

# Protected Disclosures Procedure

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## Purpose

The purpose of this document is to establish procedures relating to:

- Making disclosures under the *Protected Disclosure Act 2012* (Vic);
- Protecting people from reprisals because of disclosures.

## Scope

These procedures will apply to, and are binding upon all staff and students of the University.

## Definitions

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below. The definitions overlap to some extent.

Key Term	Definition
<b>Improper Conduct</b>	<p>A disclosure may be made about <b>improper conduct</b> by a public body or public official. Improper conduct is defined by section 4 of the Act to mean <b>corrupt conduct</b> under the Independent Broad-Based Anti-Corruption Commission Act 2011, or <b>specified conduct</b>, which includes-</p> <ul style="list-style-type: none"> <li>• conduct of any person that adversely affects the honest performance of a public officer's or a public body's performance;</li> <li>• conduct of a public officer or public body that constitutes or involves the dishonest performance of a public officer's or a public body's functions;</li> <li>• conduct of a public officer, former public officer or a public body that amounts to knowingly or recklessly breaching public trust;</li> <li>• conduct of a public officer or public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions;</li> <li>• a conspiracy or attempt to engage in any of the above conduct;</li> <li>• conduct of a public officer or public body that involves: <ul style="list-style-type: none"> <li>- a substantial mismanagement of public resources, or;</li> <li>- a substantial risk to public health or safety or;</li> <li>- a substantial risk to the environment.</li> </ul> </li> </ul> <p>The specified conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.</p> <p>This list may not be exhaustive of what constitutes improper conduct.</p>
<b>Corrupt Conduct</b>	<p><b>Corrupt conduct</b> as defined in the Independent Broad-Based Anti-Corruption Commission Act 2011 means conduct-</p> <ol style="list-style-type: none"> <li>1. of any person that adversely affects the honest performance by a public officer or public body of his or her or its functions as a public officer or public body; or</li> </ol>

	<ol style="list-style-type: none"> <li>2. of a public officer or public body that constitutes or involves the dishonest performance of his or her or its functions as a public officer or public body; or</li> <li>3. of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust; or</li> <li>4. of a public officer or a public body that involves the misuse of information or material acquired in the course of the performance of his or her or its functions as a public officer or public body, whether or not for the benefit of the public officer or public body or any other person; or</li> <li>5. that could constitute a conspiracy or an attempt to engage in any conduct referred to above.</li> <li>6. being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence.</li> </ol> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• <i>A public officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.</i></li> <li>• <i>A public officer favours unmeritorious applications for jobs or permits by friends and relatives.</i></li> <li>• <i>A public officer sells confidential information.</i></li> </ul>
<b>Detrimental Action</b>	<p>The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:</p> <ul style="list-style-type: none"> <li>• Action causing injury, loss or damage;</li> <li>• Intimidation or harassment; and</li> <li>• Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.</li> </ul> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• <i>A public body refuses a deserved promotion of a person who makes a protected disclosure.</i></li> <li>• <i>A public body demotes, transfers, isolates in the workplace or changes the duties of a person due to the making of a protected disclosure.</i></li> <li>• <i>A person threatens, abuses or carries out other forms of harassment directly or indirectly against a person making a protected disclosure or his or her family or friends.</i></li> <li>• <i>A public body discriminates against a person making a protected disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.</i></li> </ul>

## Statement of Support to Persons Making Protected

The University is committed to the aims and objectives of the *Protected Disclosure Act 2012* (the Act). It does not tolerate improper conduct by its employees, officers or members, nor the taking of reprisals against those who come forward to disclose such conduct.

The University recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal **improper conduct** (which is defined in section 4 of the Act to include corrupt conduct, conduct involving a substantial mismanagement of public resources, and conduct involving a substantial risk to public health and safety or the environment).

The University will take all reasonable steps to protect people who make such disclosures from any **detrimental action** in reprisal for making the disclosure. Detrimental action is defined in section 3 of the Act and includes intimidation or harassment and discrimination, disadvantage or adverse treatment in relation to employment.

## Purpose of These Procedures

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the University or its employees. Details of all contact information are listed in Contact Details.

Disclosures may be made by employees, students or by members of the public.

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. As an alternative, employees may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

**Allegations of improper conduct as defined in the Act CANNOT be reported to a University employee if the person who wishes to make the report desires the protection from detrimental action set out in the Act.** This is because the University is not a body able to receive disclosures under the Act. Reports should be made directly to IBAC.

Complaints or allegations outside the Act criteria can be reported to the Protected Disclosure Coordinator (See Contact Details for contact information). The University offers the same anonymity provisions and assurance that all reasonable steps will be taken to protect anyone making such reports.

## Objects of the Act

The *Protected Disclosure Act 2012* commenced operation on 10 February 2013. It supersedes the *Whistleblowers Act 2001*. The main objective of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies and to establish a system for matters to be investigated. The Act provides protection from detrimental action to any person affected by a protected disclosure whether it is a person who makes a disclosure, a witness, or a person who is the subject of an investigation.

## The Reporting System

### Disclosure to IBAC

Disclosures of improper conduct or detrimental action by the University or its employees must be made to IBAC in order to be "protected disclosures". Refer to Contact Details.

Advice about reporting any improper conduct may be obtained from the Protected Disclosure Coordinator. Refer to Contact Details.

### Alternative Contact Persons

The following table sets out where disclosures about persons other than employees of the University should be made. Contact the Protected Disclosure Coordinator, or IBAC for further information on such disclosures.

Person who is the subject of the disclosure	Person/body to whom the disclosure must be made
Employee of a public body	That public body of IBAC
Member of Parliament (Legislative Council) Ministers of the Crown*	Speaker of the Legislative Assembly
Councillor Freedom of Information Commissioner Privacy Commissioner Health Services Commissioner Commissioner of Law Enforcement Data Security	IBAC or the Ombudsman
Chief Commissioner of Police Director of Public Prosecutions Chief Crown Prosecutor Solicitor General Governor Lieutenant-Governor or Administrator Electoral Commissioner Persons issued or appointed to Boards of Enquiry or Commissions of Enquiry Judicial Officers Ministerial Officers Parliamentary Advisers Parliamentary Officers	IBAC
Member of the police force (other than Commissioner)	IBAC or a prescribed member of police personnel

Chief Examiner or Examiner appointed under the Major Crimes (Investigative Powers) Act  Ombudsman Officers  VAGO Officer	IBAC or Victorian Inspectorate
IBAC  IBAC Officers	Victorian Inspectorate

\* If Minister not a Member of Parliament disclosure should be made to IBAC

## Roles and Responsibilities

### Employees

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

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

### Protected Disclosure Coordinator

The Protected Disclosure Coordinator will be the key contact point within the University, and will play a central role in managing the internal reporting system for disclosures. They will:

- Receive phone calls, emails and letters from members of the public or the University employees seeking to make a disclosure and provide advice regarding the reporting of improper conduct to IBAC;
- Impartially assess each disclosure to determine the best method of dealing with the disclosure;
- Coordinate the reporting system used by the Organisation;
- Be a contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- Be responsible for ensuring that the public body carries out its responsibilities under the Act and Guidelines
- Liaise with IBAC in regards to the Act
- Where necessary, arrange for appropriate welfare support for the person making a protected disclosure, including the appointment of a Welfare Manager in relation to that person;
- Advise the person making a protected disclosure of the progress of an investigation into the disclosed matter (if known)
- Establish and manage a confidential filing system;
- Collate statistics on disclosures made
- Take all necessary steps to ensure the identity of the person making the disclosure and the identity of the person who is the subject of the disclosure are kept confidential;
- Liaise with the Vice-Chancellor regarding protected disclosure matters;
- If required appoint an investigator to investigate disclosures and be responsible for the conduct of that investigation.

## Receipt of Disclosures

The University staff receiving telephone calls regarding issues which may involve protected disclosures must not enquire into the circumstances of the disclosure and must refer the caller to IBAC or the Protected Disclosure Coordinator. If the disclosure is received in the mail or in some other written form, the letter, email, facsimile or document must be immediately and personally delivered to the Protected Disclosure Coordinator without recording any details of the disclosure in any University correspondence system.

The contents of disclosure telephone calls or mail are confidential and a person divulging any matter relating to a disclosure may be subject to prosecution for offences and any penalties under the Act.

## Welfare Manager

A Welfare Manager appointed by the Protected Disclosure Officer is responsible for looking after the general welfare of the person making a disclosure (or a person cooperating with an investigation, as the case may be). The Welfare Manager will at a minimum:

- **Inform** the person of the protections available, the actions proposed to be taken and the results of such actions;
- **Provide active support** including an acknowledgement of the person for coming forward, assurance that they will be given all reasonable protection, and an undertaking to keep them informed;
- **Manage expectations** regarding outcomes and whether expectations are realistic or deliverable\*;
- **Maintain confidentiality** including ensuring the identity of the person cannot be inferred, reminding the person not to identify themselves and keeping hardcopy and electronic files confidential;
- **Assess the risks** of reprisals and proactively manage these risks;
- **Protect the discloser or cooperator** by examining immediate welfare and protection needs, fostering a supportive workplace, listen and respond to concerns about reprisals, and assess the nature of these concerns
- **Manage the impact of any investigation** by seeking to prevent the spread of gossip and rumours;
- **Keep contemporaneous records** of all aspects of the case management of the person including all contact and follow up action.

\* A Welfare Manager cannot be expected to go beyond what is reasonable in providing support and should discuss the issue of reasonable expectations with the person making a disclosure (or the cooperator).

The Welfare Manager must not divulge details of the disclosed matter to anyone but the Protected Disclosure Coordinator or the Vice-Chancellor. All meetings between the person and the Welfare Manager must be conducted discreetly.

The Welfare Manager may be a person from within the University or a third party engaged for that purpose.

## Confidentiality

The University will take all reasonable steps to protect the identity of the person making disclosures. Maintaining confidentiality is crucial in ensuring reprisals are not made.

The Act requires any person who receives information due to the handling or investigation of a disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of section 52 constitutes a criminal offence.

The University will ensure all relevant files, whether paper or electronic, are kept in a secure room and can only be accessed by the Protected Disclosure Coordinator or the Welfare Manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Protected Disclosure Act matter, and warn of the



criminal penalties that apply to any unauthorised divulging of information. All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on floppy disc.

University staff will not email or fax sensitive documents relevant to a disclosure unless satisfied that general staff do not have access to the machine receiving the e-mail or fax. University staff are to ensure all sensitive phone calls and meetings are conducted in private.

## Collating and Publishing Statistics

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

## Receiving and Assessing Disclosures

### Has the disclosure been made in accordance with Part 2 of the Act?

Protected Disclosures cannot be made to the University. They should be made to IBAC.

### Has the disclosure been made to the appropriate person?

Disclosures concerning an employee, member or officer of the University should be made to IBAC in order to be protected under the Act. If the disclosure concerns an employee, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed, which generally will be IBAC. If the disclosure concerning another public body has been made anonymously, it should be referred to IBAC.

### 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 or detrimental action taken against a person in reprisal for making a protected disclosure?

There are two tests as to whether there is a disclosure of improper conduct or detrimental action:

1. Does the information disclosed show or tend to show improper conduct or detrimental action; or
2. Does the information disclosed show or tend to show person making a disclosure believe on reasonable grounds\* that the alleged conduct has occurred.

If a matter is not a protected disclosure it may still be investigated by the University through its complaint management processes.

In circumstances where the disclosure is about conduct allegedly posing an immediate threat to the health and safety of individuals or the preservation of property, or which allegedly constitutes serious criminal conduct, the University may take immediate or urgent action.

\* In determining whether the person making the disclosure had reasonable grounds for believing the conduct had occurred consideration is given to whether a reasonable person possessed of all the information held by the person



making the disclosure would have formed that belief having regard to all the circumstances. The person making the disclosure will be given a reasonable opportunity to present additional information to support the allegations made.

## Preventing Detrimental Actions

### Commitment to Protecting Persons Who Make Protected Disclosures

The University is committed to the protection of persons against detrimental action taken in reprisal for the making of protected disclosures. The Protected Disclosure Coordinator is responsible for ensuring these persons are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

In most cases Protected Disclosure Coordinator will appoint a Welfare Manager to all persons who have made a protected disclosure, particularly if the matter proceeds to investigation.

All employees will be advised that it is a serious offence for a person to take detrimental action in reprisal for a protected disclosure. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

Detrimental action includes:

- Causing injury, loss or damage;
- Intimidation or harassment; and
- Discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including the taking of disciplinary action).

### Occurrence of Detrimental Action

If a person making a protected disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the Welfare Manager will:

- Record details of the incident;
- Advise the person of their rights under the Act; and
- Advise the Protected Disclosure Coordinator or Vice-Chancellor of the detrimental action.

The Protected Disclosure Coordinator or Vice-Chancellor will report serious matters likely to amount to a criminal offence to the police or IBAC.

The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure. Where such detrimental action is reported, the Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. The University may not investigate the matter due to the possibility of criminal charges being laid.

### Persons Implicated In Improper Conduct

Where a person who makes a disclosure is implicated in misconduct, the University will handle the disclosure and protect the person from reprisals in accordance with the Act, all IBAC guidelines and these procedures. Note that the person making a protected disclosure is not liable to any civil or criminal liability *for making that disclosure*.

The University acknowledges that the act of disclosure should not shield persons from the reasonable consequences flowing from any involvement in improper conduct. Section 42 of the Act specifically provides that a

person's liability for their own conduct is not affected by the person's disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

The Vice-Chancellor will make the final decision (following advice from the Protected Disclosure Coordinator) as to whether disciplinary or other action will be taken against a person who has made a protected disclosure. Where disciplinary or other action relates to conduct that is the subject of the person's disclosure, the disciplinary or other action will generally be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Vice-Chancellor 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-disclosure 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. The Protected Disclosure Coordinator will clearly advise the person who made the disclosure of the proposed action to be taken, and of any mitigating factors that have been taken into account.

## Criminal Offences

The University will ensure employees are aware of the following offences created by the Act:

1. It is an offence for a person to take or threaten action against a person in reprisal when:

- a protected disclosure has been made;
- a person believes a protected disclosure has been made; or
- a person believes another person intends to make a protected disclosure.

**Penalty may include 2 years imprisonment.**

2. It is an offence for a person or body to disclose the content of an assessable disclosure or information about that disclosure - **Penalty may include 12 months imprisonment.**

3. It is an offence for a person to disclose information likely to lead to the identification of a person who has made a disclosure - **Penalty may include 12 months imprisonment**

## Civil Action

A person who takes detrimental action against a person in reprisal for a protected disclosure may be found liable in tort to that person. Damages may be awarded. The University may also be vicariously liable

The Supreme Court can issue an injunction to prevent detrimental action being taken

## General Information

### The Role of IBAC

The role of IBAC under the Act is to:

- Receive disclosures directly or by notification;
- Determine whether a disclosure is a protected disclosure;
- Assess and investigate disclosures;
- Prepare and publish guidelines to facilitate making disclosures, for the handling of disclosures and for the protection of persons from detrimental actions;
- Review written procedures established by public bodies and make recommendations in relation to these procedures;
- Monitor investigations where they have been referred to public bodies ;
- Monitor the action taken by public bodies where findings of an investigation reveal that improper conduct has occurred;
- Research, collect and analyse data and statistics relating to the protected disclosure scheme;
- Report to Parliament on IBAC's research and education functions; and
- Provide education and information about the protected disclosure scheme.

Further information in relation to the role of IBAC can be found at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

IBAC has published *Guidelines for Making and Handling Protected Disclosures* and *Guidelines for Protected Disclosure Welfare Management*. Both these guidelines can be found at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au).

## Freedom of Information

Section 78 of the Act excludes the application of the Freedom of Information Act 1982 to any document that relates to a disclosure made under the Act.

## Legislative Context

- Public Interest Disclosure Act 2013 (Cth)
- Protected Disclosure Act 2012 (Vic) Protected Disclosure Act 1994
- Public Interest Disclosure Act 2010
- Public Interest Disclosure Act 2018
- National Anti-Corruption Commission Act 2022 (Cth)
- Right to Information Act 2009 (Qld)
- Government Information (Public Access) Act 2009 (NSW)
- Freedom of Information Act 1982 (Vic)
- Freedom of Information Act 1991 (SA)

## Review

These procedures will be reviewed annually to ensure they meet the objectives of the Act and accord with IBAC guidelines.

## Contact Details

**For reporting improper conduct under the Protected Disclosure Act:**

<b>Protected Disclosure Coordinator</b>  Director, Corporate Governance	<b>Address:</b>	the University  University Drive  Mt Helen VIC 3353
	<b>Telephone:</b>	03 5327 9504
	<b>E-mail:</b>	a.tinetti@federation.edu.au
<b>IBAC</b>  Independent Broad-based Anti-corruption Commission	<b>Address:</b>	Level 1, North Tower, 459 Collins Street,  Melbourne, VIC 3001
	<b>Postal:</b>	IBAC, GPO Box 24234  Melbourne, VIC 3000
	<b>Telephone:</b>	1300 735 135
	<b>Fax:</b>	03 8635 6444
	<b>Internet:</b>	<a href="http://www.ibac.vic.gov.au/contact-us">http://www.ibac.vic.gov.au/contact-us</a>

## Responsibility

The Legal Office is responsible for the maintenance of this procedure.

## Promulgation

The [Protected Disclosures Procedure](#) will be communicated throughout the the University via:

1. an Announcement Notice on the [FedUni News webpage](#);
2. inclusion in the [the University Policy Library](#);
3. distribution of e-mails to Head of School / Head of Department / University staff.

## Implementation

The [Protected Disclosures Procedure](#) will be implemented throughout the the University via:

1. Information Sessions;
2. Distribution of posters and brochures.

## Independent Agency

- Independent Broad-Based Anti-Corruption Commission (IBAC) (Vic)
- Crime and Corruption Commission (CCC) (Qld)
- Independent Commission Against Corruption (ICAC)(NSW)

- Independent Commission Against Corruption (ICAC)(SA)