

# Protected Disclosure Policy

## Section 1 - Background and Purpose

(1) To inform staff and students about:

- a. How the University manages the welfare of persons entitled to be protected under the [Protected Disclosure Act 2012](#) (Act);
- b. What kind of disclosures can be made about the University, one of its officers, employees or Council members, and by whom under the Act.

## Section 2 - Scope

(2) Applies to:

- a. All campuses;
- b. All staff;
- c. All Council members.

## Section 3 - Policy Statement

(3) The University is committed to the aims and objectives of the [Protected Disclosure Act 2012](#). It encourages the disclosure of improper conduct relating to the University or a member, officer or employee of the University, and will take all reasonable steps to protect a person who discloses improper conduct from any detrimental action in reprisal from making the disclosure. In addition, it will manage the welfare of those persons and others connected with or the subject of a protected disclosure in accordance with the requirements of the [Act](#).

## Section 4 - Procedures

### Part A - Preamble

(4) These Procedures govern the handling of welfare management of persons making or associated with protected disclosures about improper conduct and detrimental action on the part of the University, its staff or members of Council. The University is committed to the objectives of the [Protected Disclosure Act 2012](#) (Vic).

### Part B - General - The Purpose of the Procedures

(5) The University is required to establish and publish procedures under s 58 of the Act and in accordance with the Guidelines of the Independent Broad-based Anti-corruption Commission (IBAC) published under s 57 of the Act<sup>1</sup>. It is also required to ensure these procedures are readily available to members of the public as well as internally to all staff and members of Council.

1. The IBAC has published 2 Guidelines under s 57 of the Act as at 14 June 2013. Further information about those Guidelines, including links to the full Guidelines, may be found on the IBAC's What is a Protected Disclosure? (IBAC) webpage (last accessed 22 June 2013).

(6) These procedures are a resource for disclosers and potential disclosers, whether an internal staff, Council member, student or an external member of the public; essentially, any individual who wants to find out how the University will manage their welfare if they make a disclosure. In addition, these procedures cover how the University will protect other people connected to a protected disclosure complaint from detrimental action being taken against them in reprisal for a discloser making a protected disclosure. Such persons can include individuals who are the subject of protected disclosures and protected disclosure complaints; and others who are connected to protected disclosures, such as witnesses or persons cooperating with an investigation into a protected disclosure complaint.

(7) The disclosure must be about behaviour that is corrupt or specified conduct that is not corrupt but that would, if proved, constitute a criminal offence or reasonable grounds for dismissal. Specified conduct is conduct that is dishonest, breaches public trust, involves the misuse of information, a substantial mismanagement of public resources, a substantial risk to public health or safety or a substantial risk to the environment.

## Part C - About the Act

(8) The Act replaced the [Whistleblowers Protection Act 2001](#) and commenced operation on 10 February 2013. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. It does so by providing certain protections for people who make a disclosure, or those who may suffer detrimental action in reprisal for making a disclosure. An essential component of this protection is to ensure that information connected to a protected disclosure, including the identity of a discloser and the contents of that disclosure, are kept strictly confidential.

(9) The University is bound by and committed to the aims and objectives of the Act. The University does not tolerate improper conduct by the organisation, its staff, or members of Council nor the taking of reprisals against those who come forward to disclose such conduct. The University supports the making of disclosures that reveal improper conduct or the taking of detrimental action in reprisal against persons who come forward to report such improper conduct. The University will take all reasonable steps to protect a person who discloses improper conduct from any detrimental action in reprisal for making the disclosure, and afford natural justice to the person or body who is the subject of the disclosures.

(10) For more information regarding the University's commitment to managing the welfare of persons making and connected with a protected disclosure, see section 6 'Welfare Management'.

(11) Protected disclosures may be made about any of the public officers or bodies as defined in s 3 of the Act and s 6 of the [IBAC Act](#). They include:

- a. government departments;
- b. statutory authorities;
- c. Councils established under the [Local Government Act 1989](#);
- d. the Electoral Boundaries Commission;
- e. government-appointed boards and committees;
- f. government-owned companies;
- g. universities and TAFEs;
- h. public hospitals;
- i. a body performing a public function on behalf of the State, a public body or a public officer;

- j. employees, staff and members of public bodies including those set out above;
- k. police and protected service officers;
- l. teachers;
- m. public servants;
- n. Members of Parliament, including Ministers;
- o. Judicial officers, including coroners, members of the Victorian Civil and Administrative Tribunal, associate judges and judicial officers;
- p. IBAC officers;
- q. statutory office holders, including the Auditor-General, the Ombudsman and the Director of Public Prosecutions; and
- r. the Governor, Lieutenant-Governor or Administrator of the State.

(12) According to IBAC, not all agencies may receive disclosures under the Act. In IBAC's view, the University is not a body that may receive protected disclosures. Therefore, if you wish to make a disclosure about the University, or one of the University's Council members, officers or employees, you should make that disclosure to IBAC in accordance with its procedures and Guidelines.

(13) A protected disclosure cannot be made about:

- a. a Public Interest Monitor;
- b. the VI or officers of the VI; nor
- c. the conduct or actions of a Court.

## **Part D - The University's Internal Arrangements for Handling Welfare Management**

(14) This section sets out the roles and responsibilities of persons in the University who have functions, obligations, rights and duties under the Act.

(15) The University supports a workplace culture where the making of protected disclosures is valued by the organisation and the right of any individual to make a protected disclosure taken seriously.

(16) The University will:

- a. ensure these procedures are accessible on its website and available internally and externally to Council members, officers, employees and any individual in the broader community;
- b. not tolerate the taking of detrimental action in reprisal against any person for making a protected disclosure, including to take any reasonable steps to protect such persons from such action being taken against them;
- c. afford natural justice and treat fairly those who are the subject of allegations contained in disclosures;
- d. take the appropriate disciplinary and other action against any Council members, officers, employees engaged in the taking of detrimental action;
- e. ensure that University as a whole handles the welfare management of persons connected with protected disclosures matters consistently and appropriately in accordance with its obligations under the Act, the Regulations, IBAC's Guidelines and these procedures; and
- f. be visible, approachable, openly communicative and lead by example in establishing a workplace that supports the making of protected disclosures.

## Part E - Staff, Council Members and Students

(17) Staff, Council members and students are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these Procedures.

(18) All staff, Council members and students 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.

## Part F - Protected Disclosure Coordinator

(19) The University's Protected Disclosure Coordinator has a central role in the way the organisation deals with all protected disclosure matters, and in particular for ensuring that the welfare of any persons connected with a protected disclosure is properly managed.

(20) The Protected Disclosure Coordinator is:

- a. the contact point for general advice about the operation of the Act and for integrity agencies such as IBAC;
- b. responsible for ensuring that the University carries out its responsibilities under the Act, any regulations made pursuant to the Act and any guidelines issued by IBAC;
- c. the University's chief liaison with IBAC in regard to the Act;
- d. to take all necessary steps to ensure information received or obtained in connection with a disclosure, including the identities of the discloser and the person(s) to whom the disclosure relate, are kept secured, private and confidential at all times;
- e. responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support a person entitled to be protected and to protect him or her from any reprisals; and
- f. to collate statistics required to be reported by the University in its annual reports under the Act.

(21) The Protected Disclosure Coordinator appointed by the University is:

Professor Andrew Brennan, University Ombudsman  
Protected Disclosure Coordinator  
La Trobe University Bundoora Victoria 3086  
Tel: 03) 9479 1897  
Fax: (03) 9479 3897  
Email: ombudsman@latrobe.edu.au

## Part G - Making a Disclosure

(22) This section specifies what a disclosure is, who can make one, and what a disclosure can be made about.

## Part H - What is a Disclosure and Who can Make a Disclosure?

(23) A disclosure may be made about 2 things under the Act:

- a. improper conduct of public bodies or public officers (including the University, its staff, employees and Council members); and
- b. detrimental action taken by public bodies or public officers in reprisal against a person for the making of a

protected disclosure.

(24) The conduct or action being disclosed about may be one which has taken place, is still occurring, or is believed is intended to be taken or engaged in. Disclosures may also be made about conduct that occurred prior to the commencement of the Act on 10 February 2013.

(25) A disclosure may:

- a. only be made by a natural person (or a group of individuals making joint disclosures)<sup>2</sup>. Disclosures cannot be made by a company or an organisation;
- b. be made anonymously;
- c. be made even where the discloser is unable to identify precisely the individual or the organisation to which the disclosure relates; and
- d. also be a complaint, notification or disclosure (however described) made under another law.

2. It should be noted that some of the protections set out in the Act protecting a protected discloser are available only to the person who makes a disclosure. The IBAC has pointed out that the consequence of this is that if a person makes a disclosure by 'notifying' the agency on behalf of another individual, then it is the 'notifier' who may receive those protections, and not the person on whose behalf they have made the disclosure. The person on whose behalf the disclosure has been made will only be entitled to protections against detrimental taken against them in reprisal for the disclosure made by the notifier.

## Part I - How Can a Disclosure Be Made?

(26) A disclosure must be made in accordance with Part 2 of the Act. Part 2 of the Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.

(27) Disclosures must be made in private.

(28) Generally:

- a. a verbal disclosure may be made:
  - i. in person;
  - ii. by telephone;
  - iii. by leaving a voicemail message on a particular telephone answering machine; or
  - iv. by any other form of non-written electronic communication.
- b. IBAC recommends that written disclosures to IBAC be made via its [online form](#) (last accessed 23 June 2013).

(29) Disclosures cannot be made by fax.

(30) A disclosure made by email from an address from which the identity of the discloser cannot be ascertained will be treated as an anonymous disclosure.

(31) According to IBAC, a disclosure attempted or purported to be made to the University will not be a disclosure made in accordance with Part 2 of the Act, because in IBAC's view Part 2 of the Act does not permit the University to receive disclosures<sup>3</sup>. If you wish to make a disclosure, please make that disclosure directly to IBAC. For further information about how to make a disclosure to IBAC, see pp 8 – 12 of IBAC's Guidelines for Making and Handling Protected Disclosures.

3. For more information on this point, please see pp 11 – 12 of the [Guidelines for making and handling protected disclosures](#) (Released January 2016).

## Part J - What Can a Disclosure Be Made About?

(32) A disclosure must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as outlined in the Valid Disclosure Diagram.

### Improper Conduct

(33) A disclosure may be made about improper conduct by a public body or public official in the performance of their functions as a public body or public officer. University staff, employees and Council members are public officers as defined by the Act.

(34) Disclosers will need to identify that there is a link between the alleged improper conduct of a person or an organisation and their function as an employee, staff or Council member of the University or a public body.

(35) Improper conduct is defined in the Act to mean either corrupt conduct or specified conduct (both terms are also defined by the Act and the IBAC Act).

### Corrupt Conduct

(36) Corrupt conduct means any one of the following:

- a. conduct 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;
- b. conduct 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;
- c. conduct of a public officer or public body that constitutes or involves knowingly or recklessly breaching public trust;
- d. conduct 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;
- e. or conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; and
- f. if that conduct could be proved beyond reasonable doubt at a trial, amounts to:
  - i. an indictable offence; or one of the following 3 types of common law offences committed in Victoria:
    - perverting the course of justice
    - attempting to pervert the course of justice
    - bribery of an official.

### Specified Conduct

(37) Specified conduct is any one of the above types of conduct, or conduct that involves substantial mismanagement of public resources, risk to public health or safety, or risk to the environment, which would not constitute “corrupt conduct” but would nevertheless, if proved, constitute either:

- a. a criminal offence; or

- b. reasonable grounds for dismissing or terminating the employment of the officer who engaged or is engaging in that conduct.

(38) It should be noted the risk in relation to mismanagement or public health and safety or the environment must be “substantial”, requiring significant or considerable mismanagement, or significant or considerable risks to public health, safety or the environment.

### **Detrimental Action**

(39) It is an offence under the Act for a University employee, staff or Council member or the University to take detrimental action against a discloser in reprisal for making a protected disclosure. There are two essential components here: whether there is in fact “detrimental action”, as defined by the Act, and whether that action is being taken in reprisal against a person for making or being connected with a protected disclosure.

### **Detrimental Action**

(40) Detrimental action as defined by the Act includes:

- a. action causing injury, loss or damage;
- b. intimidation or harassment; and
- c. discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.

(41) In addition, a person can have taken detrimental action without having taken the action itself, but just by threatening to take such action. Further, the detrimental action need not necessarily have been taken (or threatened to be taken) against a person making a protected disclosure, but against any person connected with a protected disclosure.

(42) Examples of detrimental action prohibited by the Act include:

- a. threats to a person’s personal safety or property, including intimidating or harassing a discloser or the discloser’s family or friends or otherwise causing personal injury or prejudice to the safety or damaging property of a discloser or the discloser’s family or friends;
- b. the demotion, transfer, isolation or change in duties of a discloser due to his or her having made a disclosure;
- c. discriminating or disadvantaging a person in their career, profession, employment, trade or business; or
- d. discriminating against the discloser or the discloser’s family and associates in subsequent applications for promotions, jobs, permits or tenders resulting in financial loss or reputational damage.

### **Taken in Reprisal for a Protected Disclosure**

(43) The person (or the person incited to take detrimental action) must take or threaten the detrimental action, because, or in the belief that the:

- a. other person or anyone else has made, or intends to make the disclosure;
- b. other person or anyone else has cooperated, or intends to cooperate with an investigation of the disclosure.

(44) This belief must be a ‘substantial’ reason for taking that action, or it will not be considered to be detrimental action.

## **Part K - Assessment of a Disclosure**

(45) Disclosures about the University and its staff, employees or Council members should only be made to

IBAC. According to IBAC, the University is a public body that cannot receive disclosures. If the University receives a complaint, report, or allegation of improper conduct or detrimental action that it views to be a protected disclosure, it will advise the discloser to make their disclosure to IBAC.

(46) Once a disclosure has been notified to IBAC, IBAC must determine whether it is a protected disclosure complaint. Such a determination must be made within a reasonable time after the disclosure is notified to IBAC.

(47) If IBAC is of the view that the assessable disclosure is not a protected disclosure, then it is not a 'protected disclosure complaint'. If IBAC is of the view that the assessable disclosure is a protected disclosure, then it must determine that the protected disclosure is a "protected disclosure complaint".

## **Part L - If IBAC Determines the Disclosure is Not a Protected Disclosure Complaint**

(48) If IBAC determines the disclosure is not a protected disclosure complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- a. IBAC has determined that the disclosure is not a protected disclosure complaint; and
- b. as a consequence of that determination:
  - i. the disclosure will not be investigated as a protected disclosure complaint; and
  - ii. the confidentiality provisions under Part 7 of the Act no longer apply in relation to the disclosure; and
- c. regardless of whether IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 apply to a protected disclosure.

## **Part M - If IBAC Determines the Disclosure is a Protected Disclosure Complaint**

### **Notification to the Discloser**

(49) If IBAC determines the disclosure is a protected disclosure complaint, IBAC must advise the discloser in writing and within a reasonable time after the determination is made, that:

- a. IBAC has determined that the disclosure is a protected disclosure complaint;
- b. regardless of the determination, the protections available to a discloser of a protected disclosure under Part 6 of the Act apply;
- c. the discloser has rights, protections and obligations under the Act as contained in ss 72, 74 and Parts 6 and 7 of the Act, including an explanation of the effect of those sections and Parts of the Act; and
- d. it is an offence under s 74 of the Act to disclose that IBAC has determined that the disclosure is a protected disclosure complaint.

(50) Whether or not IBAC determines the disclosure to be a protected disclosure complaint, the protections under Part 6 of the PD Act apply to the discloser.

(51) Once IBAC has determined that a disclosure is a protected disclosure complaint, the discloser cannot withdraw that disclosure. However, under the IBAC Act, IBAC can decide not to investigate a protected disclosure complaint if the discloser requests that it not be investigated.

### **Further actions IBAC may take<sup>4</sup>**

4. This section of the procedures comprises a summary of points drawn from pp 23 to 25 of the IBAC's



[Guidelines for making and handling protected disclosures](#) (last accessed 23 June 2013). For further information, please refer to those Guidelines.

(52) Under the IBAC Act, IBAC may dismiss, investigate, or refer a protected disclosure complaint.

(53) If IBAC dismisses a protected disclosure complaint, then it must do so on one of the grounds specifically set out in the IBAC Act. In particular, IBAC must dismiss a protected disclosure complaint if the matter disclosed is a matter that neither IBAC nor an investigating entity may investigate.

(54) IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is “serious corrupt conduct”.

(55) IBAC may also choose to refer the protected disclosure complaint to other appropriate and relevant investigative entities.

(56) Depending on the action IBAC decides to take, IBAC must also provide certain other information to the discloser. That information is set out at the chart on p 24 of IBAC’s [Guidelines for making and handling protected disclosures](#).

5. Refer to: [Guidelines for making and handling protected disclosures](#), last accessed 23 June 2013.

## **Other Information About Investigative Entities’ Investigations of a Protected Disclosure Complaint<sup>5</sup>**

(57) If IBAC or another investigative entity is conducting an investigation of a protected disclosure complaint, it may be in contact with the University or a person about which the disclosure has been made. This will be for the purpose of conducting investigative enquiries.

(58) La Trobe University or that person will be able to disclose information about the protected disclosure complaint to the investigative entity without breaching the confidentiality requirements of the Act.

(59) The relevant investigative entity may also disclose the identity of the discloser and the content of the disclosure if necessary to do so for the purposes of their investigative action. If this is the case, then La Trobe University or person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the Act.

(60) In addition, if the University is advised of the identity of the discloser, then it will be required to look after the welfare of the discloser and provide protection against possible detrimental action.

(61) At the conclusion of its investigation, the relevant investigative entity must generally provide the discloser with information about the results of its investigation, including any action taken by the investigative entity and any recommendation by the investigative agency that action or further action be taken.

## **Part N - Welfare Management**

(62) The University is committed to the protection of genuine disclosers against detrimental action taken in reprisal for the making of protected disclosures.

(63) The protection of persons making genuine protected disclosures about improper conduct or detrimental action is essential for the effective implementation of the Act. In addition, the Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a protected disclosure complaint

("cooperators"). Persons who are the subject of allegations will also have their welfare looked after.

(64) It is the view of IBAC that the University cannot receive disclosures, and therefore may not know that a person has made a protected disclosure. Confidentiality obligations require a person who has made a protected disclosure not to discuss the matter with any other person except with IBAC (or another investigative entity to which IBAC may have referred the disclosure). Therefore, the University will only be made aware that a person requires protection under the Act if that information has been provided to the University by IBAC or the VI (when assessing whether a disclosure is a protected disclosure complaint), or by the investigative entity investigating a protected disclosure complaint.

(65) Once the University has been made aware of the identity of a discloser, and any other relevant information about the protected disclosure, the University will keep all information it receives confidential, and will manage the welfare of any relevant persons in accordance with its obligations under the Act.

(66) The University must, where it is aware of or has been provided the identities of disclosers and cooperators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the protected disclosure<sup>7</sup>. The University will ensure its workplace culture supports disclosers and cooperators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., employees, Members, other officers) or external members of the public.

7. The balance of this section of these procedures assume that the University has been provided with the relevant information from one of the investigative entities such that it is aware of the identity of the persons requiring protection and is therefore able to comply with its requirements to manage the welfare of those persons.

(67) Generally, for internal persons, the University will ensure a supportive work environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, the University will take reasonable steps to provide appropriate support. The University will discuss reasonable expectations with all persons receiving welfare management in connection with a protected disclosure.

## **Part O - Support Available to Disclosers and Cooperators**

(68) The University will support disclosers and cooperators by:

- a. keeping them informed, by providing:
  - i. confirmation that the disclosure has been received, if the relevant investigative agency has provided this information to the University;
  - ii. the legislative or administrative protections available to the person;
  - iii. a description of any action proposed to be taken;
  - iv. if action has been taken by the University, details about results of the action known to the University;
- b. providing active support by:
  - i. acknowledging the person for having come forward;
  - ii. assuring the discloser or cooperator that they have done the right thing, and the University appreciates it;
  - iii. making a clear offer of support;
  - iv. assuring them that all reasonable steps will be taken to protect them;
  - v. giving them an undertaking to keep them informed as far as the University is reasonably able to;
- c. managing their expectations by undertaking an early discussion with them about:
- d. what outcome they seek;

- i. whether their expectations are realistic;
  - ii. what the University will be able to deliver;
- e. maintaining confidentiality by:
- i. ensuring as far as is possible that other people cannot infer the identity of the discloser or cooperator;
  - ii. reminding the discloser or cooperator not to reveal themselves or to reveal any information that would enable others to identify them as a discloser or cooperator;
  - iii. ensuring that hardcopy and electronic files relating to the disclosure are accessible only to those who are involved in managing disclosures in the University;
- f. proactively assessing the risk of detrimental action being taken in reprisal (rather than reactively waiting for a problem to arise and a complaint to be made by the discloser or cooperator), that is, actively monitor the workplace, anticipating problems and dealing with them before they develop as far as is possible;
- g. protecting the discloser or cooperator by:
- i. examining the immediate welfare and protection needs of the person and seeking to foster a supportive work environment;
  - ii. listening and responding to any concerns the person may have about harassment, intimidation or victimisation in reprisal for their actions;
  - iii. assessing whether the concerns the person may have about harassment, intimidation or victimisation might be due to other causes other than those related to the protected disclosure;
- h. preventing the spread of gossip and rumours about any investigation into the protected disclosure where the University is aware of any investigation being undertaken or about to be undertaken; and
- i. keeping contemporaneous records of all aspects of the case management of the person, including all contact and follow-up action.

## **Appointment of a Welfare Manager**

(69) In appropriate circumstances, the University will appoint a suitable welfare manager to protect a discloser or a cooperator. The following matters will be taken into consideration by the University when deciding whether to appoint a welfare manager in a particular case:

- a. are there any real risks of detrimental action against the discloser or cooperator, taking into account their particular circumstances?
- b. whether the University can or will take the discloser or cooperator seriously and treat them with respect?
- c. whether the University will give the discloser or cooperator effective support, including keeping the discloser informed of the status of the disclosure (as far as the University has been provided with such information by a relevant investigative entity)?
- d. can the University protect the person from suffering repercussions, by dealing with the matter discreetly and confidentially, and responding swiftly and fairly to any allegations that the discloser or cooperator has in fact suffered retribution?

(70) If the answer to the first question is 'yes' then IBAC recommends the appointment of a dedicated welfare officer. If the answer to the first question is 'no' and the University can meet the needs set out in the remainder of the questions, IBAC suggests there may be no need for a dedicated welfare officer to be appointed for that particular case.

(71) In most circumstances, a welfare officer will only be required where a protected disclosure complaint proceeds to investigation, but each protected disclosure received by the University will be assessed on its own merits. In particular, a Welfare Manager will be appointed where the University believes that one is required to ensure that the appropriate support as set out in section 6.1 above can be provided to the discloser or cooperator.

(72) If appointed, the Welfare Manager will, in addition to providing the general support set out above at section 6.1:

- a. advise the discloser or cooperator of the legislative and administrative protections available to him or her, including providing practical advice;
- b. listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- c. not divulge any details relating to the protected disclosure to any person other than the Protected Disclosure Coordinator;
- d. ensure all meetings between the Welfare Manager and the discloser or cooperator are conducted discreetly to protect the person from being identified as being involved in the protected disclosure; and
- e. ensure the expectations of the discloser are realistic and reasonable, and that the discloser or cooperator understands the limits of the support the University is able to reasonably provide in the particular circumstances. This is particularly the case where a Welfare Manager has been appointed in relation to an external discloser or cooperator.

## **Part P - Welfare Management of Persons Who are the Subject of Protected Disclosures**

(73) The University will also meet the welfare needs of a person who is the subject of a protected disclosure. It is important to remember that until a protected disclosure complaint is resolved, the information about the person is only an allegation.

(74) The University will make a decision about whether or when the subject of a disclosure will be informed about a protected disclosure involving an allegation made against him or her. It is possible that the subject of the disclosure may never be told about the disclosure if it is not determined to be a protected disclosure complaint, or if a decision is made to dismiss the disclosure. This may also depend on the stage at which the relevant investigative entity actually informs the University of the identity of the subject of a disclosure.

(75) The Act limits the disclosure of information about the content of an assessable disclosure and the identity of the discloser to certain specified circumstances set out in Part 7 of the Act. The University may give information about the disclosure to the subject of the disclosure if it is directed or authorised to do so by the investigative entity investigating the protected disclosure complaint, or for the purpose of taking action with respect to the conduct alleged, including disciplinary action.

(76) Investigative entities may also inform the subject of the protected disclosure complaint in the course of their investigation for the purposes of conducting that investigation, or any actions that they propose to take as a result of the investigation.

### **Welfare Services**

(77) A person the subject of a disclosure who is made aware of their status as such may have a welfare manager appointed by the University. Alternatively, the Protected Disclosure Coordinator will provide support and advice to a person the subject of a disclosure, particularly in relation to their rights and obligations under the Act, these procedures, and any other relevant law or code of conduct. The University will consider each matter on a case by case basis, taking into account the information it has been provided by the investigative entity and the person's particular circumstances.

### **Confidentiality**

(78) Consistently with the University's confidentiality obligations under the Act as outlined in these procedures, the fact that a disclosure has been made, any information received from IBAC or another investigative entity and the identities of persons involved will not be divulged.

(79) The University will take all reasonable steps to ensure the confidentiality of the subject of a disclosure at all times. Where the disclosure is dismissed or investigations do not substantiate the allegations made against the person, the fact that the investigation was undertaken, its results, and the identity of the person subject of the disclosure (to the extent that the University has been provided that information by an investigative entity) will still be kept confidential by the University.

## **Natural Justice**

(80) The University will afford natural justice to the subject of a disclosure prior to any decision being made about the allegations. If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring consultations with the subject include the provision of natural justice to him or her. IBAC has noted that affording a subject of a disclosure natural justice in this context means that if a decision is to be made about their conduct this person has the right to:

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

## **If the Allegations are Wrong or Unsubstantiated**

(81) The University will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are wrong or unsubstantiated. In those circumstances, the University and any investigative entity involved will ensure that there are no adverse consequences for this person arising out of the disclosure or its investigation. This is particularly crucial in a situation where there has been publicly disclosed information identifying the subject, but also where such information has become well-known across the University and the subject is an employee, Council member or staff of the University.

(82) Further, if the matter has been publicly disclosed by the University, the Vice-Chancellor will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

## **If Detrimental Action is Reported**

(83) If any person reports an incident of harassment, discrimination or adverse treatment that may amount to detrimental action apparently taken in reprisal for a disclosure, the Welfare Manager or Protected Disclosure Coordinator must record details of the incident and advise the person of their rights under the Act to make a disclosure to IBAC.

(84) A person takes detrimental action against another person in reprisal for a protected disclosure if:

- a. the person takes, or threatens to take, detrimental action against the other person because, or in the belief that:
  - i. the other person or anyone else has made, or intends to make, the disclosure; or
  - ii. the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- b. for either of the reasons above, the person incites or permits someone else to take or threaten to take detrimental action against the other person.

(85) All persons are reminded it is a criminal offence to take detrimental action against another person in reprisal for a protected disclosure under the Act. The penalty for committing such an offence in contravention of the Act is a

maximum fine of 240 penalty units, (\$34,646.40 from 1 July 2013, usually increasing 1 July every year in accordance with arrangements made under the Monetary Units Act 2004), two years imprisonment or both.

(86) In addition, the taking of detrimental action in reprisal for making a disclosure can be grounds for a person to make a further disclosure with respect to that conduct. The disclosure of this allegation should be made to IBAC as a new disclosure under Part 2 of the Act. Where the detrimental action is of a serious nature likely to amount to a criminal offence, and the University will also consider reporting the matter to the police or IBAC.

(87) A discloser of a protected disclosure may also:

- a. take civil action against the person who took detrimental action against the discloser and seek damages;
- b. take civil action against the University jointly and severally to seek damages if the person who took detrimental action against the discloser took that action in the course of employment with, or while acting as an agent of the University; and
- c. apply for an order or an injunction from the Supreme Court.

## **Part Q - Protections for Persons Making a Protected Disclosure**

### **Part 6 Protections Available to Disclosers**

(88) Part 6 of the Act sets out the protections provided to persons who make a disclosure that is a 'protected disclosure', i.e., one that is made in accordance with Part 2 of the Act. In summary, they are as follows:

- a. the discloser is not subject to any civil or criminal liability for making the protected disclosure;
- b. the discloser is not subject to any administrative action (including disciplinary action) for making the protected disclosure;
- c. by making the protected disclosure, the discloser is not committing an offence against the Constitution Act 1975 or any other law that imposes obligations of confidentiality or otherwise restricts the disclosure of information;
- d. by making the protected disclosure, the discloser is not breaching any other obligation (made by oath, rule of law or practice) requiring him or her to maintain confidentiality; and
- e. the discloser cannot be held liable for defamation in relation to information included in a protected disclosure made by him or her.

(89) The protections in Part 6 apply from the time at which the disclosure is made by the discloser. They apply even if IBAC has determined that the protected disclosure is not a protected disclosure complaint.

(90) The protections also apply to further information relating to a protected disclosure made by the original discloser, if the further information has been provided, verbally or in writing, to:

- a. IBAC; or
- b. any investigative entity investigating the protected disclosure.

### **Loss of Protections Caused by Actions of the Discloser**

(91) However, a discloser is not protected if they commit an offence under s 72 or s 73 of Act, as follows:

- a. provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure (maximum penalty: a fine of 120 penalty units (\$17,323.20 from 1 July 2013), usually increasing 1 July every year in accordance with arrangements made under the Monetary Units Act 2004), 12

months imprisonment, or both); claim that a matter is the subject of a protected disclosure knowing the claim to be false (maximum penalty: a fine of 120 penalty units, 12 months imprisonment, or both);

- b. falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a protected disclosure complaint (maximum penalty: a fine of 120 penalty units, 12 months imprisonment, or both).

## **Other Limitations on Protections Afforded to Disclosers**

(92) A discloser is not protected against legitimate management action being taken by the University in accordance with the Act.

(93) In addition, although the discloser of a protected disclosure is not subject to criminal or civil liability for making the disclosure, the Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the Act. Therefore, the discloser will still be held liable for their own conduct that they disclose as part of making a protected disclosure.

## **If the Person Making the Disclosure is Implicated in the Improper Conduct or Detrimental Action that is the Subject of the Disclosure**

(94) Where a discloser is implicated in improper conduct, and an investigative entity has provided the necessary information to the University, The University will protect the discloser from reprisals in accordance with the Act, IBAC's guidelines and these procedures. The University acknowledges that the act of disclosing should not shield disclosers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.

(95) The management of the welfare of a discloser may become complicated when that person is implicated in misconduct, whether or not that misconduct is related to the disclosure.

(96) Taking disciplinary or other action against a person who has made a protected disclosure invariably creates the perception that it is being taken in reprisal for the disclosure. The Vice-Chancellor will make the final decision on the advice of the Protected Disclosure Coordinator or Welfare Manager as to whether disciplinary or other action will be taken against a discloser. Where disciplinary or other action relates to conduct that is the subject of the disclosure, the disciplinary or other action will only be taken after the disclosed matter has been appropriately dealt with. In all cases where disciplinary or other action is being contemplated, any such action will not be taken without the University ensuring that:

- a. the fact that a person has made a protected disclosure is not a substantial reason for the University taking the action against the employee;
- b. there are good and sufficient grounds that would fully justify action against any other person in the same circumstances;
- c. there are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

(97) The University will take all reasonable steps to thoroughly document its decision-making process, including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not being taken in retribution against the discloser for making the disclosure, so that it will be able to clearly demonstrate that the disciplinary or other action was taken for the appropriate and permitted reasons under the Act.

(98) The discloser will be clearly informed of any action proposed to be taken, be afforded natural justice, and inform and be informed of any mitigating factors that have been taken into account. Such communications with the discloser will be made in plain English and reasonable steps to provide appropriate support will be offered where appropriate.

## **Part R - Confidentiality**

(99) The University will take all reasonable steps to protect the identity of the discloser and the matters disclosed by him or her. Maintaining confidentiality is crucial, among other things, in ensuring detrimental actions are not taken in reprisal against that person.

(100) The obligation of confidentiality extends to any person receiving a disclosure or making a disclosure. It is in the interest of the discloser to ensure he or she does not discuss any related matters other than with officers of IBAC, another investigative entity, or other persons authorised by law.

## **Part S - Steps Taken by the University to Ensure Confidentiality**

### **Information Management**

(101) The University will ensure all files, whether paper or electronic, are kept in a secure manner. All printed material will be kept in files that are clearly marked as a 'Protected Disclosure Act' matter, and contain a prominent warning of the criminal penalties that apply to any unauthorised access or divulging of information concerning a protected disclosure. All electronic files will be password-protected or have strict limitations on access rights. Backup files will be kept on CDs or other suitable removable medium to which access will also be strictly restricted.

(102) Sensitive information will not be emailed to a machine or account to which staff have general access.

(103) The Welfare Manager will not divulge any details relating to the disclosed matter to any person other than the Protected Disclosure Coordinator or an investigator appropriately authorised under the Act or the IBAC Act. All phone calls and meetings will be conducted discreetly and in private.

### **Exemption from the Freedom of Information Act 1982 ("FOI Act")**

(104) The FOI Act provides a general right of access for any person to seek documents in the possession of the University.

(105) However, the Act provides that certain information related to protected disclosures as contained in documents in the possession of the University will be exempt from the application of the FOI Act.

(106) Such information excluded from the operation of the FOI Act includes:

- a. any information relating to a disclosure made in accordance with the Act; and
- b. any information that is likely to lead to the identification of a discloser.

(107) The University is required to contact IBAC prior to providing any document originating from IBAC or relating to a protected disclosure, if that document is sought under the FOI Act.

### **Training for All Staff**

(108) The University will:

- a. ensure that staff, employees, officers and members have access to a copy of these procedures in hard or soft copy;
- b. incorporate into its induction procedures training about the University's general obligations under the Act and the rights and obligations of all employees, staff and members;
- c. introduce periodic refresher courses for existing staff, employees and members about their rights and obligations under the Act;



- d. provide additional training and assistance to:
  - i. any members of the University with specific responsibilities and functions to handle and manage protected disclosures under the Act, including the Protected Disclosure Coordinator and people involved in welfare management; and
  - ii. any staff with functions and duties under the FOI Act or with responsibilities for information management, to ensure that no prohibited information is disclosed under the Act and to ensure there is appropriate liaising with the staff of IBAC or other investigative agencies where required in response to a request for access under the FOI Act.

## **Part T - Limited Exceptions Permitted by the Act**

(109) The Act makes it a crime to disclose information connected with a disclosure made in accordance with the Act. Limited exceptions to the prohibition on disclosure are specified by the Act, include circumstances such as:

- a. where disclosure is required by the University (or one of its officers) in the exercise of functions of the University under the Act;
- b. where necessary for the purpose of the exercise of functions under the Act;
- c. by an investigative entity for the purpose of exercising that entity's functions under the IBAC Act;
- d. in accordance with a direction or authorisation given by the investigative entity that is investigating the disclosure;
- e. to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of an assessable disclosure including a disciplinary process or action;
- f. where IBAC or the VI has determined that the assessable disclosure is not a protected disclosure and the discloser or the University subsequently discloses the information;
- g. when an investigative entity had published a report to Parliament, in accordance with its confidentiality obligations;
- h. for the purpose of obtaining legal advice in relation to matters specified in the Act;
- i. in order to enable compliance with the Act:
  - i. where a person does not have a sufficient knowledge of the English language, to obtain a translation from an interpreter;
  - ii. where a person is under 18 years of age, to a parent or guardian;
  - iii. where a person is suffering a disability and is not able to understand, to an independent person;
  - iv. in disciplinary actions or legal proceedings for certain offences in the Act or other specified Acts.

(110) However, the Act prohibits the inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making the disclosure. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in an annual report or any reports to Parliament.

## **Part U - Penalties Apply for Breach of Confidentiality**

(111) The Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures. The penalties for breaching the confidentiality required by the Act include imprisonment, financial payments or both.

(112) The criminal offences set out in the Act relating to confidentiality include:

- a. divulging information obtained in connection or as a result of the handling or investigation of a protected disclosure without legislative authority. Maximum penalty: 60 penalty units (\$8,661.60 from 1 July 2013), six months imprisonment, or both.

- b. Disclosing that a disclosure has been notified to IBAC for assessment under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.
- c. Disclosing that a disclosure has been assessed by IBAC or the VI to be a protected disclosure complaint under the Act. Maximum penalty: 60 penalty units, six months imprisonment, or both.

## Part V - Collating and Publishing Statistics

(113) The University is required to publish information about how these procedures may be accessed in its annual reports.

## Section 5 - Definitions

(114) For the purpose of this Policy and Procedure:

- a. discloser: A person who (purports to) make(s) a complaint, allegation or disclosure (however described) under the Act
- b. disclosure: Any complaint, concern, matter, allegation or disclosure (however described) purported to be made in accordance with Part 2 of the Act
- c. Guidelines: The Guidelines published by IBAC under s 57 of the Act as at June 2013, copies of which may be downloaded from the [What is a Protected Disclosure? \(IBAC\)](#) webpage (last accessed on 25 June 2013)
- d. IBAC: Independent Broad-based Anti-corruption Commission
- e. IBAC Act: [Independent Broad-Based Anti-Corruption Commission Act 2011](#)
- f. investigative entity: Any one of the four bodies authorised to investigate a protected disclosure complaint, being IBAC, the Victorian Ombudsman, the Chief Commissioner of Police and the VI.
- g. procedures: This version of the procedures of the University, as established under s 58 of the Act
- h. protected discloser: A person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the Act
- i. protected disclosure: Any complaint, concern, matter, allegation or disclosure (however described) made in accordance with Part 2 of the Act
- j. protected disclosure complaint: A protected disclosure which has been determined and assessed by IBAC to be a protected disclosure complaint under s 26 of the Act
- k. Regulations: [Protected Disclosure Regulations 2013](#)
- l. University: La Trobe University
- m. VI: Victorian Inspectorate

## Section 6 - Stakeholders

Responsibility for implementation – Vice-Chancellor; Vice-President (Administration); General Counsel, Legal Services; University Ombudsman; and Director, Risk Management.

Responsibility for monitoring implementation and compliance – University Ombudsman.

## Status and Details

<b>Status</b>	Historic
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