act (without particulars that would lead to the identification of the whistleblower);
- when publishing de-identified statistics in the PIC / BC's annual report; or
- in criminal proceedings for offences under the Act.

If the nature of the allegations makes it impossible to keep the identity of the whistleblower confidential during an investigation, the whistleblower and his or her welfare manager will be warned of this fact.

## Records relating to a disclosure

The PIC / BC will ensure all relevant files are kept in a secure location to be accessed only by the Coordinator and investigator.

All relevant printed material will be kept in a confidential file that is clearly marked as a 'Whistleblower Protection Act matter', and warns of the criminal penalties that apply to any unauthorised disclosures of information. All electronic files will be password protected.

The PIC / BC will endeavour to hand deliver documents relating to disclosure and will ensure all phone calls and meetings relating to it are conducted in private.

## Collating and publishing statistics

The Protected Disclosure Coordinator will establish a secure register to record the information required to be published in the annual report, and to generally keep account of the status of whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

The register will contain the following information:

- the number and types of disclosures made to public bodies during the year;
- the number of disclosures referred to the Ombudsman for determination as to whether they are public interest disclosures;
- the number and type of disclosed matters referred to the public body by the Ombudsman for investigation;
- the number and types of disclosed matters referred to the public body to the Ombudsman for investigation;
- the number and types of investigations taken over from the public body by the Ombudsman;
- the number of requests made by a whistleblower to the Ombudsman to take over an investigation by the public body;
- the number and types of disclosed matters that the public body has declined to investigate;
- the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation; and
- any recommendations made by the Ombudsman that relate to the public body.

## **The investigation process**

Every disclosure made to the PIC / BC, and every public disclosure made to the Ombudsman must be investigated.

Where the Ombudsman refers a protected disclose to the PIC / BC for investigation, the Protected Disclosure Coordinator will appoint an investigator to carry out the investigation.

The objectives of an investigation are to:

- collate information relating to the allegation as quickly as possible (i.e. taking steps to protect or preserve documents, materials and equipment);
- consider the information collected and draw objective and impartial conclusions from it;
- maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- make recommendations arising from the conclusions concerning remedial or other appropriate action.

### **Terms of reference**

Before commencing an investigation, the Protected Disclosure Coordinator will draw up terms of reference and obtain authorisation for those terms by the Chief Executive Officer. The terms of reference will set up a date by which the investigation report is to be concluded, and will describe the resources available to the investigator to complete the investigation within the time set.

The Protected Disclosure Coordinator may approve, if reasonable, an extension of time requested by the investigator.

The terms of reference will require the investigator to make regular reports to the Protected Disclosure Coordinator who, in turn, is to keep the Ombudsman informed of the general process.

### **Investigation plan**

The investigator will prepare an investigation plan for approval by the Protected Disclosure Coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- what is being alleged?
- what are the possible findings or offences?
- what are the facts in issue?
- how is the inquiry to be conducted?
- what resources are required?

The investigator will be sensitive to the whistleblower's fear of reprisals and will be aware of the statutory protections provided to the whistleblower.

### **Natural justice**

The person who is the subject of the disclosure is entitled to know the allegations made against him or her, and must be given the right to respond to them. However, this does not mean that the person must be advised of the allegation(s) as soon as the disclosure is received or the investigation commenced. This also does not mean that the identity of the person making the disclosure can be disclosed.

If the investigator is to make a report adverse to the interests of any person, that person should be given the opportunity to put forward material in his or her defence to be fairly set out in the report. All relevant parties to the matter should be heard and all submissions considered.

The investigator or any decision maker should not have a personal or direct interest in the matter being investigated.

It is at the decision maker's discretion whether a witness may have legal or other representation present during interviews.

### **Conduct of the investigation**

The investigator will make contemporaneous notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the investigator will take all reasonable steps to protect the identity of the whistleblower. Where the disclosure of the whistleblower cannot be avoided due to the nature of the allegations, the investigator will warn the whistleblower and his or her welfare manager of this probability.

It is in the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.

### **Referral of an investigation to the Ombudsman**

If the investigation is being obstructed (i.e. the non-cooperation of key witnesses), or has revealed conduct that may constitute a criminal offence, it will be referred to the Ombudsman.

### **Reporting requirements**

The Protected Disclosure Coordinator will ensure that the whistleblower is kept regularly informed concerning the handling of a protected disclosure and an investigation.

Where the Ombudsman or whistleblower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.

## **Response to the investigation**

### **1. Reporting requirements – after the investigation**

At the conclusion of the investigation, the investigator must submit a written report to the Coordinator containing a summary of:

- the allegations;
- all relevant information received;
- his or her findings and reasons for them, and if evidence is rejected as being unreliable, the investigator's reasons for so finding; and
- recommendations arising from the conclusions.

The report may be accompanied by:

- the transcript or other record of oral evidence taken, including sound recordings; and
- all documents, statements or other exhibits received by the office and accepted as evidence during the investigation.

### **2. Where the disclosure is substantiated**

If the Coordinator is satisfied that the disclosed conduct has occurred, he or she:

- will recommend to the Chief Executive Officer the action that must be taken to prevent the conduct from continuing or occurring in the future;
- will provide a written report to the Minister for Finance, the Ombudsman and the whistleblower setting out the findings of the investigation and any remedial steps taken; and
- may recommend that action be taken to remedy any harm or loss arising from the conduct.

### **3. Where the disclosure is not substantiated**

The Coordinator will report these findings to the Ombudsman and the whistleblower.

## Protecting the whistleblower

### 1. What protection does the *Whistleblowers Protection Act 2001* provide?

If a protected disclosure is made, the whistleblower:

- will not be exposed to liability arising from related administrative processes; and
- will not be liable for defamation regarding the disclosure.

It is an offence for a person to take detrimental action in reprisal for a protected disclosure.

**The maximum penalty is a fine of approximately \$27,000.00 or/or 2 years imprisonment.**

The taking of detrimental action itself is grounds for a disclosure under the Act.

### 2. What protection do the Procedures provide?

Under the Procedures, the Coordinator has an overarching responsibility to ensure whistleblowers are protected from both direct and indirect detrimental action taken in reprisal for the making of a disclosure. The PIC / BC aims to promote a workplace culture that is supportive of protected disclosures being made. Indeed all PIC / BC staff must refrain from any activity that is, or could be perceived as victimisation or harassment of a whistleblower.

#### 2.1 Appointment of a welfare manager

A Welfare Manager may be appointed to whistleblowers that have made a protected disclosure. The welfare manager will:

- examine the welfare and protection needs of the whistleblower and seek to foster a supportive work environment for him or her (where s/he is an employee);
- advise the whistleblower of the legislative and administrative protections available to him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure;
- keep a contemporaneous record of all aspects of the case management of the whistleblower including all contact and follow up action; and
- ensure the expectations of the whistleblower are realistic.

### 3. If reprisals occur

If a whistleblower is subject to detrimental action in reprisal for the making of the disclosure, the matter will be referred to the Coordinator or Chief Executive Officer who will assess the report as a new disclosure under the Act.

#### **4. Keeping the whistleblower informed**

The Protected Disclosure Coordinator will ensure the whistleblower is informed of:

- objectives and findings of an investigation; and
- steps taken by the PIC / BC to address any improper conduct that is found to have occurred.

The whistleblower will be given reasons for decisions made by the PIC / BC in relation to a protected disclosure.

## **Whistleblowers implicated in improper conduct**

Where a whistleblower is implicated in improper conduct, the PIC / BC will protect him or her from reprisals in accordance with the Act and the Procedures.

However in accordance with the Act, the PIC / BC acknowledges that the act of whistleblowing should not shield individuals from the reasonable consequences flowing from involvement in improper conduct.

Where a whistleblower is implicated in improper conduct, the Chief Executive Officer may consider an admission to be a mitigating factor when considering whether disciplinary or other action should be taken against him or her.

In all cases where disciplinary or other action is being contemplated, the chief executive officer must be satisfied that it has been clearly demonstrated that:

- the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);
- there are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances; and
- there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Protected Disclosure Coordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure.

## **Management of the person against whom a disclosure has been made**

The PIC / BC recognises that employees against whom disclosures are made must also be supported during the investigation process. The PIC / BC will take all reasonable steps to ensure that their confidentiality is maintained.

The Coordinator will ensure that the subject:

- is informed as to the substance of the allegations;
- is given the opportunity to answer the allegations before a final decision is made;
- has his or her defence set out fairly in any report; and
- is informed as to the substance of any adverse comment that may be included in any report arising from the investigation.

## **Where a disclosure is wrong or unsubstantiated**

Where investigations do not substantiate the disclosure, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who was the subject of the disclosure, will remain confidential.

If the matter has been publicly disclosed, the Chief Executive Officer will consider any request by the subject of the disclosure that the PIC / BC issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

## **Offences under the *Whistleblowers Protection Act 2001***

It is an offence to:

- knowingly make a false disclosure, which may result in a penalty of approximately \$27,000.00 and/or 2 years imprisonment;
- divulge information obtained as a result of the handling or investigation of a protected disclosure unless authorised to do so by the Act. The penalty for breach is approximately \$7,000.00 and/or 6 months imprisonment;
- obstruct the Ombudsman in performing his or her responsibilities under the Act. The Act provides a maximum penalty of approximately \$27,000.00 and/or 2 years imprisonment.

## **Commonly asked questions and answers**

### **The purpose of the Act is punish those who have engaged in improper conduct.**

FALSE – the Act aims to encourage and facilitate disclosures of improper conduct by public officers and bodies, protect whistleblowers from reprisal, and to establish a system for investigation and taking rectifying action. Any disciplinary or other action taken against a person who is found to have engaged in improper conduct will be conducted under the relevant disciplinary process.

### **To be a ‘protected disclosure’, the disclosure must be made by a natural person who believes that the alleged conduct occurred, whether or not that belief is reasonable.**

FALSE – a disclosure made without reasonable grounds will not be a protected disclosure, and thus will not attract the protections provided by the Act (e.g. immunity from defamation proceedings for statements made in the disclosure).

### **The PIC / BC does not encourage the making of whistleblowing disclosures as investigating them wastes PIC / BC’s time and resources.**

FALSE – The PIC / BC believes that taking a positive stance towards whistleblowing, and treating all disclosures seriously will lead to a more efficient use of public resources, and contribute to the PIC / BC fulfilling its ethical duties. The PIC / BC supports the making of disclosures that reveal improper conduct. The PIC / BC also encourages staff members to raise any matters of concern at any time with their supervisors.

### **Disclosures by anonymous parties that do not name the person who is alleged to have engaged in the conduct will not be accepted.**

FALSE – a disclosure may be made anonymously and need not identify the person who is alleged to have engaged in the improper conduct or detrimental action. Any disclosure made anonymously will be referred to the Ombudsman.

### **Only a member of the public may make a whistleblowing disclosure.**

FALSE – the Act also provides for an employee of a public body to make a whistleblowing disclosure about a public body or public officer.

### **Improper conduct is any conduct that is corrupt, involves a substantial mismanagement of public resources and/or poses a substantial risk to public health, safety or the environment.**

TRUE – common examples of improper conduct are bribery, extreme and excessive waste, misuse of company funds, unsafe working conditions and serious environmental pollution.

### **Jane has made a disclosure that implicates her manager, Sasha, in the granting of tenders to companies that employ Sasha’s family members in preference to other tenderers. Sasha thinks**

**that Jane may have been the whistleblower, and tells Jane that if any action is taken against Sasha in relation to the preferential treatment, Jane may lose her job. As no detriment will occur until the time when Jane loses her job, Sasha's actions do not constitute 'detrimental action' under the Act.**

FALSE – Sasha's action in telling Jane she may lose her job is intimidation, harassment or adverse treatment under the Act. It does not matter that further detrimental action is threatened at the time that Sarah may be dismissed from her employment, the making of the threat itself is detrimental action.

**Disclosures must be accompanied with supporting evidence.**

FALSE – Disclosures may be made orally or in writing without supporting evidence. It is enough that the whistleblower has a reasonable belief, and can tell someone receiving the disclosure what the allegations are.

**Improper conduct can be reported directly to the Ombudsman without first raising it with the PIC / BC.**

TRUE – disclosures can be made either to a member of the PIC / BC's staff (who will then refer it to the Protected Disclosure Coordinator) or directly to the Victorian Ombudsman. In either instance all reasonable steps will be taken to protect the whistleblower's identity.

**It is okay for people who become aware of information in relation to a whistleblower investigation to confidentially tell other people who are close to them about the information and investigation.**

FALSE - Any person who discloses information obtained as a result of the handling of a protected disclosure (except as provided by the Act) can be subjected to fines of approximately \$6,000.00 and/or a 6 month jail term. The information may only be released as part of a report made under the Act (without revealing identities), when publishing statistics in the PIC / BC's annual report (without revealing identities), or in criminal proceedings for offences under the Act.

**Mary makes a protected disclosure about sexual harassment in the workplace, consisting of inappropriate emails containing explicit photographs being sent and displayed in the workplace. Mary has been one of the people who has sent the emails. As Mary has been honest and made the disclosure about sexual harassment in the workplace, Mary will be a witness in the investigation only, and will be immune from disciplinary and other action taken in relation to the matters disclosed.**

FALSE - whistleblowing does not shield an individual from the consequences flowing from involvement in improper conduct. However, the Chief Executive Officer may consider an admission to be a mitigating factor when considering whether disciplinary or other action should be taken against the whistleblower.

**The person who is a subject of a protected disclosure has the right to natural justice in relation to the conduct of the investigation.**

TRUE - the Coordinator will ensure that he or she is informed as to the substance of the allegations, has an opportunity to rebut them, and has his or her defence set out fairly in any report.

**A witness in a whistleblowing investigation has the right to be represented by a lawyer or other representative during interviews.**

FALSE – the deemed investigator has discretion whether a witness may have legal or other representation during an interview. Where legal representation is present, their role is to advise or support the witness, not to answer questions for the witness.

**A finding that a disclosure is not substantiated will mean that an employee whistleblower will be disciplined.**

FALSE - where investigations do not substantiate the disclosure, so long as the person did not know that the disclosure was false and has not engaged in any misconduct themselves, there will be no disciplinary or other action taken. It is an offence under the Act to knowingly make a false disclosure, which may result in a penalty of approximately \$25,000.00, 2 years imprisonment or both.

**Once the whistleblower has made the complaint, he or she will not be kept aware of the results of the investigation.**

FALSE – The Protected Disclosure Coordinator will ensure the whistleblower is informed of the objectives and findings on an investigation, as well as steps taken by the PIC / BC to address any improper conduct that has occurred.

**Sue's friend Walter is the subject of a protected disclosure that alleges he misused company funds to cover his gambling debts. The Ombudsman has asked Sue to tender letters Walter wrote to her requesting large sums of money. Sue has refused to do so and as a result may be subject to penalties under the Act.**

TRUE - it is an offence to obstruct the Ombudsman in performing his or her responsibilities under the Act. Sue may be subject to a maximum penalty of approximately \$25,000.00 and/or 2 years imprisonment.