



## Privacy Policy

**Note: This is a PTO Board Approved Policy  
Amendments cannot be made without Board Approval  
Last reviewed and approved by Board – October 2017**

### Purpose

This Policy has been written by the Public Transport Ombudsman Limited (the PTO) to comply with its obligations under the *Privacy Act 1998 (Cth)* (the Act) and the Australian Privacy Principles (APPs)<sup>1</sup>.

Ordinarily, organisations that have an annual turnover of \$3 million or less are not covered by the Act, unless that organisation opts into coverage under section 6EA. The PTO's annual turnover is \$3 million or less. To demonstrate its commitment to best practice and in line with the privacy obligations of most other industry based Ombudsman Schemes the PTO opted into coverage under the Act on 29 April 2011.

This policy sets out the PTO's obligations when dealing with personal information. The Notes following any principle outline the way in which the PTO will comply with the relevant APP in the context of its function and activities.

The policy has been structured to broadly reflect the 13 APPs. The numbering of sub-clauses within this Policy does not mirror the numbering of sub-clauses of each APP in the Act.

This policy is intended to ensure that the privacy of individuals is protected in the collection, use, disclosure and storage of personal information by the PTO.

### What is personal information?

The Act defines personal information as:

*information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, about an individual whose identify is apparent, or can reasonable be ascertained, from the information or opinion.*

The personal information the PTO collects may include, but is not limited to, name and address details, banking details or concession travel entitlements.

### Functions and activities of the PTO

The PTO provides an accessible, free and independent dispute resolution service for users of Victorian public transport services or for people who are affected by Victorian public transport related activities (consumers) and public transport operators (operators).

A complaint that is within the PTO's jurisdiction may be referred to the operator to give it an opportunity to resolve it. If the operator and consumer cannot resolve the complaint, the PTO may investigate and determine how it should be resolved.

<sup>1</sup> The *Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)* was passed on 29 November 2012 and included significant changes to the Act, including the introduction of the Australian Privacy Principles, which replace the National Privacy Principles (NPPs) from 12 March 2014. The APPs are published on the Office of the Australia Information Commissioner's website, <http://www.oaic.gov.au/privacy/privacy-resources/privacy-guides/app-quick-reference-tool>

The PTO also provides an information service to consumers about the functions and activities of the office and general information about the public transport industry.

The PTO is required to provide regular public reports about the number and type of cases it receives. The PTO often includes illustrative and de-identified case studies in public reports, newsletters and presentations. As such, case studies do not include an individual's personal information.

The *Privacy Act 1988* (Privacy Act) gives the Information Commissioner the discretion to recognise external dispute resolution (EDR) schemes to handle privacy-related complaints.<sup>2</sup>

## 1 Open and transparent management of personal information

- 1.1 The PTO will manage personal information in an open and transparent way.
- 1.2 The PTO publishes a Privacy Statement and its Privacy Policy about the management of personal information on its website.
- 1.3 If a request is made to provide this Policy in a particular form, the PTO will provide a copy in the requested form, if it is reasonable and practicable to do so in the circumstances.
- 1.4 The PTO collects personal information from consumers and operators for the purpose of resolving complaints.
- 1.5 An individual may access their personal information held by the PTO in accordance with this Policy.
- 1.6 If an individual wishes to complain about a breach of an APP by the PTO, they can make a complaint to the PTO's Operations Manager.

## 2 Anonymity and Pseudonymity

- 2.1 Individuals may have the option where it is practicable, of not identifying themselves, or of using a pseudonym, when dealing with the PTO.

### Notes

*Individuals wishing to make a complaint to the PTO for investigation and resolution will generally be required to identify themselves, as it is in most cases not practical for the PTO to investigate a complaint from an individual who has not identified themselves or who has used a pseudonym.*

*Individuals with a general enquiry or request for information or wishing to lodge a complaint but not have it investigated by the PTO, will not be required to identify themselves, or may choose to use a pseudonym. Individuals will be asked for a postcode so the PTO can report on and assess the geographical spread of callers.*

<sup>2</sup> The PTO became a recognised external dispute resolution scheme in 2014. Guidelines for the recognition of an external dispute resolution scheme are available at: <https://www.oaic.gov.au/agencies-and-organisations/advisory-guidelines/guidelines-for-recognising-external-dispute-resolution-schemes>

### 3 Collection of solicited personal information

- 3.1 The PTO will only collect personal information that is reasonably necessary for one or more of the PTO's functions or activities, including resolving a consumer's complaint.
- 3.2 The PTO will only collect sensitive information about an individual with their consent and if the information is reasonably necessary for one or more of the PTO's functions, or a lawful exception under the APPs applies.
- 3.3 The PTO will only collect personal information by lawful and fair means.
- 3.4 The PTO will only collect personal information about an individual from that individual, unless it is unreasonable or impracticable to do so.

#### Notes

*Under the Act, sensitive information means:*

- (a) *information or an opinion about an individual's:*
  - (i) *racial or ethnic origin; or*
  - (ii) *political opinions; or*
  - (iii) *membership of a political association; or*
  - (iv) *religious beliefs or affiliations; or*
  - (v) *philosophical beliefs; or*
  - (vi) *membership of a professional or trade association; or*
  - (vii) *membership of a trade union; or*
  - (viii) *sexual preferences or practices; or*
  - (ix) *criminal record;*

*that is also personal information; or*
- (b) *health information about an individual; or*
- (c) *genetic information about an individual that is not otherwise health information.*

*The collection of sensitive information will be in accordance with this policy and will be limited to that which is necessary for dealing with a complaint made to the PTO.*

*Where an individual provides sensitive information about him or herself to the PTO, consent to the collection and use of such information will be assumed.*

*Where sensitive information has been supplied, and is not necessary and relevant to ongoing handling of a complaint – the PTO will take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified. Further details of these steps is contained below in section 11.*

### 4 Dealing with unsolicited personal information

- 4.1 If the PTO receives unsolicited personal information then the PTO will determine whether or not it could have collected the information under APP 3 if the PTO had solicited the information.

- 4.2 If the PTO determines that it could not have collected the personal information then it will, as soon as practicable and if lawful and reasonable to do so, destroy the information or ensure that the information is de-identified.
- 4.3 If the PTO determines it could have collected the personal information under APP 3, then APPs 5 to 13 will apply in relation to the information, as if the PTO had collected the information under APP 3.

## **5 Notification of the collection of personal information**

- 5.1 At or before the time or, if that is not practicable, as soon as practicable after, the PTO collects personal information about an individual, we will notify the individual of the PTO's Privacy Policy including matters referred to below to the extent that it is reasonable in the circumstances.
- 5.2 The matters for the purposes of subclause 5.1 include:
- a. the identity and contact details of the PTO;
  - b. the purposes for which the PTO collects the personal information;
  - c. that the PTO's Privacy Policy contains information about how the individual may access their personal information that is held by the PTO and seek the correction of such information; and
  - d. that the PTO's Privacy Policy contains information about how the individual may complain about a breach of the APPs and how the PTO will deal with such a complaint.

### **Notes**

*The PTO provides the information required in the APPs to individuals by:*

- *including that information in a privacy statement on the PTO website;*
- *maintaining an up to date copy of this Policy on the PTO website;*
- *referencing our Privacy Policy and how to access it in email responses, in brochures and on our Freecall telephone message; and*
- *providing a copy of this Policy on request.*

*The PTO will collect information in the following ways:*

- *in the original phone call/letter/ email/ online complaint form and subsequent correspondence and/or conversations with the consumer, or the consumer's authorised representative;*
- *from the operator; and/or*
- *from third parties, as necessary, who can assist the dispute resolution process by providing information.*

*The PTO will not accept personal information obtained by any person in any way which is unlawful or improper.*

*Given the purpose and activities of the PTO, it can be assumed that, before making a complaint, most consumers will be aware that the PTO will use the personal information they provide and that it will require disclosure to the relevant operator they are complaining about, for the purposes of dispute resolution.*

*It is accepted practice for alternative dispute resolution schemes such as the PTO to collect and use available information, including third party personal information to carry out the primary function of dispute resolution.*

### **Information about Third Parties**

*Sometimes the PTO receives information during the investigation of a complaint that concerns a third party who may or may not have any direct interest or involvement in the complaint itself. The information is usually sent unsolicited by the consumer or operator.*

*In such cases the PTO will determine if it would have been permitted to collect this information under APP 3. If the PTO determines that it could have, any unsolicited information collected and retained by the PTO is afforded the same privacy protections as if it was solicited information.*

*In many cases it will not be reasonable or practicable for the PTO to collect the personal information directly from the individual concerned because:*

- a. to do so would disclose the fact that a complaint has been made to the PTO and thereby breach the privacy of the consumer and undermine the confidential nature of the dispute resolution process;*
- b. disclosure may have adverse consequences for the consumer including pressure not to pursue their legal rights including their right to access the PTO and, in some cases, the threat of physical or emotional harm;*
- c. the PTO may not have contact details for the third party and may have to incur considerable costs to locate him or her; or*
- d. in some circumstances, such as where allegations of fraud or forgery are made in relation to the third party, it would not be practicable to collect the relevant and potentially incriminating information from that third party.*

*Where the PTO collects personal information about a third party it will take reasonable steps to ensure that the third party is or has been made aware of the matters listed above if it is practicable to do so.*

*However, the PTO will not contact third parties directly to inform them that it holds information about them because to do so would breach the privacy of the consumer and the confidentiality of the dispute resolution process and may, in some cases, pose a threat to the life, health and safety of the consumer. For these reasons, the PTO has determined that it is not reasonable or practicable to inform the third party of the matters set out above.*

*If the PTO considers that the third party information is necessary to the resolution of the complaint, the PTO may ask the consumer or operator to advise the third party that the information has been provided to the PTO and why.*

*Where information about a third party is provided by the consumer or the operator that is not necessary to the resolution of the complaint, the PTO will, to the extent practicable, delete, de-identify or return the information to the consumer or operator.*

## **6 Use or disclosure of personal information**

6.1 The PTO will only use and disclose personal information about an individual for the primary purpose for which it was collected unless a secondary purpose in accordance with the APPs applies.

In the event that the PTO discloses personal information to a third party in error, the PTO Officer who becomes aware of the incident is required to immediately report the breach to the PTO's Operations Manager.

The PTO will take all such steps as are reasonable to minimise risk associated with the event and inform the individual concerned.

In such an event the PTO will follow steps outlined in the Office of the Australian Privacy Commissioner's publication: Data breach notification – A guide to handling personal information security breaches.<sup>3</sup>

In the event of serious a serious breach, such as a breach of the PTO's data security systems, the PTO may report the breach to the Office of the Australian Information Commissioner and seek guidance on steps to mitigate the breach and notify individuals.

- 6.2 The use or disclosure of personal information about an individual for a secondary purpose may apply for the reasons set out under the APPs, including if:
- a. the individual would reasonably expect the PTO to use or disclose the information for the secondary purpose and the secondary purpose is:
    - i. if the information is sensitive information—directly related to the primary purpose; or
    - ii. if the information is not sensitive information—related to the primary purpose; or
  - b. the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order; or
  - c. a permitted general situation exists in relation to the use or disclosure of the information by the PTO. A permitted general situation includes where the collection, use or disclosure is reasonably necessary for the purposes of a confidential alternative dispute resolution process.

<sup>3</sup> A current version of the guide can be obtained at: <https://www.oaic.gov.au/agencies-and-organisations/guides/data-breach-notification-a-guide-to-handling-personal-information-security-breaches>.

## **Notes**

*The PTO respects the confidentiality of information provided by and about individuals and treats all such information as confidential between the individual and the operator.*

*The PTO will use personal information about an individual it collects for its primary purpose of alternative dispute resolution. In the course of resolving a complaint, the PTO may disclose personal information about an individual to:*

- *the consumer;*
- *the relevant operator;*
- *other parties who may assist the PTO in the complaint handling process, such as independent technical advisers.*

*The PTO does not envisage that it would use or disclose personal information for purposes other than the primary purpose in many instances. However, any such secondary uses will be limited to those permitted under the APPs, including when an individual would reasonably expect this disclosure to occur and it relates to the primary purpose for which the information was collected.*

*The PTO conducts regular customer satisfaction surveys about the dispute resolution service it provides. Personal information is disclosed to a survey company. Personal information is only retained by the survey company during the course of the survey. A consumer can advise the PTO that they do not want their personal information disclosed or used for this purpose, and the PTO will not include them in the survey process.*

*Personal information will be de-identified before being used for the purpose of reporting to stakeholders, the public and the Government about our activities and as such will not be personal information.*

*If the PTO believes it is necessary to use or disclose personal information for a secondary purpose, or if a relevant person or authority requests personal information, the PTO will seek consent of the individual prior to use or disclosure.*

### **Third parties seeking information about a complaint**

*Sometimes the PTO is contacted by a third party seeking information about a complaint. This may include Members of Parliament, legal advisers, disability advocates or family members.*

*The PTO will not discuss any personal/confidential aspect of a complaint with any person other than the consumer and the relevant operator unless the consumer has authorised the PTO to do so. Generally, the PTO will require written authority from the consumer for a third party to access any personal/confidential information regarding a complaint.*

*The PTO does not regard a person to whom correspondence has been copied by the consumer as authorised to discuss the complaint or receive information about the progress of the complaint.*

## **7 Direct Marketing**

7.1 If the PTO holds personal information about an individual, the PTO will not use or disclose the information for the purpose of direct marketing unless one of the exceptions under the APPs applies.

## 8 Cross-border disclosure of personal information

- 8.1 Although the PTO is unlikely to disclose personal information to overseas recipients, the PTO will only disclose personal information to overseas recipients with prior authority of the individual concerned.

### Notes

*The PTO only operates within Victoria. As such, it is not envisaged that the PTO will transfer personal information about an individual to someone in a foreign country, other than the individual him or herself.*

*Where a particular case requires information about an individual to be transferred outside Australia, the individual's prior authority will be sought.*

## 9 Adoption, use or disclosure of government related identifiers

- 9.1 The PTO will not adopt a government related identifier of an individual as its own identifier.
- 9.2 The PTO will not use or disclose a government related identifier unless it is in accordance with the APPs.

### Notes

*The PTO identifies complaints by a number and letter sequence. Individuals are not assigned any identifying numbers or codes by the PTO.*

## 10 Quality of personal information

- 10.1 The PTO will take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that it collects is accurate, up to date and complete.
- 10.2 The PTO will take such steps (if any) as are reasonable in the circumstances to ensure that the personal information that it uses or discloses is, having regard to the purpose of the use of disclosure, accurate, up to date and complete.

### Notes

*Where a consumer or operator notifies the PTO of undisputed changes to personal information held by the PTO about an individual or errors in PTO records, the PTO will make the necessary changes as soon as practicable.*

## 11 Security of personal information

- 11.1 The PTO will take such steps as are reasonable to protect the personal information it holds about an individual:
- a. from misuse, interference and loss; and
  - b. from unauthorised access, modification or disclosure.
- 11.2 If;
- a. the PTO holds personal information about an individual; and
  - b. the PTO no longer needs the information for any purpose for which the information may be used or disclosed; and



- c. the information is not contained in a Commonwealth record; and
- d. the PTO is not required by or under an Australian law, or a court/tribunal order, to retain the information;

the PTO will take such steps as are reasonable in the circumstances to destroy the information or to ensure that the information is de-identified.

## **Notes**

*The PTO's premises and information systems are controlled by electronic security.*

*Hard copy personal information collected by the PTO is appropriately filed and securely stored on the premises.*

*PTO staff have access to hard copy files and electronic records relating to complaints in order to deal with those complaints.*

*The PTO makes staff aware of privacy obligations through regular training. All staff, including contracted and temporary staff, are required to give confidentiality undertakings in respect of any personal information they access.*

*The PTO routinely archives physical complaint files in a secure offsite location. The PTO destroys physical complaint files seven years after closure of the file.*

### **Data security and confidentiality when accessing PTO records remotely**

*Some staff members have authority to access the PTO's IT system remotely. The PTO has appropriate security measures in place to facilitate remote access and this Privacy Policy applies when PTO records are accessed in this way.*

## **12 Access to personal information**

- 12.1 If the PTO holds personal information about an individual, the PTO will, on request by the individual, give the individual access to the information.
- 12.2 The PTO may not provide the individual access to the personal information to the extent that:
  - a. the PTO reasonably believes that giving access would pose a serious threat to the life, health or safety of any individual, or to public health or public safety; or
  - b. giving access would have an unreasonable impact on the privacy of other individuals; or
  - c. the request for access is frivolous or vexatious; or
  - d. the information relates to existing or anticipated legal proceedings between the PTO and the individual, and would not be accessible by the process of discovery in those proceedings; or
  - e. giving access would reveal the intentions of the PTO in relation to negotiations with the individual in such a way as to prejudice those negotiations; or

- f. giving access would be unlawful; or
- g. denying access is required or authorised by or under an Australian law or a court/ tribunal order; or
- h. both of the following apply:
  - i. the PTO has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the PTO's functions or activities has been, is being or may be engaged in; and
  - ii. giving access would be likely to prejudice the taking of appropriate action in relation to the matter; or
- i. giving access would be likely to prejudice one or more enforcement related activities conducted by, or on behalf of, an enforcement body; or
- j. giving access would reveal evaluative information generated within the PTO in connection with a commercially sensitive decision-making process.

#### *Dealing with requests for access*

#### 12.3 The PTO will:

- a. respond to the request for access to the personal information within a reasonable period after the request is made; and
- b. give access to the information in the manner requested by the individual, if it is reasonable and practicable to do so.

#### *Access Charges*

12.4 If the PTO charges the individual for giving access to information, the charge will not be excessive and will not apply to the making of the request.

#### *Refusal to give access*

12.5 If the PTO refuses to give access to the personal information, the PTO will give the individual a written notice that sets out the reasons for the refusal except to the extent that, having regard to the grounds for the refusal, it would be unreasonable to do so; and provide:

- a. the mechanisms available to complain about the refusal; and
- b. any other matter prescribed by the regulations.

12.6 If the PTO refuses to give access to the personal information because the information would reveal evaluative information generated within the PTO in connection with a commercially sensitive decision-making process, the reasons for the refusal may include an explanation for the commercially sensitive decision.

### 13 Correction of personal information

#### 13.1 If:

- a. the PTO holds personal information about an individual; and
- b. either:
  - i. the PTO is satisfied that, having regard to a purpose for which the information is held, the information is inaccurate, out of date, incomplete, irrelevant or misleading; or
  - ii. the individual requests the entity to correct the information;

the PTO will take such steps (if any) as are reasonable in the circumstances to correct that information to ensure that, having regard to the purpose for which it is held, the information is accurate, up to date, complete, relevant and not misleading.

#### *Notification of correction to third parties*

#### 13.2 If:

- a. the PTO corrects personal information about an individual that the PTO previously disclosed to another entity; and
- b. the individual requests the PTO to notify the other entity of the correction;

the PTO will take such steps (if any) as are reasonable in the circumstances to give that notification unless it is impracticable or unlawful to do so.

#### *Refusal to correct information*

#### 13.3 If the PTO refuses to correct the personal information as requested by the individual, the PTO will give the individual a written notice that sets out:

- a. the reasons for the refusal except to the extent that it would be unreasonable to do so; and
- b. the mechanisms available to complain about the refusal; and
- c. any other matter prescribed by the regulations.

#### *Request to associate a statement*

#### 13.4 If:

- a. the PTO refuses to correct the personal information as requested by the individual; and
- b. the individual requests the entity to associate with the information a statement that the information is inaccurate, out of date, incomplete, irrelevant or misleading;

the PTO will take such steps as are reasonable in the circumstances to associate the statement in such a way that will make the statement apparent to users of the information.

### *Dealing with requests*

- 13.5 If a request is made as per above, the PTO will respond within a reasonable period after the request is made and will not charge the individual for the making of the request, for correcting the personal information or for associating the statement with the personal information (as the case may be).

### **Notes**

*Any individual who wishes to gain access to information held by the PTO, or who believes information held by the PTO is not accurate, up to date or complete should contact the PTO staff member handling the complaint or the PTO's Operations Manager.*

*The PTO can be contacted by:*

Freecall: 1800 466 865  
Telephone: (03) 8623 2111  
Facsimile: (03) 8623 2100  
Email: [enquiries@ptovic.com.au](mailto:enquiries@ptovic.com.au)  
Mail: PO Box 538  
Collins Street West  
Melbourne 8007 VIC

*The individual should provide as much information as possible to assist the PTO in determining where the relevant information is held. This includes case reference numbers, the name of the consumer and/or operator and relevant dates.*

### **Complaints about the PTO**

*Complaints about the way the PTO has collected, stored, used or disclosed personal information should be directed to the PTO's Operations Manager.*

*The Operations Manager will then review whether the PTO has managed the personal information in accordance with this policy.*

*The findings of the review will be communicated within 21 days of the complaint being made.*