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**RESPONSIBLE COMMITTEE:** Executive Management Team

**CATEGORY:** Governance

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**RELATED DOCUMENTS:**

**Legislation:** Freedom of Information Act 1982  
Public Interest Disclosures Act 2012 (Vic) (PID) Act  
[Protected Disclosure Regulations 2013](#) (Regulations)  
[IBAC Reporting Corruption](#)

**Documents:** PPP083 Staff Code of Conduct  
PPP044 Public Interest Disclosure Coordinator Role Statement  
PPP045 Public Interest Disclosure Welfare Manager Role Statement  
PPP051 Fraud and Corruption Control Policy  
PPP088 Staff Grievance Resolution Guidelines  
PPP095 Disciplinary Management Guidelines  
PPP182 Related Party Disclosure Policy  
PPP183 Related Party Discloser Guidelines

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## 1. Introduction

The Public Interest Disclosures Act 2012 (Vic) (PID Act) enables people to make disclosures about improper conduct within the public sector without fear of reprisal. The Act aims to ensure openness, transparency and accountability by encouraging people to make disclosures and protecting them if, and when, they do so.

The PID Act provides protection for any person who makes a protected disclosure, who is the subject of, or a witness in an investigation into a public interest disclosure complaint and any person who may suffer detrimental action in reprisal for making a disclosure. The PID Act also creates obligations of confidentiality preventing the disclosure of the identity of the person who has made a disclosure and the content of the disclosure.

The Independent Broad-based Anti-Corruption Commission (IBAC) is responsible for receiving complaints about improper conduct under the PID Act.

## 2. Guideline Statement

South West TAFE (SWTAFE or the 'Organisation') is committed to the aims and objectives of the *Public Interest Disclosure Act 2012* and encourages the disclosure of improper conduct relating to SWTAFE, or a Board member, officer, or employee of SWTAFE, in accordance with the PID Act.

SWTAFE does not tolerate improper conduct by the organisation, its Board members, officers and employees nor does it tolerate reprisal against any person who discloses such conduct. All reasonable action will be taken to protect a person who discloses improper conduct, who may be the subject of a public interest disclosure or who may be a witness in an investigation into a public interest disclosure complaint, from any detrimental action in reprisal for making a disclosure or participating in an investigation.

In accordance with the provisions of the PID Act, SWTAFE will manage the welfare of any person, or any person connected with or the subject of a public interest disclosure.

### 3. Scope

This guideline applies to Board members, officers and employees of SWTAFE.

These guidelines may be used as a resource for disclosers, and potential disclosers, and includes SWTAFE's responsibility in the welfare and protection of anyone connected to a disclosure from detrimental action in reprisal.

### 4. Principles

SWTAFE supports a workplace culture which does not tolerate improper conduct, where the making of a public interest disclosure is valued and where an individual may make a public interest disclosure without fear of reprisal. SWTAFE will:

- ensure these procedures are accessible both internally and externally to members of SWTAFE Board, officers and employees of SWTAFE and individuals within the broader community;
- not tolerate the taking of detrimental action in reprisal for making a public interest disclosure and will take all reasonable steps to protect individuals against the taking of such action;
- provide natural justice, equality and fairness to any person(s) who is the subject of allegations contained in a public interest disclosure;
- in accordance with SWTAFE guidelines, take appropriate action where a Board member, officer or employee of SWTAFE engages in, or proposes to engage in, the taking of detrimental action;
- deal with public interest disclosure matters consistently and appropriately in accordance with its obligations under the PID Act, the Regulations, IBAC Guidelines and these procedures
- manage the welfare of any person connected with a public interest disclosure
- be open and transparent in establishing a workplace which supports the making of public interest disclosures.

### 5. Definitions

**Improper conduct** defined in the section 4 of the PID Act as:

conduct of a public officer or public body engaged in by the public officer or public body in their capacity as a public officer or a public body that constitutes criminal offence; or

- (i) serious professional misconduct; or
- (ii) dishonest performance of public functions; or
- (iii) an intentional or reckless breach of public trust; or
- (iv) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body; or
- (v) a substantial mismanagement of public resources; or
- (vi) a substantial risk to the health or safety of one or more persons; or
- (vii) a substantial risk to the environment; or
- (viii) reasonable grounds for dismissal

**Corrupt conduct** set out in section 4 of the *Independent Broad-based Anti-Corruption Act, 2011* means conduct of a public officer or public body that:

- constitutes or involves the dishonest performance of his, her or its functions
- constitutes or involves knowingly or recklessly breaching public trust
- involves the misuse of information or material acquired in the course of the performance of his, her or its functions
- could constitute a conspiracy, or an attempt, to engage in any conduct referred to in the points above
- Corrupt conduct is conduct that implies a substantial:
  - mismanagement of public resources;

- risk to public health or safety
- risk to the environment

Corrupt is also the conduct of any person that adversely affects the honest performance by a public officer or public body of his, her or its functions

**Detrimental action** includes:

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

For detrimental action to occur, a person need not have actually taken the action, but can just have threatened to do so. The person need not have taken or threatened to take the action against the person themselves, but can have incited someone else to do so. The detrimental action need not be taken against a discloser, but against any person.

**Discloser** a person who makes a disclosure of improper conduct or detrimental action in accordance with the requirements of Part 2 of the PID Act. A Discloser may be anonymous.

**Disclosure** a report, complaint; concern, matter or allegation (however described) purported to be made in accordance with Part 2 of the Act about the improper conduct of a public officer or public body. A disclosure can also be made about detrimental action against a person by a public officer or public body in reprisal for the making of a public interest disclosure

#### **Public Interest Disclosure**

a disclosure by a natural person of information that shows/tends to show or information that the person reasonably believes shows/tends to show improper conduct or detrimental action.

#### **Public Interest Disclosure Complaint**

a disclosure that has been determined by IBAC, the Victorian Inspectorate or IOC to be a Public Interest Complaint

#### **Protected Disclosure Coordinator**

the person allocated the responsibility by SWTAFE to handle all protected disclosure matters for SWTAFE ((please refer to PPP044 Public Interest Disclosure Coordinator Role Statement))

#### **Protected Disclosure Welfare Manager**

the person allocated the responsibility by the protected Disclosure Coordinator to protect the welfare of the discloser or cooperator ((please refer to PPP045 Public Interest Disclosure Welfare Manager Role Statement))

## **6. Making disclosures**

- 6.1 SWTAFE is not a public body prescribed under the PID Act to receive public interest disclosures. Disclosures about SWTAFE, its Board, officers or employees must be made directly to the Independent Broad-based Anti-Corruption Commission ([IBAC](#)).

In addition to the web link above, IBAC may be contacted at the following:

**Phone:** 1300 735 135

**Fax:** (03) 8635 6444

**Street address:** Level 1, North Tower, 459 Collins Street Melbourne, VIC 3000

**Postal address:** GPO Box 24234, Melbourne VIC 3001

- 6.2 Any person may make a disclosure of 'corrupt or improper conduct' where the person making the disclosure believes on reasonable grounds that SWTAFE, a Board member, officer or employee of SWTAFE, has:
- engaged in, is engaging in or proposes to engage in improper conduct, or
  - has taken, is taking or proposes to act against a person in reprisal for making a disclosure.
- The person making the disclosure must be an individual or a group of individuals making joint disclosures.
- 6.3 SWTAFE has a Public Interest Disclosure Coordinator (Coordinator) who is responsible for the manner in which SWTAFE manages its obligations under the PID Act. Whilst being the main contact for enquiries about protected disclosures, from either internal or external sources, the Coordinator is unable to formally receive disclosures.
- 6.4 A disclosure must be made in accordance with, and satisfy, Part 2 of the PID Act to be considered a Public Interest disclosure and may be made verbally or in writing. A disclosure can be anonymous. Disclosures made by email from an address that does not identify the discloser will be treated as an anonymous disclosure.
- 6.5 Disclosures may be made in circumstances where the person or the organisation to which the disclosure relates cannot be identified.
- 6.6 All disclosures relating to SWTAFE, a Board member, officers or employees of SWTAFE must be made in private to either the Independent Board-based Anti-corruption Commission (IBAC) or SWTAFE's Public Interest Disclosure Coordinator.
- IBAC recommends the use of its online form for all written disclosures reported.
- 6.7 Where IBAC advises a discloser that the matter disclosed is not a Public Interest disclosure complaint, the discloser may make a complaint under applicable SWTAFE policies and procedures.
- 6.8 Further information on making disclosures can be obtained from IBAC's Guidelines for Making and Handling Public Interest Disclosures located on the IBAC website.

## 7. Receipt and Assessment of disclosures by SWTAFE

- 7.1 Where SWTAFE's Public Interest Disclosure Coordinator receives a complaint, report or allegation of improper conduct or detrimental action the Coordinator must assess whether the disclosure may be a public interest disclosure which meets all of the requirements for a protected disclosure detailed in Part 2 of the Act and the Public Interest Disclosure Regulations.
- 7.2 If the disclosure does not meet all the requirements as identified through clause 7.1 above, then it is not a public interest disclosure and will therefore be dealt with under SWTAFE's *PPP088 Staff Grievance Resolution Guidelines*. Within 28 days of the disclosure being made, the Coordinator will provide the discloser with written advice informing that:
- the disclosure is not considered a public interest disclosure;
  - the disclosure has not been notified to IBAC for assessment; and
  - the protections of Part 6 of the PID Act continue to apply, regardless of whether the disclosure is notified to IBAC for assessment
- 7.3 SWTAFE does not have to provide the discloser with the information identified in clause 7.2 unless the discloser has indicated, or it otherwise appears to SWTAFE, that the discloser wishes to receive the protections that apply to a Public Interest disclosure under this PID Act
- 7.4 If the Coordinator considers that the disclosure may be a public interest disclosure then, within 28 days, it will notify the disclosure to IBAC for assessment and will provide the discloser with written advice informing that:
- the disclosure may be a public interest disclosure;
  - the disclosure has been notified to IBAC for assessment; and

- it is an offence under section 74 of the PID Act to disclose that the disclosure has been notified to IBAC for assessment under the PID Act.

## **8. Receipt and Assessment of Disclosures by IBAC**

- 8.1 At the time of notifying IBAC of an assessable disclosure SWTAFE may also provide IBAC with any information they may have obtained regarding the disclosure in the course of their inquiries. Receipt and Assessment of Disclosures by IBAC
- 8.2 After a disclosure has been received by IBAC it will determine, in its own view and within a reasonable time, whether the disclosure is a public interest disclosure complaint. IBAC may seek additional information from SWTAFE or the discloser in order to make its decision.
- 8.3 If the assessable disclosure is not a public interest disclosure complaint then the discloser will be provided with written notification. Accordingly, the disclosure will not be investigated and all confidentiality provisions, identified in part 7 of the Act, will no longer apply.
- 8.4 If the assessable disclosure is a public interest disclosure complaint then the discloser will be provided with written notification. The notification will include a written statement containing the prescribed matters relating to the rights, protections and obligations under the Act of a person who has made a public interest disclosure and that it is an offence under section 74 of the Act to disclose that IBAC has determined that the disclosure is a public interest disclosure.
- 8.5 In either circumstance identified in clause 8.2 and 8.3, all protection and welfare provisions as set out in Part 6 of the PID Act will continue to apply where SWTAFE has knowledge of the discloser's identity.
- 8.6 Where a disclosure is notified to IBAC, and subsequently assessed as a public interest disclosure complaint, the disclosure may not be withdrawn.

## **9. Investigations**

- 9.1 When a determination of an assessable disclosure is made, IBAC will determine to:
- dismiss the matter on one of the grounds set out in Section 68 of the Independent Broad-based Anti-Corruption Commission Act, 2011 (the IBAC Act), and sub-sections 68(2), (3) and (4);
  - investigate the alleged conduct if it is reasonably satisfied that the conduct is 'serious corrupt conduct' under sub-section 60 (2) of the IBAC Act
  - refer the matter to the relevant investigative entity.
- 9.2 Where a determination is made in respect of an assessable disclosure notified to it, IBAC will advise SWTAFE and/or the discloser of any action being taken or of an investigation commencing.
- 9.3 For the purpose of investigating of a public interest disclosure complaint IBAC, or another investigating entity, may be in contact with SWTAFE via the Coordinator. SWTAFE is able to disclose information about the Public Interest disclosure complaint to the investigating entity without breaching the confidentiality requirements of the PID Act.
- 9.4 For the purposes of the investigation IBAC, or the Investigating entity, may reveal the identity of the discloser and the content of the disclosure when necessary to do so. The SWTAFE contact to whom the information has been disclosed is bound by the confidentiality requirements of Part 7 of the PID Act.
- 9.5 Where SWTAFE is advised of, or is aware of, the identity of the discloser there is a responsibility to manage the welfare of the discloser and provide protection against possible detrimental action.

## **10. Outcomes of Investigations**

- 10.1 At the conclusion of the investigation, the investigative entity will provide the discloser with information about the results of the investigation, including any action taken and recommendations made.
- 10.2 An investigative entity does not have to provide this information to the discloser if they consider that the disclosure might result in any possible adverse outcomes specified in section 163(4) of the IBAC Act or section 24(3) of the Ombudsman Act.

## 11. Detrimental Action

- 11.1 It is an offence under the PID Act for any person to take detrimental action against a discloser in reprisal for making, or intending to make, a disclosure or against a person who has cooperated, or intends to cooperate, with an investigation of a disclosure.
- 11.2 All reports of detrimental action will be thoroughly investigated and any employee of SWTAFE found to be taking detrimental action against a discloser, or someone cooperating with an investigation, will be subject to action under SWTAFE's *PPP096 Disciplinary and Performance Management Guidelines*.
- 11.3 There are two components to determining if detrimental action has taken place:
- whether the action is "detrimental action" as defined by the PID Act; and
  - whether the action is being taken in reprisal against a person for making or being connected with a public interest disclosure
- 11.4 A person can have taken detrimental action without having personally taken the action, i.e. by threatening to take such action. Examples of detrimental action may include:
- threats to a person's personal safety or property, including intimidating or harassing a discloser or the disclosers family or friends;
  - causing personal injury or prejudice to the safety or damaging property of a discloser or the disclosers family or friends;
  - the demotion, transfer, isolation or change of duties of a discloser due to his or her having made disclosure;
  - discriminating or disadvantaging a person in their career, profession, employment, trade or business;
  - 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.
- 11.5 Part 6 of the Act sets out the protections provided to a person who has made a disclosure that is a protected disclosure made in accordance with Part 2 of the PID Act.
- 11.6 Where the identity of the discloser or co-operator is known, and after due consideration of any potential or real risks of detrimental action, the Coordinator may appoint a Welfare Manager to look after and monitor the specific needs of the discloser/co-operator and provide practical advice and support. In most instances this may only be necessary when a public interest disclosure proceeds to investigation.
- 11.7 The Welfare Manager is not expected to go beyond what is reasonable for a SWTAFE in providing support to them. The Welfare Manager will discuss the issue of reasonable expectations with the discloser or co-operator.
- 11.8 Where a Welfare Manager is unavailable or has not been appointed, the Coordinator will assume the functions of welfare management.
- 11.9 The Employee Assistance Program is available for internal disclosers or co-operators.
- 11.10 A person making a disclosure is not protected against legitimate management action and will be held liable for his/her own conduct which may be disclosed as part of the public interest disclosure.

## 12. Offences for Making Unauthorised Disclosures

Part 11 of the PID 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 PID Act include imprisonment, fines or both.

## 13. Confidentiality of Information and Information Management

- 13.1 SWTAFE is committed to their confidentiality obligations under the Act. Any information received by a discloser, IBAC or other investigating entity and the identities of those involved will remain confidential.



- 13.2 SWTAFE will, at all times, take all reasonable steps to ensure the confidentiality of the subject of a disclosure regardless of the outcome of the assessment or investigation of the disclosure.
- 13.3 SWTAFE 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 'Public Interest 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. Sensitive information will not be emailed to a machine or account to which general staff have access.

#### **14. Natural Justice**

- 14.1 SWTAFE will afford the principals of natural justice to the subject of a disclosure prior to any decision being made about the allegations. Where the matter is being investigated by an investigative entity, then that entity will be responsible for ensuring that the principals of natural justice are followed.
- 14.2 SWTAFE will give its full support to the subject of a disclosure where the allegations contained in the disclosure are wrong or unsubstantiated. If this occurs, SWTAFE and the investigative entity will ensure that there are no adverse consequences for this person.

#### **15. Freedom of Information**

- 15.1 The Freedom of Information Act 1982 does not apply to any document in the possession of SWTAFE, or any person, that relates to a public interest disclosure, an assessable disclosure or that is likely to lead to the identification of a person who made an assessable disclosure (section 78 of the Act).
- 15.2 Any person in SWTAFE who has been asked to deal with a Freedom of Information request which may relate to a public interest disclosure should refer such requests to the Coordinator for action.

#### **16. Diversity, Equity and Inclusion**

SWTAFE is committed to making diversity, equity and inclusion part of everything we do, including in the implementation of this policy/procedure/guideline. For more information, please visit the 'Our Values' page on our [website](#) [external] or the Diversity, Equity & Inclusion Homepage on ECHO [internal]. [Diversity, Equity & Inclusion \(DEI\)](#)

#### **17. Statement of Commitment to Child Safety**

South West TAFE is committed to the protection of all children from all forms of child abuse and demonstrates this commitment through the implementation of a Child Safe Program designed to keep children safe within our organisation. For Child Safe key documents, resources, contact officer details please go to: [Child Safe Commitment](#)