

PUBLIC TRANSPORT OMBUDSMAN
AND
TRANSPORT SAFETY VICTORIA
CASE REFERRAL AND COMMUNICATION PROTOCOL
Effective from December 2016

1 INTRODUCTION

1.1 Purpose

The Public Transport Ombudsman (PTO) and the Director of Transport Safety (Safety Director) both have roles and responsibilities in relation to public transport in Victoria. The purpose of this referral and communication protocol is to promote effective co-ordination and communication, ensuring both organisations effectively and efficiently refer matters, seek input and share information when appropriate.

1.2 PTO role

The PTO deals with complaints about Victorian public transport that members of the community have been unable to resolve directly with public transport operators. In particular, the PTO has the power to investigate and resolve complaints about Metro Trains Melbourne, Yarra Trams, V/Line, Transdev, Bus Association Victoria members, Public Transport Victoria, VicTrack, Southern Cross Station Pty Ltd, Level Crossing Removal Authority and Melbourne Metro Rail Authority. Such complaints may involve:

- The provision or supply of public passenger transport services by or on behalf of a member of the PTO Scheme;
- Public passenger transport vehicles, facilities and land, including graffiti, vandalism and cleanliness;
- The sale of tickets, including complaints about myki, ticket machines and validators;
- The conduct or behaviour of public transport staff (including Authorised Officers), agents or contractors; and
- A PTO Scheme member's use of land or premises, or the effect of a member's conduct, operations or activities in relation to land or premises.

The complainant must have given the relevant transport operator the opportunity to address the issue before the PTO can undertake an investigation. Appendix 1 provides a list of the issues which fall under the PTO's jurisdiction and those issues that are outside of its jurisdiction.

1.3 Safety Director's role

The Safety Director is a statutory office charged with independently seeking the highest transport safety standards as Victoria's transport safety regulator. TSV supports the Safety Director in performing his/her statutory functions, including through administering a range of transport safety legislation. This legislation includes the **Rail Safety (Local Operations) Act 2006** (Vic.) and the **Bus Safety Act 2009** (Vic.) which regulate the safety of public transport services.

A primary part of achieving safe transport is through safety accreditation/ registration of rail and bus transport operators, and monitoring compliance with transport safety law requirements. This is ensured through a rigorous system of compliance audits, inspections or investigations of operators, and taking regulatory action when appropriate.

Appendix 2 provides more information on the requirements and obligations on public transport operators, and public transport safety issues that fall within Safety Director's regulatory scope.

2 REFERRALS/INPUT

2.1 Cases referred to the Safety Director by PTO

PTO shall, in relation to an issue raised with PTO, refer the issue to the Safety Director as a 'Refer to Non Member' case if all of the following apply:

- (a) the issue is outside PTO's jurisdiction to investigate;
- (b) the issue falls within the Safety Director's regulatory scope (in light of clause 1.3 above and Appendix 2), as confirmed by the Safety Director following an enquiry by the PTO Operations Manager; and
- (c) the PTO has obtained the customer's express consent to the referral of the customer's personal information to TSV.

When making a referral to the Safety Director, the PTO will send an email to the Safety Director's Contact Officer. The email will provide customer contact details and a brief summary of the issue.

2.2 Complaints investigated by the PTO requiring the Safety Director's input

When the PTO requires input from the Safety Director about an aspect of an investigation which is within PTO's jurisdiction, the PTO Conciliator will discuss the matter with the PTO Operations Manager to confirm that input from the TSV is required.

If this is the case, the Operations Manager will direct the Conciliator to the Safety Director's Contact Officer. Any requests will be sent via email and copied to the Operations Manager.

The email will provide no personal information about the complainant, unless it is relevant to the request for input and the complainant has provided express consent for such details to be provided to the Safety Director.

The email will provide a brief summary of the issue, a clear description of the input requested and the required timeframe. The PTO will generally ask for a response within seven days so that the investigation can proceed. If the required timeframe cannot be met, the Safety Director will advise the PTO as soon as possible so a new timeframe can be agreed upon.

2.3 Cases referred to PTO by the Safety Director

The Safety Director shall, in relation to an issue that comes to the attention of the Safety Director, refer the issue to PTO under the direction of the Safety Director's Contact Officer if all of the following apply:

- (a) the issue is outside the Safety Director's regulatory scope;
- (b) the issue is within PTO's jurisdiction (in light of clause 1.2 above and Appendix 1), as confirmed by PTO following enquiries by the Safety Director's Contact Officer; and
- (c) any individuals to be identified in the issue referral have provided their express consent to the referral of their personal information to PTO.

2.4 Issues investigated by the Safety Director requiring PTO input

When the Safety Director requires input from PTO about any issue that is the subject of a compliance inspection, audit or investigation by the Safety Director that is within PTO's jurisdiction, the Safety Director's Contact Officer will discuss the matter with the PTO Operations Manager and make arrangements for input to be provided where appropriate.

3 COMMUNICATIONS

3.1 Contact officers

PTO and the Safety Director nominate the following officers as the first point of contact for any issues arising out of this protocol:

PTO Contact Officer	Safety Director's Contact Officer
Operations Manager	Acting Manager, Regulatory Policy and Legal

3.2 Meetings between the PTO and the Safety Director

The PTO and relevant Safety Director staff (including the Safety Director's Contact Officer) will meet as required to discuss emerging issues of relevance to both organisations. The meetings between the parties are to be held upon reasonable request by either party.

3.3 Information sharing

In addition to meetings and referrals, the parties recognise the value of information sharing between the organisations. Where appropriate and subject to clause 3.4 below, each organisation will share information that comes to their attention where that information is relevant to the other's role.

3.4 Privacy/confidentiality obligations

Both organisations acknowledge that in referring cases, seeking input or sharing information in general:

- (a) no confidential information is to be disclosed without the express consent of the disclosing party. Confidential information includes all information (recorded in any other medium or by any other method) treated by the disclosing party as confidential, including but not limited to any information relating to a party's operations, processes, plans, intentions, knowhow, designs, trade secrets, software, or data); and
- (b) any personal or health information is to be used or disclosed in accordance with applicable information privacy law requirements, including ensuring consent is given before disclosure or use where necessary or appropriate.

4 TERM AND EFFECT

4.1 No legally binding effect

This protocol is not intended to create legally binding obligations or liabilities on either organisation. It does not prevent or inhibit PTO or the Safety Director from acting in proper performance of their public functions and both organisations may develop alternative arrangements to those set out in this protocol.

4.2 Term and review process

This protocol is effective from the effective date contained in this document. It continues to have effect until terminated at the initiation of either organisation at any time. Both organisations will review and amend the contents of this protocol as necessary to ensure it remains current and effective and upon reasonable request by either party.

TREASURE JENNINGS
Ombudsman
Public Transport Ombudsman Limited

DAVID HOURIGAN
Director, Transport Safety
Transport Safety Victoria

APPENDIX 1 – PTO JURISDICTION

Extract from Public Transport Ombudsman Limited Charter (2013):

3 JURISDICTION AND FUNCTIONS OF THE OMBUDSMAN

- 3.1 Subject to paragraph 4, the Ombudsman's jurisdiction and functions are to receive, to investigate and to facilitate the resolution of:
- (a) complaints as to the provision or supply of (or the failure to provide or supply) public passenger transport or any goods or services related to the provision or supply (or the failure to provide or supply) public passenger transport services by or for a member;
 - (b) complaints in relation to the sale of tickets including ticketing machines, ticket retailers and ticket refunds;
 - (c) complaints relating to infrastructure and rolling stock related matters (including, without limitation, graffiti, vandalism and cleanliness);
 - (d) complaints regarding the conduct or behaviour of Authorised Officers, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
 - (e) complaints in relation to Public Statutory Bodies providing public transport services or related activities, where under the MOU the Ombudsman is the appropriate body to receive, investigate and facilitate the resolution of the complaint;
 - (f) complaints regarding the conduct or behaviour of officers, employees, agents or contractors of members;
 - (g) complaints in relation to a member's use of, or the effect of a member's conduct, operations or activities on or in relation to, land or premises;
 - (h) complaints referred by the Secretary in relation to Authorised Officer conduct or behaviour and complaints in relation to Public Statutory Bodies providing public transport services or related activities which otherwise fall within the jurisdiction of the Ombudsman; and
 - (i) such other complaints as may, by agreement between the Ombudsman, the complainant and the member be referred to the Ombudsman by a member.

4 LIMITS ON THE OMBUDSMAN JURISDICTION

- 4.1 For the avoidance of doubt, the jurisdiction of the Ombudsman is limited to the functions enumerated in paragraph 3.
- 4.2 The functions of the Ombudsman do not extend to complaints relating to:
- (a) the setting of prices or tariffs or determining price structures;
 - (b) commercial activities which are not within or closely related to the core public passenger transport services provided by members;
 - (c) the content of Government policies (as opposed to commercial policies of government-owned or government-controlled members), legislation, licences and codes;
 - (d) complaints which are specifically under consideration by any court or tribunal, or which would involve reconsidering matters that have previously been considered or determined by a court or tribunal;
 - (e) any matter specifically required by legislation, including subordinate legislation, rules, codes, licences, and orders made in accordance with the law, or any matter which under an agreed working procedure with PTV or another relevant government authority, is to be handled by PTV or another government authority as the case may be;

- (f) actions properly and reasonably taken by a member and the consequences of such actions, in execution of a written direction, notice or other like instrument (Instrument) issued to a member by a person or entity having regulatory or administrative power to issue such Instrument and where such Instrument directly relates to:
 - (i) facilitating the reliability of the supply of public passenger transport services;
 - (ii) facilitating the security of public passenger transport services;
 - (iii) a public passenger transport emergency; or
 - (iv) a matter of public passenger transport safety.
- (g) any Free School Bus Service;
- (h) complaints in relation to the adequacy of the region or routes of operation or frequency of service, published in the current timetable, in relation to public passenger transport services;
- (i) complaints regarding the conduct or behaviour of Authorised Officers, which the Ombudsman does not have authority to receive, investigate and facilitate the resolution of in accordance with the MOU; and
- (j) complaints in relation to Victorian Public Statutory Bodies that do not provide public transport services or conduct related activities or which the Ombudsman does not have authority to receive, investigate and facilitate the resolution in accordance with the MOU.

APPENDIX 2 – JURISDICTION OF TSV

All matters relating to the compliance of duty-holders under **Rail Safety (Local Operations) Act 2006** (Vic.) (and to which the Rail Safety National Law (Victoria) does not apply pursuant to the **Rail Safety National Law Application Act 2013** (Vic.)) and the **Bus Safety Act 2009** (Vic.).

These duty-holders include, but are not limited to, transport operators, bus/rail safety workers, persons involved in the design/construction/installation/modification/maintenance etc. of rail infrastructure or rolling stock or bus stop infrastructure, suppliers of rail infrastructure or rolling stock, rail contractors, procurers of bus services, persons determining the location of bus stops, and the public .

Relevant obligations include:

- duties to ensure safety so far as is reasonably practicable in relation to risks created by the relevant duty-holder’s activities and the capacity of the duty-holder to manage those risks;
- requirements for the safety accreditation/registration of bus or rail transport operators, including to have a safety management process that addresses their:
 - safety policies, systems and control arrangements;
 - security management/emergency management/change management arrangements;
 - risk management processes;
 - personnel and safety work management and competence associated with safety;
 - asset management;
 - engineering and operational safety systems.

Issues that are of particular relevance to TSV are those that give rise to systemic safety concerns, for example:

- the integrity of physical rail infrastructure, rolling stock, bus stop infrastructure or buses from a safety perspective;
- the location of bus stops from a safety perspective;
- safety planning and management policies, systems or processes; or
- the behaviour of transport personnel/safety workers that give rise to systemic safety risks;

but not complaints about:

- an individual’s personal security/safety (e.g. experiences of violence on public transport; accidents on public transport, personal injuries sustained);
 - an individual’s well-being (e.g. noise pollution, health impacts etc.); or
 - reliability, comfort or other non-safety related performance of a transport operator.
-