

PROTECTED DISCLOSURE POLICY

1. Purpose

This policy has been developed to facilitate a protected disclosure consistent with the Protected Disclosure Act 2012 (the Act) and changes in effect from 1 December 2016 for mandatory notifications in accordance with the *Independent Broad-Based Anti-Corruption Commission Act 2011* (the IBAC Act). The policy is to be implemented in a manner which complements the normal (established) communication channels in use within The Gordon. Staff are encouraged to continue to raise appropriate matters at any time with Gordon management in line with existing policies and procedures and where necessary to use this procedure for a protected disclosure.

2. Scope

This policy covers the disclosure of corrupt or improper conduct and the protection from detrimental action associated with a protected disclosure by any persons associated with or employed by The Gordon.

3. Definitions

The following terms and abbreviations are specific to this procedure:

Detrimental Action: It is an offence for a person to take detrimental action against a person who has made a protected disclosure. The Act defines detrimental action as including:

- 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.

Improper Conduct: Improper conduct is defined as:

- Corrupt Conduct (as defined in the *IBAC Act 2011*), or
- Specified conduct that is not Corrupt Conduct.

Specified conduct includes:

- conduct of any person that adversely affects the honest performance of a public officer's or public body's functions
- conduct of a public officer or public body that constitutes or involves the dishonest performance of a public officer's or public body's functions
- conduct of a public officer, former public officer or a public body that amounts to knowingly or recklessly breaching public trust
- conduct by a public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their official functions, or
- a conspiracy or attempt to engage in any of the above conduct
- conduct of a public officer or public body that involves a substantial:
 - Mismanagement of public resources, or
 - Risk to public health or safety, or
 - Risk to the environment.

These elements of improper conduct are qualified by the requirement that they would be a criminal offence or grounds for dismissal if proven. This indicates that the conduct will only fall within the meaning of the Act where it is dishonesty of a serious nature.

The above list is not exhaustive and, when in doubt as to whether the conduct shows or tends to show that there was improper conduct, (IBAC) should be contacted for guidance.

Substantial mismanagement of public resources: The use of the word 'substantial' has the effect of confining the definition to a situation in which the mismanagement is of a significant or considerable degree.

Mismanagement should not be confused with 'misuse'. Mismanagement is to manage badly or wrongly, whilst misuse is wrong or improper use. For example, to use a government car for personal gain is a misuse rather than mismanagement.

Substantial risk to public health, safety or the environment: The use of 'substantial' has the effect of confining the definition to conduct that puts public health, safety or the environment at considerable or great risk.

The risk is limited to public health or safety. This means the risk is not just to an individual but relates to conduct which affects, or has the potential to affect, a large class or group of the wider community.

Protected disclosure: To be a protected disclosure, a disclosure must satisfy the following criteria:

- A person rather than a corporation or organisation is making the disclosure.
- The disclosure relates to the conduct of a public body (The Gordon) or public officer (employee) acting in their official capacity.
- The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure.
- The person making the disclosure has reasonable grounds for believing the alleged conduct has occurred.

If all of the criteria are met, then:

The disclosure is a protected disclosure and is referred to the Protected Disclosure Coordinator for assessment to determine whether the disclosure is a public interest disclosure.

If the criteria are not met, then:

The disclosure is not assessed to be a protected disclosure and the matter does not need to be dealt with under the Act. In this case the Protected Disclosure Coordinator will decide how the matter is to be dealt with thereafter.

4. Overview / principles

4.1 Objectives of the act

The main objective is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies and to establish a system for matters to be investigated. The Act also provides protection from detrimental action to any person affected by a protected disclosure whether it is a person who makes a disclosure, a witness, or a person who is the subject of an investigation.

From 1 December 2016, all relevant public officers (i.e. CEOs) of a public body must notify IBAC of any matter they suspect on reasonable grounds involves corrupt conduct.

4.2 The reporting system

The Gordon is committed to ensuring it has a robust system for the receipt, assessment and investigation of protected disclosures. This will include:

- Ensuring senior staff are involved and retain oversight
- Ensuring confidentiality of the information and the identity of the persons making protected disclosures are maintained throughout the process
- Keeping the roles of assessment and investigation of a disclosure distinct from welfare management of the person making a disclosure
- Identifying clear contact points for reporting protected disclosures, including all relevant disclosures made in person or by mail, phone calls and emails
- Enabling the CEO to immediately notify IBAC of any matter suspected on reasonable grounds that involves corrupt conduct
- Ensuring a disclosure about the Chief Executive Officer is immediately notified to IBAC by the Chief Operating Officer and / or Board Chair in accordance with the *IBAC Mandatory Notifications Policy SHRD PO 41*.

A clear internal reporting system will benefit The Gordon by:

- Encouraging staff to raise matters of concern internally
- Providing a reporting channel for disclosures that may otherwise never be reported
- Ensuring disclosures by such persons are properly and appropriately assessed and acted upon
- Ensuring the protection of the Act is fully available to all internal and external persons making protected disclosures

4.3 Confidentiality

The Act requires any person who receives information due to the handling or investigation of an assessable disclosure, not to disclose that information except in certain limited circumstances. These include:

- Where exercising the functions of the public body under the Act
- When making a report or recommendation under the Act
- When publishing statistics in the annual report of a public body
- In criminal proceedings for certain offences in the Act.

However, the Act prohibits:

- The inclusion of particulars in any report or recommendation that is likely to lead to the identification of the person making a protected disclosure
- The disclosure of particulars in an annual report and other reports to Parliament that might lead to the identification of a person against whom a protected disclosure is made.

4.4 Collating and publishing statistics

The Gordon will report on the number and types of disclosures in its annual report. The information will be collated by Strategic HR & Development.

4.5 Receiving and assessing disclosures

4.5.1 How to make a disclosure

A person may make a disclosure:

- Orally
- In writing
- Electronically
- Anonymously.

This means that disclosures may be received from anonymous sources, including unverified email addresses, phone calls, by facsimile, in a conversation or meeting. If the disclosure is made orally, contemporaneous notes should be made of the disclosure.

If the disclosure comes from an email address from which the identity of the person making the disclosure cannot be determined, the disclosure should be treated as an anonymous disclosure.

Any person can submit an allegation or complaint. The Act does not require the individual to be an employee of The Gordon, or a public sector employee. The complaint must be made by an individual and not by a company, organisation or group of people.

Disclosures of improper conduct or detrimental action by The Gordon or any of its employees, members or officers may be made to the following officers:

Protected Disclosure Officer:

Employee Relations Manager
Strategic HR & Development, City Campus

Phone: 5225 0690

The Protected Disclosure Coordinator:

Head of Strategic HR and Development
City Campus

Phone: 5225 0778

4.5.2 Receiving a disclosure

The Gordon can only receive disclosures that relate to the conduct of its employees. If a disclosure is received about an employee, officer or member of another public body, the disclosure has not been made in accordance with Part 2 of the Act. In this instance, the person making the disclosure should be advised of the correct person or body to whom the disclosure must be made. In such circumstances they should generally be advised to make their disclosure to IBAC.

A disclosure may be made to any member officer or employee of The Gordon. It is our responsibility to ensure that any allegation made that may fall under the Act is referred to the protected disclosure coordinator to assess the information.

4.5.3 Assessing a disclosure

Where The Gordon receives information relating to the conduct of an employee, member or officer, it must first assess whether the disclosure meets the criteria to be a protected disclosure and then determine if the information is deemed to be a public interest disclosure. The Gordon must reach its conclusion about the disclosure within 45 days of receiving it.

4.6 Preventing detrimental actions

The Gordon is committed to the protection of persons making protected disclosures against detrimental action (as defined in section 7.1). The Gordon is responsible for ensuring persons making a protected disclosure are protected from direct and indirect detrimental action, and that the workplace culture is supportive of protected disclosures being made.

The Gordon will take all reasonable steps to protect the identity of anyone making a protected disclosure and for ensuring reprisals are not made. Confidentiality will be assured as follows:

- The Protected Disclosure Coordinator, in consultation with the individual making the disclosure, select and appoint a Welfare Manager to support the individual
- The Gordon will ensure all files, whether paper or electronic, are kept in a secure location and can only be accessed by the Protected Disclosure Coordinator, Protected Disclosure Officer, the investigator or Welfare Manager (in relation to welfare matters)
- All printed material will be kept in files that are clearly marked as a Protection Disclosure Act matter, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure
- All electronic files shall be produced and stored in a secured file and be given password protection. Backup files shall be kept in line with The Gordon Records Management policy.
- All materials relevant to an investigation, such as tapes from interviews, shall also be stored securely with the protected disclosure files
- The Gordon will not email documents relevant to a protected disclosure matter and shall ensure all phone calls and meetings are conducted in private in neutral locations.

Anyone making a disclosure will be advised that it is in their own interests to keep disclosures confidential by only discussing related matters with authorised persons within The Gordon or officers of IBAC's office or other persons as authorised by law.

If a person making a protected disclosure reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action apparently taken in reprisal for the making of the disclosure, the welfare manager or protected disclosure coordinator must:

- Record details of the incident
- Advise the person making a protected disclosure of their rights under the Act.

Where the detrimental action is of a serious nature likely to amount to a criminal offence, The Gordon will give consideration to reporting the matter to the police or IBAC.

The taking of detrimental action in reprisal for making a disclosure can be an offence against the Act, as well as grounds for making a further disclosure. Where such detrimental action is reported, the allegation must be assessed as a new disclosure under the Act.

The Gordon will not conduct enquiries or gather information concerning an allegation of detrimental action that may compromise the integrity of evidence used in the investigation of a criminal offence.

4.7 Management of the person against whom the disclosure is made

The principles of natural justice will be adhered to in any investigation of a protected disclosure. These principles concern procedural fairness and ensure a fair decision is reached by an objective decision maker. The Gordon shall have regard to the following issues in ensuring procedural fairness:

- As certain actions can prejudice a future investigation by IBAC, once reasonable grounds for suspicion of corrupt conduct have been formed further investigation is to cease immediately, until IBAC has assessed the matter and informed of its decision. IBAC’s decision may be to dismiss, to refer or to investigate further.
- The person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be given the right to respond. (This does not mean the person must be advised of the allegation as soon as the disclosure is received or the investigation has commenced)
- If the investigator is contemplating making a report adverse to the interests of any person, that person should be given the opportunity to put forward further material that may influence the outcome of the report and that person’s defence should be fairly set out in the report
- All relevant parties to a matter should be heard and all submissions should be considered
- A decision should not be made until all reasonable inquiries have been made
- The investigator or any decision maker should not have a personal or direct interest in the matter being investigated
- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process; and
- The investigator must be impartial in assessing the credibility of the disclosure and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

4.8 Criminal offences

The Act establishes a number of offences regarding a disclosure once it has been determined to be a protected disclosure:

Criminal offences	<p>Detrimental action It is an offence for a person to take or threaten action in reprisal when:</p> <ul style="list-style-type: none"> – a protected disclosure has been made – a person believes a protected disclosure has been made – a person believes that another person intends to make a protected disclosure.
	<p>Breach of confidentiality 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.</p>
	<p>Provision of false information 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 protected disclosure.</p>
Civil action	A person who takes detrimental action against a person in reprisal for a protected disclosure may be found liable in damages to that person. The public body may also be found to be vicariously liable.

4.9 Freedom of information

Section 78 of the Act excludes the application of the *Freedom of Information Act 1982* to any document that relates to a disclosure made under the Act.

Helpful contacts:

IBAC

Phone: 1300 735 135

Email: info@ibac.vic.gov.au

Website: www.ibac.vic.gov.au

Post: IBAC, GPO Box 24234, Melbourne, Vic 3000

5. Responsibilities

Position	Responsibility
Head of SHRD	Accountable for the implementation, maintenance and communication of this policy. The Gordon's nominated Protected Disclosure Co-ordinator and is therefore responsible for ensuring The Gordon's reporting, investigation and management of protected disclosures as well as for implementing the <i>IBAC Mandatory Notifications Policy SHRD PO 41</i> .
The Employee Relations Manager	The Gordon's nominated Protected Disclosure Officer and is therefore responsible for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action.

5.1 Employees

- Employees are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures
- All employees of The Gordon have an important role to play in supporting those who have made a legitimate disclosure. Employees must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, employees should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

5.2 Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a central role in the internal reporting system and will:

- Impartially assess each disclosure to determine whether it appears to be a protected disclosure
- Conduct a confidential preliminary investigation to assist the principle officer as delegated by the Chief Operating Officer to make a mandatory notification to IBAC, to establish what conduct has occurred, but to cease investigation immediately once reasonable grounds for suspicion have been formed. No further action shall be taken until IBAC has assessed the matter and informed of its decision
- Coordinate the reporting system used by the Gordon
- Be a contact point for general advice about the operation of the Act and for integrity agencies such as the IBAC
- Liaise with IBAC in regard to the relevant legislation
- Receive all disclosures forwarded from the Protected Disclosure Officer
- Receive all phone calls, emails and letters from members of the public or employees seeking to make a disclosure
- Impartially assess each disclosure to determine whether it is a public interest disclosure
- Refer all public interest disclosures to IBAC
- Be responsible for carrying out, or appointing an investigator to carry out an investigation referred by IBAC
- Be responsible for overseeing and coordinating an investigation where an investigator has been appointed
- If it is deemed necessary, appoint a Welfare Manager to support the individual making the protected disclosure and to protect him or her from any reprisals
- Advise the individual making the protected disclosure of the progress of an investigation into the disclosed matter
- Establish and manage a confidential filing system

- Collate and publish statistics on disclosures made
- Take all necessary steps to ensure the identity of the individual making the protected disclosure and the identity of the person who is the subject of the disclosure are kept confidential
- Have a good working knowledge of existing Gordon policies and procedures relating to fraud and corruption and performance management (as referenced).
- Liaise with the Chief Executive Officer / Delegate as appropriate.

5.3 Protected Disclosure Officer

The Protected Disclosure Officer will:

- Be a contact point for general advice about the operation of the Act for any person wishing to make a disclosure about improper conduct or detrimental action
- Make arrangements for a disclosure to be made privately and discreetly and, if necessary, away from the workplace
- Receive any disclosure made orally or in writing (from internal and external sources)
- Commit to writing any disclosure made orally
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with a protected disclosure
- Take all necessary steps to ensure the identity of those involved are kept confidential; and
- Forward all disclosures and supporting evidence to the Protected Disclosure Coordinator
- Have a good working knowledge of existing Gordon policies and procedures relating to fraud and corruption and performance management as well as the IBAC Mandatory Notifications policy (as referenced).

5.4 Welfare Manager

Where a protected disclosure proceeds to investigation The Gordon is committed to preserving the welfare of those involved. The protected disclosure coordinator will appoint a Welfare Manager to monitor the needs of the person making a protected disclosure and to provide advice and support.

The role of the Welfare Manager is to:

- Examine the immediate welfare and protection needs of a person making a protected disclosure who has made a disclosure and seek to foster a supportive work environment
- Advise the person making a protected disclosure of the legislative and administrative protections available
- Listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure
- Keep a contemporaneous record of all aspects of the case management of the person making a protected disclosure, including all contact and follow-up action
- Endeavour to ensure that the expectations of the person making a protected disclosure are realistic.

The Welfare Manager must not divulge any details relating to the disclosed matter to any person other than the protected disclosure coordinator, the investigator or the Chief Executive Officer / Delegate. All meetings between the Welfare Manager and the person making a disclosure should be conducted discreetly to protect confidentiality.

5.5 Investigator

The investigator is responsible for carrying out an internal investigation into a disclosure referred to The Gordon. An investigator may be a person from within The Gordon or a consultant engaged for that purpose by the Protected Disclosure Coordinator.

6. Key aligned internal documents

IBAC Mandatory Notifications Policy SHRD PO 41

Fraud and Corruption Policy FIN PR 05

Disciplinary Procedure (Staff) SHRD PR 20

Employee Code of Conduct SHRD RD 20.01

Conflict of Interest SHRD PO 16

Records Management Policy RM PO 01

7. Key aligned external documents

Protected Disclosure Act 2012

Independent Broad-Based Anti-Corruption Commission Act 2011

8. Review and approval

	Position	Work area
Author / reviewer:	Employee Relations Manager	Strategic HR and Development
Custodian:	Head	Strategic HR and Development
Review schedule:	This policy will be reviewed every 3 years (or earlier as required)	
Last reviewed / updated:	24 May 2019	