

Goulburn Ovens Institute of TAFE Procedure no. PRHR-172 <i>(Copy on public web site)</i>	Title: Protected Disclosure (Whistleblower) Procedure Executive approved: 21/10/2014 <i>Reviewed: 27/08/2015, 5/07/2017, 27/07/2017, 30/10/2017, 08/08/2018</i> Responsible Officer: CFO Authorising Officer: CEO Review: Annual (10th April 2019)
<i>Disclaimer: Printed hard copies of this document are uncontrolled. For the current version, please refer to Policy Central.</i>	

Protected Disclosure (Whistleblower) Procedure

1. PURPOSE

In accordance with the *Protected Disclosures Act 2012 (the Act)*, GOTAFE is required to establish and publish appropriate procedures for the dealings of such disclosures pertaining to *the Act*.

This Procedure is to be read in conjunction with GOTAFE’s Protected Disclosure Policy. This procedure complies with the Guidelines of the Independent Broad-based Anti-corruption Commission (IBAC). These procedures are to be used as a resource for Managers, disclosers, potential disclosers and/or respondents to a disclosure.

GOTAFE does not tolerate improper conduct by employees, or the taking of reprisals against those who come forward to disclose such conduct. These procedures cover how GOTAFE will protect 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.

2. SCOPE

This procedure applies to existing, new and prospective employees, labour hire employees, contractors and volunteers, including fixed-term and casual staff. GOTAFE will ensure these procedures are readily available to members of the public via our website, as well as internally to all GOTAFE staff via the intranet.

3. DEFINITIONS

Term	Definition
Corrupt Conduct	Conduct that: <ul style="list-style-type: none"> a) adversely affects the honest performance by a public officer or public body of his or her, or its, functions; b) constitutes or involves the dishonest performance of a public body or public officer’s functions as a public officer or public body; c) constitutes, or involves knowingly or recklessly breaching public trust; d) involves the misuse of information or material acquired in the course of the performance of public duties, whether or not this is done for the benefit of the public body or officer, or for any other purpose; e) constitutes a conspiracy or an attempt to engage in any of the above conduct; f) if proven, would constitute an indictable offence or a common law offence (perverting, or attempting to pervert, the course of justice, bribery of a public official).

Detrimental Action	Action taken against a discloser in reprisal for making a disclosure. Detrimental action can include: <ul style="list-style-type: none"> • action causing injury, loss or damage • intimidation or harassment, and • discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.
Discloser	A person who makes a disclosure.
Disclosure	A disclosure of improper conduct or detrimental action made directly to the IBAC or the Victorian Ombudsman under <i>the Act</i> .
EAP	Means GOTAFE’s Employee Assistance Program
IBAC	<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i> The Independent Broad-based Anti-corruption Commission (IBAC) Level 1, North Tower 459 Collins Street Melbourne Vic 3000 GPO Box 24234, Melbourne, VIC 3001 Telephone: 1300 735 135 Website: www.ibac.vic.gov.au
Improper Conduct	Conduct that: <ol style="list-style-type: none"> a) adversely affects the honest performance by a public officer or public body of his or her, or its, functions; b) constitutes or involves the dishonest performance of a public body or public officer’s functions as a public officer or public body; c) constitutes, or involves knowingly or recklessly breaching public trust; d) involves the misuse of information or material acquired in the course of the performance of public duties, whether or not this is done for the benefit of the public body or officer, or for any other purpose; e) constitutes a conspiracy or an attempt to engage in any of the above conduct; or f) involves a public officer or public body in substantial- <ol style="list-style-type: none"> (i) mismanagement of public resources; (ii) risk to public health or safety; or (iii) risk to the environment. <p>Where such conduct, if proven, would be either-</p> <ul style="list-style-type: none"> • ‘corrupt conduct’ as defined under <i>the Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i> which includes conduct listed in (a) to (e) above, where such conduct would constitute an indictable offence or a common law offence (perverting, or attempting to pervert, the course of justice, bribery of a public official); • a criminal offence; or • reasonable grounds for dismissing or dispensing with, or otherwise terminating the services of the officer who was, or is, engaged in that conduct.
PD Act ‘the Act’	Means the <i>Protected Disclosure Act 2012</i> .
Protected Disclosure	A disclosure about improper conduct or detrimental action made in accordance with <i>the Act</i> which affords the person making the disclosure protection from liability and from detrimental action in reprisal for making the disclosure.
Protected Disclosure Coordinator (PDC)	Means a designated member of GOTAFE staff whose role is to advise on complaints or allegations of improper conduct, detrimental action, other corrupt conduct or misconduct.

	The Protected Disclosure Coordinators @ GOTAFE are the Board Secretary or delegate.
Public Officer	A member of staff or Board or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, GOTAFE, or any such member of member of staff or the Board.
Specified Conduct	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.
Welfare Manager	In appropriate circumstances, GOTAFE will appoint a suitable welfare manager to protect a discloser or a co-operator dependant on certain risk factors as per below. The Welfare Manager may also assist in arranging counselling or other relevant support as required given the circumstances.

4. RESPONSIBILITIES and PROCEDURE

4.1 RESPONSIBILITIES

a. Receipt of Disclosures

Not all agencies may receive disclosures under *the Act*. GOTAFE is NOT a body that may receive or accept disclosures. A disclosure about GOTAFE, or one of its officers or staff, MUST be made to the IBAC.

A protected disclosure cannot be made about:

- a Public Interest Monitor;
- the Victorian Inspectorate (VI) or officers of the VI; nor
- the conduct or actions of a Court.

If the matter is not one which falls within the scope of *the Act*, please contact the relevant Ombudsman to lodge your complaint.

b. Protected Disclosure Coordinator

GOTAFE’s Protected Disclosure Coordinators have a role in the way GOTAFE deals with protected disclosure matters, and for ensuring the welfare of any persons connected with a protected disclosure is properly managed.

The Protected Disclosure Coordinator is:

- the contact point for integrity agencies such as the IBAC and for general advice about the operation of *the Act* as it applies to GOTAFE;
- responsible for ensuring that GOTAFE carries out its responsibilities under *the Act*, any regulations made pursuant to *the Act* and any guidelines issued by the IBAC;
- 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;
- 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
- to collate statistics required to be reported by GOTAFE in its annual report under *the Act*.

The Protected Disclosure Coordinators at GOTAFE will be the Board Secretary, or delegate.

c. Welfare Management**I. To support discloser or cooperator.**

In appropriate circumstances, GOTAFE will appoint a suitable Welfare Manager to protect a discloser or a cooperator. GOTAFE takes all Protected Disclosure matters seriously, and will aim to treat all parties to a disclosure with respect, and comply with the principles of natural justice in relation to a disclosure, provided GOTAFE has knowledge of such a disclosure.

GOTAFE aims to protect individuals from suffering repercussions, including detrimental action, as a result of a protected disclosure being lodged or accepted by IBAC, where GOTAFE has knowledge of this. GOTAFE aims to deal with the matter discreetly and confidentially, and will respond swiftly and fairly to any allegation that the discloser or cooperator has in fact suffered any form of retribution.

In most circumstances, a Welfare Manager will only be required where a protected disclosure complaint proceeds to investigation, and where GOTAFE is made aware of such an investigation, or made aware of an acceptance of a disclosure by IBAC.

In particular, a Welfare Manager will be appointed where GOTAFE is made aware of a disclosure, and where GOTAFE believes that one is required to ensure that the appropriate support can be provided to the discloser or cooperator.

II. To support person subject of disclosure and/or cooperator

GOTAFE 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.

GOTAFE 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 GOTAFE of the identity of the subject of a disclosure.

d. Confidentiality

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

GOTAFE 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 GOTAFE has been provided that information by an investigative entity) will still be kept confidential by GOTAFE.

e. Information management

GOTAFE 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.

f. Exemption from the Freedom of Information Act 1982 (“FOI Act”)

The *FOI Act* provides a general right of access for any person to seek documents in the possession of GOTAFE.

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

Such information excluded from the operation of the *FOI Act* includes:

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

GOTAFE 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*.

g. Collating and Publishing Statistics

As part of GOTAFE’s reporting requirements, it is required to publish information about how these procedures may be accessed in its annual reports.

h. Training for all staff

GOTAFE will aim to:

- ensure that staff, employees, officers and members of the community have access to a copy of these procedures by making them available on the Public website;
- incorporate into its induction procedures training about GOTAFE’s general obligations under *the Act* and the rights and obligations of all employees, staff and members;
- introduce periodic refresher courses for existing staff, employees and members about their rights and obligations under *the Act*,

Provide additional training and assistance to:

- any members of GOTAFE 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;
- 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*.

i. How am I protected against detrimental action?

Under the Policy and this procedure, all staff members are to be informed that it is a criminal offence to take detrimental action in reprisal for a protected disclosure and that detrimental action itself can be grounds for a new disclosure under the PD Act. It is worth noting, that detrimental action need not be taken against the person who made a disclosure, but against any person, and can include inciting someone else to take the action.

j. Occurrence of detrimental action

If you experience an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of a protected disclosure, you should report this to a Protected Disclosure Coordinator who will:

- record details of the incident;
- advise you of your rights under the PD Act; and
- where the detrimental action is of a serious nature likely to amount to a criminal offence, consideration will be given to reporting the matter to the police.

The Protected Disclosure Coordinator will assess the report as a new disclosure under the Act. As with other disclosures, if satisfied it is an assessable disclosure, they will notify IBAC and inform you of this notification. If not, you will be informed that your disclosure has not been notified to IBAC and you may request that it be dealt with as a grievance under GOTAFE’s Issue Resolution and Investigation Procedure. If you have not done so yet, you may wish to access GOTAFE’s EAP for confidential welfare support.

k. What if I am implicated in the conduct I disclose?

If you are implicated in improper conduct you disclose, you are not protected from any reasonable consequences flowing from your actions. You will still be held liable for your own involvement, as making a disclosure does not give you immunity for your own wrongdoing.

Where disciplinary or other action, such as performance management, relates to conduct that is the subject of your disclosure, the disciplinary or other relevant action will only be taken after the disclosed matter has been appropriately dealt with.

l. Principles of Natural justice Apply

GOTAFE 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:

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

4.2 PROCEDURE

Item	Action/Comment	Responsibility
1	Who can make a disclosure Any person may make a disclosure about improper conduct by a public body or an officer of a public body, including GOTAFE. A disclosure may be verbal or in writing and may also be anonymous.	Person making disclosure
2	How a disclosure may be made. a. All potential disclosures must be made in accordance with this procedure. b. Despite any contrary provision in any other Act (other than the Charter of Human Rights and Responsibilities Act 2006), a disclosure under	Person making disclosure / Protected Disclosure Coordinator

Item	Action/Comment	Responsibility
	<p>this Part— I. may be made orally or in writing; and II. may be made anonymously.</p> <p>c. A provision of the PD or any other Act requiring an entity to notify, advise or otherwise communicate with a person who has made a disclosure, does not apply if the person makes such a disclosure anonymously.</p>	
3	<p>Reporting a protected disclosure.</p> <p>a. Persons can choose to make a protected disclosure to a range of bodies and persons, and it can be facilitated through an independent party, depending on who is the subject of the disclosure.</p> <p>GOTAFE provides access to an independent party 24/7 Whistle-blower Hotline called “Speak Up” available online or by phone and is a free, confidential service.</p> <p>b. Disclosures about GOTAFE, its members, employees, officers, or members of the public, can ONLY be made to the Independent Broad-Based Anti-Corruption Commission (IBAC).</p> <p>IBAC will make a determination as to whether the protected disclosure is in fact a protected disclosure.</p> <p>If IBAC determines your disclosure is not a protected disclosure complaint, IBAC must notify you in writing, within a reasonable time that:</p> <ul style="list-style-type: none"> • IBAC has determined your disclosure is not a protected disclosure complaint; • the disclosure will not be investigated as a protected disclosure complaint; and • the confidentiality provisions under Part 7 of the PD Act no longer apply in relation to the disclosure. • Advice may be that the complaint is reported to the appropriate body, or through GOTAFE’s complaints process. <p>IBAC will also notify GOTAFE of its determination. Disclosing person may choose to use an alternative process to report matters</p> <p>c. Whether or not the proposed disclosure meets the requirements of <i>the Act</i> as a protected disclosure, GOTAFE members, employees or officers may choose to report matters which may be subject to <i>the Act</i> to GOTAFE using internal reporting processes. In this case the matter will be investigated in accordance with GOTAFE’s Policy or Procedure, for example the Fraud & Corruption Management Procedure.</p> <p>It is important to note however, that if any person reporting a potential disclosure believes it to be a genuine protected disclosure, then it MUST be referred to IBAC for lodgement and investigation. You may discuss this with a</p>	<p>Person making disclosure / Protected Disclosure Coordinator</p> <p>IBAC</p> <p>Person making disclosure / Relevant Manager / Supervisor</p>

Item	Action/Comment	Responsibility
	GOTAFE Protected Disclosure Coordinator to determine the best course of action.	
4	<p>Protection of persons making a protected disclosure under <i>the Act</i> Where GOTAFE receives notice of a protected disclosure, the relevant Protected Disclosure Coordinator will:</p> <ul style="list-style-type: none"> a. if appropriate, meet with the person making the protected disclosure in order to support that person; b. take any possible actions to ensure the discloser is protected from detrimental action as per the requirements of section 45 of <i>the Act</i>; c. where the person making the protected disclosure consents, the relevant Protected Disclosure Coordinator will meet with that person’s supervisor to ensure that any detrimental action is monitored, recorded and reported; d. ensure that the person making the protected disclosure understands the protection provided by GOTAFE against detrimental action, and the courses of action available where detrimental action is found to have occurred. This may include discussion as to a possible transfer of employment in accordance with section 51 of <i>the Act</i>; e. ensure confidentiality is maintained, and f. offer the services of GOTAFE’s EAP. 	Protected Disclosure Coordinator
5	<p>Educating and training relevant staff on requirements of <i>the Act</i> Protected Disclosure Coordinator’s will be trained to ensure all reasonable steps are taken to ensure that persons making a protected disclosure to the IBAC are protected from detrimental action as defined.</p>	GOTAFE Protected Disclosure Coordinator
6	<p>Release of information under the Freedom of Information Act 1982 Section 78 of <i>the Act</i> excludes the application of the <i>Freedom of Information Act 1982</i> for release of any information related to the disclosure. Relevant staff members must ensure this is clearly marked on any relevant information.</p>	Protected Disclosure Coordinator and relevant staff

For an overview of the above process, please refer to **Appendix 1 - Protected Disclosure Assessment and Notification Flow Chart.**

5. PENALTIES

GOTAFE will ensure officers appointed to handle protected disclosures and all other employees are aware of the following offences created by *the Act*.

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made.
2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a protected disclosure without legislative authority.
3. It is an offence for a person to obstruct IBAC in performing their responsibilities under *the Act*.
4. It is an offence for a person to knowingly provide false information under *the Act* with the intention that it be acted on as a disclosed matter.

For more information on Penalties under the act, please refer to the [IBAC Guidelines for making and handling protected disclosures.](#)

6. DOCUMENTS and REFERENCE MATERIAL

- [Protected Disclosure \(Whistleblower\) Policy – POHR11](#)
- [Discipline Procedure for Staff Other Than PACCT STAFF – CS11-P45](#)
- [Gifts, Benefits and Hospitality Procedure – PRHR-153](#)
- [Discipline Procedure for PACCT Staff – CS34-P94](#)
- [Employee Code of Conduct Policy – POHR14](#)
- [Fraud and Corruption Management Procedure – B-P109](#)
- **APPENDIX 1 - Protected Disclosure Assessment and Notification Flowchart (Attached)**

- [Code of Conduct for VPS Employees](#)
- *Protected Disclosure Act 2012*
- [Protected Disclosure Regulations 2013](#)
- *Independent Broad-based Anti-corruption Commission Act 2011*
- [IBAC Guidelines for making and handling protected disclosures](#)
- [IBAC Guidelines for protected disclosure welfare management](#)
- *Public Administration Act 2011*
- [Victorian Public Service Workplace Determination 2012 \(or its successor\)](#)
- *Charter of Human Rights and Responsibilities Act 2006*
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*

**APPENDIX 1 - Protected Disclosure Assessment and Notification Flowchart
(Flowchart for disclosures made directly to GOTAFE)**

