

Public Interest Disclosure Procedure

Responsible Officer: Executive Director, Strategy and Governance

Authorising Officer: Chief Executive Officer

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1. PURPOSE

As a public sector body, GOTAFE is subject to the *Public Interest Disclosures Act 2012* (Vic) (**the Act**). This Procedure sets out how GOTAFE will deal with public interest disclosures made about it, its public officers, including employees.

GOTAFE does not tolerate Improper Conduct by its public officers, or the taking of reprisals against persons because of disclosures of such conduct.

This Procedure is to be read in conjunction with GOTAFE's Public Interest Disclosure Policy. This Procedure is to be used as a resource for employees, Managers, disclosers, potential disclosers and/or respondents to a disclosure.

This Procedure covers how a public interest disclosure about GOTAFE or public officers may be made, and how GOTAFE will protect people connected to a public interest disclosure from detrimental action being taken against them in reprisal. Such persons can include disclosers, individuals who are the subject of public interest disclosures and public interest complaints (as assessed by IBAC); and others who are connected to public interest disclosures, such as witnesses or persons cooperating with an investigation by IBAC or another entity into a public interest 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 this Procedure is 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
Act	<i>Public Interest Disclosure Act 2012 (Vic)</i>
Corrupt conduct	Conduct: a) of any person that adversely affects the honest performance by a public officer or public body of his or her, or its, functions; b) of a public officer or a public body that constitutes or involves the dishonest performance of their functions as a public officer or public body; c) of a public officer or a public body that constitutes or involves knowingly or recklessly breaching public trust; d) of a public officer or a public body that 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 public officer, or for any other purpose; or

	e) that could constitute a conspiracy or an attempt to engage in any of the above conduct; being conduct which, if proven, would constitute an indictable offence or a common law offence of perverting, or attempting to pervert, the course of justice, bribery of a public official or misconduct in public office.
Detrimental action	<p>Action taken, or threatened, against any person because a public interest disclosure has been made or investigated (or is believed to have been made or investigated), in reprisal for making the disclosure. Detrimental action can include:</p> <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 public interest disclosure.
EAP	GOTAFE's Employee Assistance Program
Improper conduct	<p>Conduct, other than trivial conduct:</p> <p>a) that is corrupt conduct;</p> <p>b) of a public officer or public body engaged in in their capacity as a public officer or public body that constitutes:</p> <ul style="list-style-type: none"> i) a criminal offence; ii) serious professional misconduct; iii) dishonest performance of public functions; iv) an intentional or reckless breach of public trust; v) an intentional or reckless misuse of information or material acquired in the course of performance of the functions of the public officer; vi) a substantial mismanagement of public resources; vii) a substantial risk to the health or safety of one or more person; or viii) a substantial risk to the environment; <p>c) of any person that:</p> <ul style="list-style-type: none"> i) adversely affects the honest performance by a public officer or public body of his or her, or its, functions; ii) is intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the person, or an associate of the person, obtaining – <ul style="list-style-type: none"> • A licence, permit, approval, authority or other entitlement under any act or subordinate instrument; • An appointment to a statutory office or as a member of the board of any public body under any act or subordinate instrument;

Improper conduct cont.	<ul style="list-style-type: none"> • A financial benefit or real or personal property; or • Any other direct or indirect monetary or proprietary gain – <p>that the person or associate would not have otherwise obtained; and</p> <p>d) could constitute a conspiracy or an attempt to engage in any of the above conduct.</p>
Public interest disclosure	<p>A disclosure by a person of:</p> <p>a) Information that shows or tends to show –</p> <ul style="list-style-type: none"> i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or ii) a public officer, or public body has taken, is taking or proposes to detrimental action against a person because a public interest disclosure has been made or investigated, or is believed to have been made or investigated; <p>b) Information that the person reasonably believes shows or tends to show –</p> <ul style="list-style-type: none"> i) a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct; or ii) a public officer, or public body has taken, is taking or proposes to detrimental action against a person because a public interest disclosure has been made or investigated, or is believed to have been made or investigated.
Public Interest Disclosure Coordinator	<p>A designated member of GOTAFE staff whose role is to provide advice and support to persons who wish to make a public interest disclosure in relation to conduct of GOTAFE or its public officers.</p> <p>The Public Interest Disclosure Coordinators at GOTAFE are the Executive Director Strategy & Governance and Executive Director Corporate Services.</p>
Public officer	<p>A member of staff or Board, or any person performing a public function on behalf of GOTAFE, or 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.</p>
Welfare Manager	<p>A GOTAFE employee appointed to provide support to a discloser, and to ensure the discloser or any other person are not subject to detrimental action as a result. The Welfare Manager may also assist in arranging counselling or other relevant support, as required. The appointment of a Welfare Manager will be at the discretion of GOTAFE.</p>

4. RESPONSIBILITIES and PROCEDURE

4.1. RESPONSIBILITIES AND KEY ISSUES

a. Receipt of Disclosures

Not all public bodies may receive public interest disclosures under the Act. GOTAFE is **NOT** a body that may receive or accept public interest disclosures.

A public interest disclosure about GOTAFE, or one of its public officers, may be made to any of the following bodies:

The Independent Broad-based Anti-Corruption Commission (IBAC):

Address: Level 1, North Tower, 459 Collins Street
Melbourne, Victoria 3001

GPO Box 24234
Melbourne, Victoria 3000

Internet: www.ibac.vic.gov.au

Email: info@ibac.vic.gov.au

Phone: 1300 735 135
TTY users phone: 1800 555 677

The Victorian Ombudsman

Address: Level 2, 570 Bourke Street
Melbourne, Victoria 3000

DX210174 Melbourne

Internet: www.ombudsman.vic.gov.au

Phone: 03 9613 6222 (1800 806 314 – regional only)
TTY users phone: 133 667 then 03 9613 6222
Telephone Interpreter: 131 450

The Victorian Inspectorate

Address: PO Box 617, Collins St West 8007

Internet: www.vic.gov.au/vicinspectorate

Phone: 03 8614 3232

b. Public Interest Disclosure Coordinator

GOTAFE's Public Interest Disclosure Coordinators:

- provide advice to persons who wish to make a public interest disclosure in relation to conduct of GOTAFE or its public officers; and
- monitor the welfare of any employees or officers connected with a public interest disclosure, and ensure the process is properly managed by GOTAFE, to the extent GOTAFE is involved.

The Public Interest 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;

- responsible for the taking of all necessary steps to ensure information received or obtained in connection with a public interest disclosure, including the identities of the discloser and the person(s) to whom the disclosure relates, are kept confidential in accordance with the Act;
- responsible for arranging any necessary and appropriate welfare support for the discloser, including appointing a Welfare Manager to support that person and to protect him or her from any reprisals; and
- responsible for collation of statistics required to be reported by GOTAFE in its annual report.

The Public Interest Disclosure Coordinators at GOTAFE are the Executive Director Strategy & Governance and Executive Director Corporate Services.

c. Welfare Management

I. To support discloser or co-operator.

Where GOTAFE is notified of a public interest disclosure in relation to it or its public officers, if appropriate, GOTAFE will appoint a Welfare Manager to support a discloser or a person involved in any investigation into a public interest disclosure.

GOTAFE takes all matters relating to public interest disclosures seriously, and will treat all parties to a disclosure with impartiality, fairness and respect.

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

Generally, a Welfare Manager will be appointed where:

- a public interest disclosure proceeds to investigation by an appropriate body and where GOTAFE is made aware of such an investigation; or
- where GOTAFE is made aware of an acceptance of a public interest disclosure by IBAC as a public interest complaint; and
- GOTAFE considers that it can offer support to the person who made the disclosure of persons involved in the investigation.

II. To support person subject of disclosure

GOTAFE will also seek to meet the welfare needs of a public officer whose conduct is the subject of a public interest disclosure, that GOTAFE is made aware of. It is important to remember that until a public interest disclosure is considered in accordance with the Act, the information about the person's conduct is only an allegation.

Subject to instructions from IBAC or any other appropriate body, GOTAFE will determine whether, or when, it is appropriate to notify a public officer of a public interest disclosure made about their conduct. If the public interest disclosure is not assessed as being a public interest complaint, or if the public interest complaint is not substantiated by IBAC, GOTAFE may determine not to notify the relevant public officer of the initial disclosure.

d. Confidentiality

Consistent with GOTAFE's confidentiality obligations under the Act as outlined in this Procedure, the fact that a public interest disclosure has been made, and

any information received by GOTAFE 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 maker and subject of a public interest disclosure at all times. Where the public interest disclosure is not assessed as being a public interest complaint, or an investigation does 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 public interest disclosure (to the extent that GOTAFE has been provided that information) 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 '*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 public interest disclosure. All electronic files will be password-protected or have strict limitations on access rights.

f. Exemption from the Freedom of Information Act 1982 (Vic) (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 public interest disclosures as contained in documents in the possession of GOTAFE will be exempt from the application of the FOI Act.

Information excluded from the operation of *the* FOI Act includes:

- any information relating to a public interest disclosure made in accordance with the Act; and;
- any information that is likely to lead to the identification of a person who has made a public interest disclosure.

GOTAFE is required to contact IBAC prior to providing any document, originating from IBAC, or relating to a public interest 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 this Procedure may be accessed in its annual reports.

h. Training for all staff

GOTAFE will aim to:

- ensure that staff, employees, other public officers and members of the community have access to a copy of this Procedure by making it available on the public website and on the intranet;
- incorporate into its induction procedures training about GOTAFE's general obligations under the Act and the rights and obligations of all employees, staff and other public officers;
- introduce periodic refresher courses for existing staff, employees and other public officers about their rights and obligations under the Act;
- provide additional training and assistance to:
 - any members of GOTAFE with specific responsibilities and functions in relation to public interest disclosures under the Act, including the Public Interest Disclosure Coordinator and Welfare Managers; 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 liaison with 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?

All GOTAFE staff members are to be informed that it is a criminal offence to take, or threaten to take, detrimental action in reprisal against a discloser or any other person; and that detrimental action itself can be grounds for a new public interest disclosure under the Act. 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, or witness detrimental action apparently taken in reprisal for the making of a public interest disclosure, you should report this to a Public Interest Disclosure Coordinator who will:

- record details of the incident;
- advise you of your rights under the Act, including the right to make a public interest disclosure in relation to the detrimental action; 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.

If you wish to make a public interest disclosure in relation to the detrimental action, you may do so to the bodies listed at 4.1(a) above.

If you decide not to make a public interest disclosure (or after you have done so and the process has completed) you may request that the alleged detrimental action 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 public interest disclosure does not give you immunity for your own wrongdoing. You will, however, have immunity from civil, criminal liability, or liability by way of an administrative process (including disciplinary action), for the making of the public interest disclosure itself.

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

Disciplinary action in relation to matters unrelated to the public interest disclosure

l. Principles of Natural Justice Apply

If the matter has been investigated by an investigative entity, then the investigative entity will be responsible for ensuring that the subject of a public interest disclosure is afforded natural justice in that process. This 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
4.2.1.	Who can make a public interest disclosure? Any person may make a disclosure about Improper Conduct by GOTAFE or its employees or other public officers.	Person making disclosure
4.2.2.	How a disclosure may be made <ol style="list-style-type: none"> Public interest disclosures about GOTAFE or its public officers can be made to IBAC, the Victorian Ombudsman or the Victorian Inspectorate. Disclosures cannot be made directly to GOTAFE – if a disclosure is made to GOTAFE, the Public Interest Disclosure Coordinator will be responsible for advising the person of the bodies to whom the disclosure can be made. A public interest disclosure may be verbal or in writing and may also be anonymous. GOTAFE provides access to an independent party 24/7 Public Interest Disclosure Hotline called “Speak Up” available online or by phone and is a free, confidential service. 	Person making disclosure / Public Interest Disclosure Coordinator
4.2.3.	What happens after a disclosure is made? <ol style="list-style-type: none"> If the public interest disclosure was not made to IBAC, it will be notified to IBAC. IBAC will make a determination as to whether a public interest disclosure is a public interest complaint, in accordance with the Act. IBAC will notify the discloser of its assessment, unless the public interest disclosure was made anonymously. A public interest complaint will be dealt with by IBAC in accordance with the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic), which may involve an investigation. Where a public interest disclosure is not assessed as being a public interest complaint, or after the public interest complaint has been dealt with by IBAC, members of the public and GOTAFE employees or officers may choose to report those matters to GOTAFE using internal reporting processes. The Public Interest Disclosure Coordinator can assist with this process. In this case the matter will be investigated in accordance with GOTAFE’s applicable Policy or 	Person making disclosure / Public Interest Disclosure Coordinator IBAC Relevant manager/supervisor

	Procedure, for example the Fraud & Corruption Management Procedure.	
4.2.4.	<p>Protection of persons making a public interest disclosure under the Act</p> <p>Where GOTAFE is notified of a public interest disclosure or public interest complaint, the relevant Public Interest Disclosure Coordinator will:</p> <ul style="list-style-type: none"> a. if appropriate, meet with the discloser in order to offer support to that person; b. take any reasonable actions to ensure the discloser, or any other person involved, is protected from detrimental action in reprisal; c. where the person making the public interest disclosure consents, the relevant Public Interest Disclosure Coordinator will meet with that person's supervisor to ensure that any detrimental action is monitored, recorded and reported; d. ensure that the discloser understands the protection provided by GOTAFE against detrimental action, and the courses of action available where detrimental action is believed to have occurred. This may include discussion as to a possible transfer of employment; e. ensure confidentiality is maintained, and f. offer the services of GOTAFE's EAP. 	Public Interest Disclosure Coordinator
4.2.5.	<p>Disciplinary action</p> <p>Generally, after a public interest disclosure has been dealt with in accordance with the Act, disciplinary action may be taken in respect of the conduct relevant to the disclosure. Where disciplinary action is taken against the person who made a public interest disclosure, the fact of making the disclosure cannot form part of the reason for taking the action.</p>	GOTAFE
4.2.6.	<p>Educating and training relevant staff on requirements of the Act</p> <p>Public Interest Disclosure Coordinators will be trained to ensure all reasonable steps are taken to ensure that persons making, or involved in, a public interest disclosure are protected from detrimental action in reprisal.</p>	<p>GOTAFE</p> <p>Public Interest Disclosure Coordinator</p>
4.2.7.	<p>Release of information under the FOI Act</p> <p>The Act excludes the application of the FOI Act for release of any information related to public interest disclosures. Relevant staff members must ensure that relevant information (whether physical or electronic) is clearly marked as relating to a public interest disclosure.</p>	Public Interest Disclosure Coordinator and relevant staff

5. PENALTIES

GOTAFE will ensure employees and other public officers, including those with responsibilities in relation to public interest disclosures, are aware of the following offences created by the Act:

- 5.1. It is an offence for a person to take detrimental action against a person in reprisal for a public interest disclosure being made.
- 5.2. It is an offence for a person to divulge information obtained as a result of the handling or investigation of a public interest disclosure.
- 5.3. It is an offence for a person to obstruct IBAC or its officers in performing their responsibilities.
- 5.4. 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 public interest disclosure.

For more information on offences and penalties under the Act, please refer to the [IBAC Guidelines for making and handling public interest disclosures](#).

DOCUMENTS and REFERENCE MATERIAL

- [Public Interest Disclosure 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](#)
- [Code of Conduct for VPS Employees](#)
- [GOTAFE's Issue Resolution and Investigation Procedure PRHR-191](#)
- *Public Interest Disclosure Act 2012*
- [Public Interest Disclosure Regulations 2013](#)
- *Independent Broad-based Anti-corruption Commission Act 2011*
- [IBAC Guidelines for making and handling public interest disclosures](#)
- [IBAC Guidelines for public interest disclosure welfare management](#)
- *Public Administration Act 2004*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Privacy and Data Protection Act 2014*
- *Health Records Act*