



# Public Interest Disclosures procedure

## Section 1 - Preamble

(1) This Procedure is effective from 6 February 2020.

## Section 2 - Purpose

(2) This Procedure sets out what is a “Public Interest Disclosure” and the rights, obligations and role of Deakin University in the event that a Public Interest Disclosure is made about Deakin. Deakin maintains this Procedure in accordance with section 58(5) of the [Public Interest Disclosures Act 2012 \(Vic\)](#) (the Act).

## Section 3 - Scope

(3) This Procedure applies throughout the University.

## Section 4 - Policy

(4) This Procedure is pursuant to the [Integrity policy](#).

## Section 5 - Procedure

(5) Deakin encourages reporting of any allegations of fraud, corruption or improper conduct (including the misuse or misappropriation of publicly funded resources).

(6) Deakin is committed to ensuring that its culture supports and protects those who make Public Interest Disclosures and those who cooperate with an investigation into a Public Interest Disclosure.

### What is a Public Interest Disclosure?

(7) The [Public Interest Disclosures Act 2012 \(Vic\)](#) (the Act) broadly defines a Public Interest Disclosure as an allegation of fraud, corrupt or improper conduct relating to a public sector body such as Deakin University.

(8) A Public Interest Disclosure could include allegations of:

- a. any person, including a student, offering a bribe to a staff member, contractor or member of Council (or any staff member, contractor or member of Council asking for or accepting a bribe);
- b. staff, contractor or member of Council unfairly giving funding to a research project coordinated by a member of their family, or otherwise for financial gain;
- c. misappropriation of University funding; or
- d. Detrimental Action against any person making a Public Interest Disclosure relating to Deakin.

## Who can make a Public Interest Disclosure?

(9) Only an individual can make a Public Interest Disclosure. This could include a Deakin member of staff, a student, staff of a contractor or supplier, or any member of the public.

## How are Public Interest Disclosures protected?

(10) A person who makes a Public Interest Disclosure to a body that is able to receive Public Interest Disclosures under the Act will receive the benefit of certain safeguards and protections under the Act, including certain assurances as to the confidentiality of the investigation and handling of their allegations, and certain protections against detrimental action (e.g. sacking, workplace discrimination or harassment) against that person as a result of them having made a Public Interest Disclosure.

## Can Deakin receive Public Interest Disclosures?

(11) Deakin is not a body that can receive Public Interest Disclosures under the Act.

(12) Individuals who wish to make a Public Interest Disclosure (and have the benefit of the statutory safeguards and protections afforded by the Act) must make their Public Interest Disclosure to an entity authorised to receive Public Interest Disclosures under the Act.

(13) Entities which can receive Public Interest Disclosures about alleged conduct relevant to Deakin include:

- a. the [Independent Board-based Anti-corruption Commission](#) (IBAC);
- b. the [Victorian Ombudsman](#);
- c. [Victoria Police](#) (if the disclosure concerns a criminal matter).

## What should Deakin do if someone wishes to make a Public Interest Disclosure relevant to Deakin?

(14) A person who wishes to make an allegation about conduct that could constitute a Public Interest Disclosure can seek advice from General Counsel and should be made aware that Deakin is not a body that can receive Public Interest Disclosures under the Act.

(15) The person should be advised to seek their own independent legal advice as to whether they wish to proceed with a formal complaint to Deakin about the alleged conduct, in the knowledge that by doing so they will not be afforded the same legal protections under the Act as if they had made a Public Interest Disclosure to a body authorised to receive Public Interest Disclosures.

(16) If the person chooses to make a formal complaint directly to Deakin, then Deakin will receive and manage the complaint in accordance with Deakin's complaint handling procedures and the [Fraud and Corruption Prevention and Control policy](#) and [procedure](#) as applicable. Serious matters of fraud, corrupt or improper conduct can be reported via an external reporting line accessible at <https://deakin.stoplينerreport.com>. Reports can be made anonymously. Otherwise, the person should make their complaint directly to [IBAC](#), the [Victorian Ombudsman](#), [Victoria Police](#) or any other body authorised to receive Public Interest Disclosures ("Authorised Body").

## What are Deakin's obligations under the Act?

(17) Public Interest Disclosures are investigated and managed confidentially by the Authorised Body. In the event that Deakin becomes aware that a person has made a Public Interest Disclosure, Deakin is required to:

- a. maintain the confidentiality of the Public Interest Disclosure and the identity of the discloser; and
- b. protect the discloser and any other person from Detrimental Action in reprisal for the making of the Public

Interest Disclosure, in accordance with this Procedure.

## **Welfare Manager**

(18) Deakin has appointed a Welfare Manager to coordinate welfare support for disclosers, any person cooperating with a Public Interest Disclosure investigation, or any person that is the subject of a Public Interest Disclosure.

The Welfare Manager is:

General Counsel: Shirley Rooney

Phone: (03) 5227 8560

Email: disclosures@deakin.edu.au

Address: Office of General Counsel, Deakin University, Geelong Waterfront Campus, 1 Gheringhap Street, Geelong, Victoria, 3220

## **Confidentiality requirements**

(19) Notifications received by Deakin from an Authorised Body about a Public Interest Disclosure relating to Deakin (or an employee or contractor) should be immediately referred to the Welfare Manager and/or to the Vice-Chancellor.

(20) Deakin will take reasonable measures to ensure that staff, particularly those opening mail, accessing email accounts, working in reception areas and handling complaints, are alert to identifying correspondence from an Authorised Body and are aware that they must forward any such correspondence to the Welfare Manager and/or the Vice-Chancellor.

(21) In the event that Deakin is notified or becomes aware of a disclosure which may be a Public Interest Disclosure, it must keep the following information confidential:

- a. the content of the disclosure;
- b. any information about the content of the disclosure;
- c. the identity of the discloser; and
- d. any information likely to lead to the identification of a person who has made the disclosure

(with limited exceptions – see ‘Exceptions to confidentiality requirements’ below).

(22) It is an offence under the Act for Deakin, or any other person, to disclose any of the information set out above to another person, except as permitted by law.

(23) If the Welfare Manager or the Vice-Chancellor becomes aware that a disclosure has been made to an Authorised Body, the Welfare Manager or the Vice-Chancellor should take the following steps to protect the confidentiality of the relevant information:

- a. take reasonable precautions to ensure that all communications regarding the disclosure are conducted in a discreet manner;
- b. take reasonable precautions to ensure that other staff or students cannot infer the identity of the discloser or a person cooperating with a Public Interest Disclosure investigation from any information they receive;
- c. remind the discloser not to reveal themselves or give out information that would enable others to identify them as a discloser, and that it is in their interests to keep the disclosure confidential by discussing related matters only with the Welfare Manager, Vice-Chancellor or other persons authorised by an Authorised Body or by law;
- d. remind staff or students who are asked by an Authorised Body to cooperate with the investigation not to reveal themselves or give out information that would enable others to identify that they are cooperating with the investigation;
- e. take reasonable precautions to ensure that any documents or files are accessible only by the Vice-Chancellor and Welfare Manager and any other staff members who are involved in managing the Public Interest Disclosure

or protecting the welfare of the discloser. If appropriate, the file may also be accessed by Deakin's Information Manager (unless the disclosure relates to the conduct of this person);

- f. take reasonable precautions to ensure that any other staff members who are involved in managing the Public Interest Disclosure, understand and abide by their confidentiality obligations under the Act;
- g. only disclose information regarding conduct which is the subject of the disclosure to other persons on a 'need-to-know' basis or otherwise as required by law or permitted by this Procedure.

(24) Deakin, through the Welfare Manager or the Vice-Chancellor, will take appropriate and reasonable precautions to protect the confidentiality of the identity of the discloser and the content of any Public Interest Disclosure for the duration of any investigation into the matter by an Authorised Body. It will also ensure that, following the conclusion of any investigation by an Authorised Body, it keeps confidential the fact that an investigation has occurred, its result, and the identity of the discloser except as required or permitted by law.

## **Exceptions to confidentiality requirements**

(25) Deakin (and others) may only disclose information about the content of a Public Interest Disclosure of which it becomes aware in very limited circumstances set out in the Act, including:

- a. in accordance with a direction or authorisation from [IBAC](#) (or another investigating entity);
- b. to the extent necessary for the purpose of taking lawful action in respect of the disclosed conduct (including disciplinary action);
- c. if [IBAC](#), or another investigating entity, has determined that the disclosure is not a Public Interest Disclosure
- d. to obtain legal advice in relation to the disclosure;
- e. where necessary for the purpose of exercising functions under the Act; or
- f. if otherwise permitted to do so by the Act.

(26) Deakin (and others) may only disclose the identity of the person who has made a Public Interest Disclosure in very limited circumstances set out in the Act, including:

- a. if [IBAC](#), or another investigating entity, has determined that the disclosure is not a Public Interest Disclosure;
- b. to obtain legal advice in relation to the disclosure;
- c. where necessary for the purpose of exercising functions under the Act; or
- d. if otherwise permitted to do so by the Act.

(27) The Welfare Manager or the Vice-Chancellor may disclose the content of a disclosure or the identity of a discloser, only as necessary, in order to:

- a. protect the discloser against Detrimental Action;
- b. investigate the Public Interest Disclosure in accordance with instructions from an investigating entity; or
- c. exercise any other function of the University under the Act.

(28) For example, if [IBAC](#) notifies the Welfare Manager or the Vice-Chancellor of a discloser's identity, the Welfare Manager may, if necessary and appropriate, notify a senior manager in the discloser's faculty, portfolio or other area for the purpose of looking after the discloser's welfare (providing that the senior manager is not the subject of the Public Interest Disclosure).

## **Obligation to protect against Detrimental Action**

(29) Detrimental Action is an act or a threat to act against another person in reprisal for that person making or intending to make a Public Interest Disclosure.

(30) The Act does not prevent a manager from taking reasonable unrelated management action in relation to an employee who has made a Public Interest Disclosure provided that the Public Interest Disclosure is in no way a reason for the management action.

### **Civil and criminal penalties for Detrimental Action**

(31) It is a serious offence for any person to take, or threaten to take, Detrimental Action against a person in reprisal for making a Public Interest Disclosure.

(32) In addition, if a person is found guilty of the offence above, they may also face the following civil penalties:

- a. they may be required to pay any damages that the court considers appropriate to compensate the discloser for any injury, loss or damage; or
- b. if the discloser's employment was terminated as part of the Detrimental Action, the court may order that Deakin is required to reinstate the discloser in their former position or a similar position.

(33) The discloser is also entitled to bring a claim in tort against the person who took Detrimental Action against them.

(34) In certain circumstances, Deakin can be found vicariously liable for any of the civil penalties listed above.

### **What are Deakin's obligations in relation to Detrimental Action?**

(35) If staff or a contractor of Deakin become aware (whether through being asked to participate in an investigation into the matter or otherwise) that a Public Interest Disclosure has been made in relation to Deakin, the staff member or contractor must refrain from any activity that is, or could be perceived to be, discrimination, victimisation, harassment or intimidation of a person who makes a Public Interest Disclosure or any person who they know or suspect is cooperating with the investigation.

(36) Deakin's obligations to protect persons from Detrimental Action in reprisal for a Public Interest Disclosure may apply to any person within the Deakin community, including:

- a. the discloser;
- b. a person who is the subject of the Public Interest Disclosure; or
- c. any person who is cooperating with a Public Interest Disclosure investigation.

(37) If Deakin is notified by an Authorised Body, or otherwise becomes aware, that a person has made a Public Interest Disclosure, Deakin through the Welfare Manager will take reasonable precautions to protect any person who is at risk of Detrimental Action being taken against them in reprisal for the Public Interest Disclosure.

(38) Such steps may include (if the person is a student, staff member or contractor of Deakin):

- a. actively monitoring the environment to anticipate any possible Detrimental Action against the discloser or person cooperating in reprisal for the Public Interest Disclosure;
- b. ensuring that appropriate measures are in place to maintain the integrity of any assessment conducted by an Authorised Body;
- c. considering any concerns the person may express about possible harassment or intimidation, including considering whether any such conduct may be due to causes other than a Public Interest Disclosure;
- d. ensuring that Deakin complies with its legal obligations including the [Occupational Health and Safety Act 2004](#) and other workplace requirements;
- e. maintaining proper records of contact with the discloser and actions taken; and
- f. other reasonable precautions considered necessary in the circumstances.

## **Complaints about Detrimental Action**

(39) If a person believes that, as a result of a Public Interest Disclosure they have been subjected to Detrimental Action, the person may notify an Authorised Body of the suspected Detrimental Action. If the notification is made in accordance with the requirements of the Act, the notification will constitute a further Public Interest Disclosure.

(40) As stated above, Deakin is not a body authorised under the Act to receive a Public Interest Disclosure alleging Detrimental Action.

(41) If a person wishes to make a complaint to Deakin alleging that Detrimental Action has been taken in reprisal for a Public Interest Disclosure, the Deakin representative who becomes aware of the complaint should:

- a. record details of the complaint and refer it to the Welfare Manager who may then advise the person that they are entitled to make a Public Interest Disclosure about the alleged Detrimental Action directly to an Authorised Body;
- b. otherwise comply with the requirements in this Procedure in respect of the complaint.

## **Obligation to manage the welfare of the discloser and/or person cooperating**

(42) Deakin, through the Welfare Manager, will take reasonable precautions to protect the welfare of a discloser and/or any person cooperating with a Public Interest Disclosure investigation (if known to it). Such steps may include:

- a. providing active support to the discloser and/or person cooperating;
- b. actively considering the welfare needs of the discloser and/or person cooperating;
- c. conducting a risk assessment to determine the likelihood of reprisals against the discloser or the possibility that the investigation could be impeded;
- d. producing a risk treatment plan to mitigate any risks identified by the risk assessment, and implementing the risk treatment plan;
- e. managing the expectations of the discloser and/or person cooperating in relation to the outcome of the matter;
- f. keeping a confidential record of the case management of the discloser or person cooperating;
- g. explaining the operation of this Procedure and/or the Act; and/or
- h. keeping records of all aspects of the matter, including all contact and follow up with the discloser and/or person cooperating.

## **Obligation to manage the welfare of the person that is the subject of a disclosure**

(43) Deakin will take all reasonable precautions to ensure that the identity of the person who is the subject of any Public Interest Disclosure (if known to it) will remain confidential while the Public Interest Disclosure is being assessed or investigated by [IBAC](#) or any other investigating entity.

(44) The Welfare Manager may take the following steps:

- a. providing active support to the person;
- b. actively considering the welfare needs of the person;
- c. explaining the operation of this Procedure and/or the Act;
- d. keeping records of all contact and follow up with the person, and/or
- e. any other steps if considered appropriate.

## **Contact details for employee assistance program**

(45) Deakin offers free and confidential counselling to all staff. University staff (including disclosers, any person

cooperating with the investigation of a Public Interest Disclosure, or the person that is the subject of the disclosure) can use this service to discuss matters related to Public Interest Disclosures and Detrimental Action in a confidential environment. Details about how to access the Employee Assistance Program can be found on the [Employee Wellbeing Support \(EWS\)](#) webpage.

## Section 6 - Definitions

(46) For the purpose of this Procedure:

- a. Act: the [Public Interest Disclosures Act 2012 \(Vic\)](#)
- b. Authorised Body: Independent Board-based Anti-corruption Commission (IBAC), the Victorian Ombudsman, Victoria Police or any other body authorised to receive Public Interest Disclosures.
- c. Detrimental Action: an act or a threat to act against another person in reprisal for that person making or intending to make a Public Interest Disclosure
- d. Discloser: person who has made a disclosure to an Authorised Body under the Act
- e. IBAC: Independent Board-based Anti-corruption Commission
- f. Public Interest Disclosure: an allegation of corrupt or improper conduct relating to a public sector body such as Deakin University.

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	6th February 2020
<b>Review Date</b>	6th February 2025
<b>Approval Authority</b>	Vice-Chancellor
<b>Approval Date</b>	5th February 2020
<b>Expiry Date</b>	To Be Advised
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