Protected Disclosure Procedure

Section 1 - Purpose / Objectives

(1) VU is required to establish and publish procedures under section 58 of the Protected Disclosures Act 2012 (the PD Act), the Protected Disclosure Regulation 2013, and the Guidelines published by the Independent Broad-based Anti-corruption Commission (IBAC) as at June 2013, and to ensure the procedure is readily available to members of the public as well as internally to all employees, staff and members of VU.

(2) The Procedure supports the University's Protected Disclosure Policy , which state the University's commitment to meeting its obligations under the PD Act. These procedures set out the mechanisms it has in place to do so.

(3) These procedures are a resource for disclosers and potential disclosers, whether an internal member, employee or staff of VU or an external member of the public.

(4) In addition, these procedures cover how VU will protect other people connected to a protected disclosure complaint from detrimental action being taken against them in reprisal for making a protected disclosure.

(5) 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. .

Section 2 - Scope / Application

(6) This Procedure applies across the University.

Section 3 - Definitions

(7) Nil

Section 4 - Policy Statement

(8) Nil

Section 5 - Procedures

Part A - Roles and Responsibilities

Role	Responsibilities
Director, Legal, Governance and Risk	Maintain oversight of procedures Liaise with IBAC

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Part B - Support for Protected Disclosures and Protected Disclosers

(9) Victoria University (VU) 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.

(10) VU will:

a. ensure these procedures are accessible on its website and available internally and externally to staff, members, 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 staff, Members or employees engaged in the taking of detrimental action;
e. ensure that VU 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, the 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.

Staff and students

(11) Staff and students are encouraged to raise matters of concern in relation to VU, including about any employee.

(12) In particular, members of the VU community are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures, whether such conduct or action has taken place, is suspected will take place, or is still occurring.

(13) All staff, students and members of the VU community have an important role to play in supporting those who have made a legitimate disclosure in accordance with the Act.

(14) All persons 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

(15) VU'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.

(16) The Protected Disclosure Coordinator is:

a. the contact point for general advice about the operation of the PD Act and for integrity agencies such as the IBAC;
b. responsible for ensuring that VU carries out its responsibilities under the PD Act, any regulations made pursuant to the Act and any guidelines issued by the IBAC;
c. VU's chief liaison with the IBAC in regard to the PD 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 VU in its annual reports under the PD Act.

(17) The Protected Disclosure Coordinator at VU is Ms Mary Simpson. Mary may be contacted on 9919 5280 or mary.simpson@vu.edu.au.

Support for protected disclosers and co-operators

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

(19) The protection of persons making genuine protected disclosures about improper conduct or detrimental action is essential for the effective implementation of the PD Act.

(20) In addition, the PD Act extends the need for welfare management to people who have cooperated or intend to cooperate with an investigation of a protected disclosure complaint ("co-operators"). Persons who are the subject of allegations will also have their welfare considered.

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

(22) VU will, where it is aware of or has been provided the identities of disclosers and co-operators, ensure they are protected from direct and indirect detrimental action being taken against them in reprisal for the protected disclosure.

(23) VU will ensure its workplace culture supports disclosers and co-operators. Such support will extend to the relevant persons regardless of whether they are internal to the organisation (e.g., employees or students) or external members of the public. However, different legislative responsibilities apply to staff, students and members of the public.

(24) For staff and students, VU will ensure a supportive work and study environment and respond appropriately to any reports of intimidation or harassment against these persons. For external persons, VU will take reasonable steps to provide appropriate support.

(25) VU will discuss reasonable expectations with all persons receiving welfare management in connection with a protected disclosure.

(26) VU will keep disclosers and co-operators fully informed, by providing confirmation that the disclosure has been received, if the relevant investigative agency has provided this information to VU.

Part C - Making a Disclosure

What is a disclosure and who can make a disclosure?

(27) A disclosure may be made about two things under the PD Act:

a. improper conduct of public bodies or public officers; and
b. detrimental action taken by public bodies or public officers in reprisal against a person for the making of a protected disclosure.

(28) The term "disclosure" is interpreted under the Act in the ordinary sense of the word, for example, as a "revelation" to the person receiving it.

(29) The IBAC considers that a complaint or allegation that is already in the public domain will not normally be a protected disclosure. Such material would, for example, include matters which have already been subject to media or other public commentary.

(30) 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 PD Act on 10 February 2013.

(31) A disclosure may:

a. only be made by a natural person (or a group of individuals making joint disclosures). 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.

(32) The following are not protected disclosures under the PD Act:

a. a disclosure that has not been made in accordance with all of the procedural requirements of Part 2 of the Act and the prescribed procedures in the Regulations;
b. a disclosure made by a discloser who expressly states in writing, at the time of making the disclosure, that the disclosure is not a disclosure under the PD Act;
c. a disclosure made by an officer or employee of an investigative entity in the course of carrying out his or her duties or functions under the relevant legislation, unless the person expressly states in writing that the disclosure is a disclosure and the disclosure is otherwise made in accordance with Part 2 of the PD Act.

How can a disclosure be made?

(33) A disclosure must be made in accordance with Part 2 of the PD Act.

(34) Part 2 of the PD Act permits disclosures to be made anonymously, orally or in writing, and need not necessarily identify the person or organisation complained about.

(35) Disclosures must be made in private. Generally, a verbal disclosure may be made:

a. in person;
b. by telephone to 1300 735 135;
c. by leaving a voicemail message on a particular telephone answering machine; or
d. by any other form of non-written electronic communication.

(36) The IBAC recommends that written disclosures to the IBAC be made via its online form. Disclosures cannot be made by fax. 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.

(37) According to the IBAC, a disclosure attempted or purported to be made to VU will not be a disclosure made in accordance with Part 2 of the Act, because in the IBAC's view Part 2 of the Act does not permit VU to receive disclosures. If you wish to make a disclosure, please make that disclosure directly to the IBAC.

(38) For further information about how to make a disclosure to the IBAC, see pp 8 — 12 of the IBAC's Guidelines for Making and Handling Protected Disclosures .

What can a disclosure be made about?

(39) 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.

Improper conduct

(40) 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.

(41) Central to the notion of improper conduct is the notion of the "public trust".

(42) "Public trust" is a concept that provides the basis 'for obligations of honesty and fidelity in public officers that exist to serve, protect and advance the interests of the public'.

(43) A person acting in their official capacity is exercising 'public power' that is derived from their public office holding and may be controlled or influenced by legislative provisions, administrative directions, or constitutional principles or conventions.

(44) There is an expectation that members of the community may rely on and trust their public bodies and officials to act honestly. The expectation is that public officers will not use their positions for personal advantage, or use the influence of their public office for improper purposes where there is a duty to act objectively and impartially.

(45) 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 a public officer or a public body.

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

Corrupt conduct

(47) 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; or
e. conduct that could constitute a conspiracy or an attempt to engage in any of the conduct referred to above; and

(48) if that conduct could be proved beyond reasonable doubt at a trial, amounts to:

a. an indictable offence; or
b. one of the following 3 types of common law offences committed in Victoria:
    i. perverting the course of justice
    ii. attempting to pervert the course of justice
    iii. bribery of an official.

Specified conduct

(49) 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.

(50) 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

(51) It is an offence under the PD Act for a public officer or body to take detrimental action against a discloser in reprisal for making a protected disclosure.

(52) 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.

(53) Detrimental action as defined by the PD 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.

(54) 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.

(55) 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.

(56) 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.

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

Part D - Assessment of a Disclosure

(58) Once a disclosure has been notified to the IBAC, the 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 the IBAC.

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

If the IBAC determines the disclosure is not a protected disclosure complaint

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

a. the 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

(61) Regardless of whether the IBAC has determined that the disclosure is a protected disclosure complaint, the protections under Part 6 apply to a protected disclosure.

(62) In addition, if the IBAC is of the view that the disclosure, although not a protected disclosure complaint, may be able to be dealt with by another entity, the IBAC may advise the discloser that:

a. the matter which is the subject of the disclosure may be able to be dealt with by that entity other than as a protected disclosure complaint; and
b. if the discloser wishes to pursue the matter, make a complaint directly to that entity.

(63) The IBAC is also able to consider whether it wishes to treat the assessable disclosure as a notification made to the IBAC under the IBAC Act.

If the IBAC determines the disclosure is a protected disclosure complaint

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

a. the 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 PD Act; and
d. it is an offence under s 74 of the Act to disclose that the IBAC has determined that the disclosure is a protected disclosure complaint.

(65) 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.

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

Further actions the IBAC may take

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

(68) If the 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, the IBAC must dismiss a protected disclosure complaint if the matter disclosed is a matter that neither the IBAC nor an investigating entity may investigate.

(69) The IBAC may choose to investigate the alleged conduct if it is reasonably satisfied that it is "serious corrupt conduct".

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

(71) Depending on the action the IBAC decides to take, the IBAC must also provide certain other information to the discloser. That information is set out at the chart on p 24 of the IBAC's Guidelines for Making and Handling Protected Disclosures .

Other information about investigative entities' investigations of a protected disclosure complaint

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

(73) VU 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.

(74) 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 VU or the person to whom the information has been disclosed, is bound by the confidentiality requirements of Part 7 of the PD Act .

(75) In addition, if VU 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.

(76) 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.

(77) The investigative entity may provide written information about the commencement, conduct or result of an investigation, including any actions taken and any recommendation made that any action or further action be taken to the relevant principal officer. However, the investigative entity must not provide any information that is likely to lead to the identification of a discloser.

(78) The investigative entity does not have to provide this information to either the discloser or the relevant principal officer in specified circumstances set out in the IBAC Act or the Ombudsman Act 1973 .

Section 6 - Guidelines

(79) Nil

Status and Details

Status	Historic
Effective Date	5th September 2014
Review Date	5th May 2017
Approval Authority	University Council
Approval Date	5th September 2014
Expiry Date	22nd November 2016
Responsible Officer	Trish Roberts Deputy Chief Financial Officer trish.roberts@vu.edu.au
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