PURPOSE

The Victorian Government Protected Disclosure Act 2012 ("the PD Act"), the Independent Broad-based Anti-Corruption Commission Act 2011 ("the IBAC Act") and the Ombudsman Act 1973 ("the Ombudsman Act") aim to encourage and facilitate the making of disclosures of improper conduct or detrimental action, in contravention of those Acts, by public officers and public bodies. They provide protection to whistleblowers who make disclosures in accordance with the PD Act, and establish systems for the matters disclosed to be investigated and for remedial action to be taken.

Monash University ("us", ‘our’ or ‘we’) is a public body under the IBAC Act. Employees at Monash University, as well as Council members of Monash University are public officers under the IBAC Act.

It is the complainant's right and responsibility to elect to take a complaint of improper conduct or detrimental action in reprisal for a protected disclosure to IBAC or the Ombudsman.

Any person contemplating making a disclosure of improper conduct or detrimental action related to us should contact IBAC in the first instance. Our protected disclosure coordinator is not authorised under the PD Act and IBAC Act to receive or assess a disclosure.

Any person who chooses to make a complaint directly to us, rather than to IBAC or the Ombudsman, will have their complaint dealt with under our policies and procedures, unless we are otherwise instructed by IBAC or the Ombudsman.

We do not tolerate improper conduct by employees, Council members of Monash University, or any person performing public services or public functions on behalf of Monash University. We do not tolerate the taking of reprisals against those people who disclose such conduct.

We implement the PD Act, the IBAC Act and the Ombudsman Act by:

- encouraging our employees, students and stakeholders to raise matters of improper conduct and/or detrimental action in reprisal for a protected disclosure directly to IBAC;
- taking steps to support whistleblowers where the identity of the whistleblower is known in any subsequent investigation of a protected disclosure complaint by IBAC or the Ombudsman;
- taking steps to protect whistleblowers against detrimental action taken in reprisal for the making of protected disclosures, where the identity of the whistleblower is known;
- recognising that employees and Council members against whom protected disclosure complaints are made may also need support during any investigation, where their identity is known;
- taking steps to ensure that the identity of the whistleblower, the person who is subject to disclosure and the witnesses are kept confidential, where their identity is known; and
- working constructively and cooperatively with IBAC and the Victorian Ombudsman.

This procedure does not replace existing University grievance or conduct and compliance policies and processes. Generally, activity that is primarily directed at an employee, like harassment or bullying, are personal grievances and fall outside this procedure. Other University procedures are available to deal with such matters.

SCOPE

This procedure should only be followed if an employee, student or member of the public elects to make a disclosure of alleged improper conduct or detrimental action and the disclosure is in accordance with Part 2 of the Protected Disclosure Act.

Employees of Monash University must not engage in any breach of the PD Act, Independent Broad-based Anti-Corruption Commission Act or Ombudsman Act. Any breach will be treated with the utmost seriousness and may result in disciplinary action up to and including termination of employment.
PROCEDURE STATEMENT

1. Making a disclosure to IBAC or the Victorian Ombudsman
   1.1 Any member of the public, student or employee can make a disclosure alleging improper conduct or detrimental action by Monash University or an employee, former employee or Council member. It does not matter if the person engaging in the conduct cannot be identified, or the person making the disclosure has made the same disclosure to another person or body.
   1.2 In order for the whistleblower protections to apply under the applicable legislation, a disclosure alleging improper conduct or detrimental action may only be made to IBAC or the Ombudsman. A person contemplating making a disclosure should refer to IBAC for more information, and see the Checklist for Whistleblowers.
   1.3 Disclosures may be made anonymously, in writing or orally. Written disclosures may be delivered personally, mailed or sent by email to IBAC or the Ombudsman. IBAC and the Ombudsman also have online forms.

2. Receiving and assessing a disclosure
   2.1 Any employee who receives information that may be a protected disclosure should refer the person who gave them that information to the protected disclosure coordinator, or alternatively, to contact IBAC or the Ombudsman directly.
   2.2 If a disclosure is made directly to the protected disclosure coordinator, the protected disclosure coordinator will advise the person making the disclosure of their right to make the disclosure directly to IBAC or the Ombudsman.
   2.3 A disclosure is in accordance with Part 2 of the PD Act if it is made to IBAC or the Ombudsman and satisfies the following criteria, that:
      - a natural person (that is, an individual person rather than a corporation) made the disclosure; and
      - the disclosure relates to conduct of the University, or an employee, a former employee, or a Council member acting in their official capacity; and
      - the alleged conduct concerns:
        - improper conduct; or
        - detrimental action taken against a person in reprisal for making a protected disclosure; and
      - the information shows or tends to show, or the person making a disclosure believes on reasonable grounds that the information shows or tends to show, that Monash University, an employee, former employee or Council member:
        - has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
        - has taken, is taking or proposes to take detrimental action as a public officer or public body in contravention of section 45 of the PD Act.
   2.4 Where IBAC or the Ombudsman advise the person making the disclosure that the matter disclosed is not a protected disclosure complaint, the person may make a complaint under the applicable Monash University policies and procedures.

3. Managing protected disclosures
   3.1 Where IBAC determines the disclosure not to be a protected disclosure complaint, IBAC will notify the whistleblower in writing and may advise the whistleblower to make a complaint directly to us. If IBAC determines the disclosure has been made in accordance with Part 2 of the PD Act, IBAC will notify the whistleblower of its determination and the action IBAC intends to take. IBAC must do this within a reasonable time.
   3.2 Under the PD Act, IBAC may decide not to notify the whistleblower of its decisions if it considers that this action may have adverse consequences such as putting a person's safety at risk or prejudicing an investigation under the IBAC Act.
   3.3 Where IBAC or the Ombudsman investigate a protected disclosure complaint, and the identity of the whistleblower is made known to us, we will consider the appointment of a welfare manager for the whistleblower and other relevant people as required.
   3.4 For further information on the responsibilities of the welfare manager, refer to IBAC’s Guidelines for protected disclosures and welfare management.
   3.5 Where we are made aware by IBAC or the Ombudsman of the identity of a whistleblower and/or the contents of the disclosure, we will keep that information confidential. A welfare manager will not disclose details relating to the disclosure to any person in accordance with the PD Act and with the authorisation of IBAC or the Ombudsman.
3.6 The Acts make it a criminal offence for a person, and in some cases, for us, to:

- take or threaten detrimental action in reprisal because, or in the belief that, the other person or anyone else has made, or intends to make, the disclosure, or where the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure (see Section 6 below, Detrimental Action);
- incite or permit someone else to take or threaten to take detrimental action against the other person, when a protected disclosure is made, has been made or intended to be made, or where the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure (see Section 6 below, Detrimental Action);
- divulge information likely to lead to the identification of the person who made the assessable disclosure, unless written consent from the person is provided in accordance with the PD Act;
- divulge information regarding an assessable disclosure unless it is in accordance with the PD Act;
- obstruct IBAC in performing IBAC's responsibilities under the Act including by attempting to mislead IBAC;
- knowingly provide false information under the PD Act with the intention that it be acted on as a protected disclosure matter, or provide false or misleading information relating to a protected disclosure;
- claim that information is a protected disclosure knowing that it is not; or
- disclose that a matter is with IBAC or the Ombudsman for assessment of investigation.

3.7 A whistleblower may take civil action against a person where detrimental action has been, or may have been taken against them for reprisal against the protected disclosure.

4. Investigating a protected disclosure complaint

4.1 Where IBAC assesses a protected disclosure to be a protected disclosure complaint, it may dismiss the matter, investigate the matter, or refer the matter to the Ombudsman for investigation.

4.2 If IBAC or the Ombudsman investigates a protected disclosure complaint, the Vice Chancellor and/or the protected disclosure coordinator will liaise with IBAC or the Ombudsman as required to:

- comply with all directions of IBAC or the Ombudsman;
- consider the appointment of a welfare manager for the whistleblower, where their identity is known; and
- consider the appointment of a welfare manager for the person who is the subject of the disclosure or a witness in an investigation, where their identity is known.

5. Reporting and managing investigation outcome

5.1 IBAC or the Ombudsman will liaise with us following an investigation into a protected disclosure complaint.

5.2 Any contact between the whistleblower, the person who is the subject of the protected disclosure complaint and/or any witnesses, and us will be under the authorisation and management of IBAC or the Ombudsman. Information will only be disclosed to us and these identified people by IBAC or the Ombudsman in accordance with the PD Act, the IBAC Act and/or the Ombudsman Act and on a case by case basis.

6. Detrimental action

6.1 It is an offence against the PD Act to take or threaten detrimental action against a person in reprisal, because, or in the belief that:

- the other person or anyone else has made, or intends to make, the disclosure; or
- the other person or anyone else has cooperated, or intends to cooperate, with an investigation of the disclosure.

6.2 It is an offence against the PD Act to incite or permit someone else to take or threaten to take detrimental action for the above two reasons.

6.3 Employees of Monash University must not under any circumstances take or threaten to take detrimental action, or incite or permit someone else to take or threaten to take detrimental action, in breach of the PD Act. Any employee who breaches this direction will be subject to disciplinary action up to and including termination of employment.

6.4 A whistleblower who considers detrimental action has been taken against them for the making of their original protected disclosure, may make a further disclosure to IBAC or the Ombudsman. This further disclosure may be assessed as a protected disclosure and investigated separately to the original disclosure.

6.5 If IBAC subsequently determines the matter to be a protected disclosure complaint, IBAC may investigate the matter or refer it to the Ombudsman for investigation as outlined in the PD Act and Ombudsman Act.

6.6 Where concerns of possible detrimental action against the whistleblower or a witness are notified by IBAC or the Ombudsman to us, consideration will be given by the University to ways to protect the whistleblower.
7. Managing Whistleblowers implicated in improper conduct

7.1 Where it is made known to us that a person who makes a disclosure is implicated in misconduct, we will liaise with IBAC and/or the Ombudsman in accordance with the PD Act and IBAC’s guidelines. We acknowledge that the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from their involvement in any improper conduct. Section 42 of the PD Act specifically provides that a person’s liability for their own conduct is not affected by the person’s disclosure of that conduct under the PD Act.

7.2 The protected disclosure coordinator will liaise with IBAC or the Ombudsman as to whether disciplinary or other action can be taken against a whistleblower. Where disciplinary or other action relates to conduct that is the subject of the whistleblower's disclosure, the disciplinary or other action will usually only be taken after the disclosed matter has been appropriately dealt with under the PD Act.

7.3 In all cases where disciplinary or other management action is being contemplated, the Vice-Chancellor and President must be satisfied that it has been clearly demonstrated that the intention to proceed with disciplinary or other management action against the whistleblower is not undertaken for the substantial reason that the person made a protected disclosure (as opposed to the content of the disclosure or other available information).

7.4 The protected disclosure coordinator will document the process including recording the reasons why the disciplinary or other management action is being taken, and the reasons why the action is not in retribution for the making of the protected disclosure. The protected disclosure coordinator will ensure that the whistleblower is advised of the proposed action to be taken, and of any mitigating factors that have been taken into account.

8. Management of the person against whom a disclosure has been made

8.1 We recognise that employees and Council members against whom disclosures are made should also be supported during the handling and investigation of disclosures. This procedure aims to avoid unnecessary harm to the person against whom a disclosure has been made, and gives the individual the appropriate support, particularly as an investigation might exonerate that person from any wrongdoing. Employees who have a complaint or a disclosure made against them may wish to access the University’s Employee Assistance Program.

8.2 We will take steps to protect the confidentiality of the person who is the subject of the disclosure, where known, during the investigation process in accordance with the IBAC’s guidelines and in liaison with IBAC or the Ombudsman. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, and the results of the investigation will be kept confidential by us, subject to specific exceptions contained in this procedure (see Section 9, Confidentiality).

8.3 If IBAC or the Ombudsman investigates a protected disclosure complaint, it will be responsible for providing natural justice to the person who is the subject of the investigation, including that the person:

- is informed as to the substance of the allegations;
- is given the opportunity to answer the allegations before a final decision is made;
- is informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and
- have their response set out fairly in any report.

8.4 We will support a person who is the subject of a disclosure where the allegations contained in a disclosure are, after investigation by IBAC or the Ombudsman unsubstantiated. If the matter has been publicly disclosed, the Vice-Chancellor and President will consider any request by that person to issue a statement of support setting out that the allegations were investigated and found to be unsubstantiated, if such statement can be made subject to confidentiality obligations in the Acts.

9. Confidentiality

9.1 Subject to the exceptions under the PD Act, the confidentiality provisions of the Acts apply as soon as IBAC determines the disclosure is an assessable disclosure. The Acts prohibit disclosure of the content of a disclosure or disclosure of information likely to lead to the identification of a person who made the disclosure.

9.2 It is also an offence to reveal that a disclosure has been referred to the IBAC, and to reveal that the IBAC has determined a disclosure to be a protected disclosure, whether this information is received directly or indirectly.

9.3 Whistleblowers are required to keep disclosures confidential by only discussing the disclosure or related matters with IBAC or the Ombudsman or the protected disclosure coordinator on authorisation of IBAC or the Ombudsman, or officers of IBAC’s Office or the Ombudsman’s Office or other persons authorised by the PD Act. The PD Act allows for exceptions such as for the whistleblower to speak to a legal practitioner for the purpose of obtaining legal advice. The fewer people who know about the protected disclosure, the more likely the identity of the whistleblower can be protected and the whistleblower can be protected from detrimental action.
9.4 If a disclosure is investigated it is often necessary for IBAC or the Ombudsman to interview employees in the area where the suspected wrongdoing occurred. While efforts are made to keep the matter confidential, the conduct of these interviews may result in persons becoming aware of the disclosure, and the whistleblower’s identity, the identity of the person against whom the disclosure is made or forming suspicions and guessing about these matters. It is an offence under the PD Act for any person who becomes aware of the identity of the whistleblower or the content of the disclosure to reveal that information unless the act of revealing the information is exempted under the PD Act.

9.5 If the protected disclosure coordinator is aware of a protected disclosure complaint investigation, the protected disclosure coordinator will manage a confidential and secure filing system for all files in relation to the disclosure. The protected disclosure coordinator will also take all necessary steps to seek to ensure that the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential.

9.6 There are some very limited exceptions to some of the confidentiality provisions protecting the protected disclosure complaint and the identity of the whistleblower under Part 7 of the PD Act. These exceptions apply only to specific persons and types of information, and include:

- the University taking lawful action (including disciplinary action) in relation to the conduct that is the subject of the disclosure;
- where necessary for the purpose of the exercise of functions under the Acts; and
- where necessary for a person to obtain legal advice.

9.7 If in doubt, the information should not be disclosed. It is advisable to check with IBAC or the Ombudsman before disclosing anything at all about the disclosure.

9.8 Section 78 of PD Act states that the Freedom of Information Act does not apply to a document that relates to a protected disclosure, relates to an assessable disclosure or is likely to lead to the identification of a person who made the protected disclosure.

10. Responsibilities

10.1 All employees, students and University council members must comply with the PD Act, the IBAC Act, the Ombudsman Act and this procedure. Any failure to do so may lead to disciplinary action up to and including termination of employment or appointment or, for a student, exclusion from candidature.

10.2 The protected disclosure coordinator has a central role to liaise with IBAC and/or the Ombudsman. In addition, the protected disclosure coordinator will:

- be responsible for ensuring that the University carries out its responsibilities under the Acts and the IBAC Guidelines;
- liaise with IBAC and the Ombudsman in any investigation into a protected disclosure complaint as required by the Acts;
- on the advice of IBAC or the Ombudsman, advise the whistleblower of the progress of an investigation into the disclosed matter;
- seek to ensure that whistleblowers are protected from detrimental action, where their identity is known, and that the culture of the workplace is supportive of protected disclosures being made;
- liaise with the Vice-Chancellor and President of Monash University.

10.3 The welfare manager appointed for the whistleblower will:

- make contact with the whistleblower;
- consider the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment;
- advise the whistleblower of the legislative and administrative protections available to them;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making a disclosure;
- maintain their support for the whistleblower throughout any investigation;
- keep a contemporaneous record of all aspects of the case management of the whistleblower, including all contact and follow-up action; and
- endeavour to ensure that the expectations of the whistleblower are realistic.

10.4 The role of IBAC under the PD Act is to:

- determine whether disclosures are protected disclosure complaints;
- investigate, dismiss or refer matters disclosed in protected disclosure complaints;
- prepare and publish guidelines for the procedures to be followed by the University in relation to the PD and IBAC Acts;
- review the procedures and implementation by the University in relation to the Acts; and
- report findings as required under the Acts.

11. Breach of procedure

11.1 We treat any breach of our policies or procedures seriously. We encourage reporting of concerns about non-compliance and manage compliance in accordance with the applicable Enterprise Agreement or contract terms.
DEFINITIONS

Corrupt conduct

Means

a. conduct of any person that adversely affects the honest performance of:
   ● an employee, or an employee’s function; or
   ● a Council member of the University or its function; or
b. conduct of an employee, Council member or the University that constitutes or involves the dishonest performance of an employee’s or the University’s functions as a public officer or public body; or
c. conduct of a current or former employee or Council member or the University that constitutes or involves knowingly or recklessly breaching public trust; or
d. conduct of a current or former employee or Council member or the University that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or
e. a conspiracy or attempt to engage in any conduct referred to in paragraphs (a) to (d) above;

being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute:

● any offence under the IBAC Act; or
● an attempt to pervert the course of justice; or
● bribery of a public official; or
● perverting the course of justice.

Conduct may be corrupt if all or any part of the conduct occurs outside Victoria, including outside Australia, and the conduct would be ‘corrupt conduct’ if it occurred in Victoria.

Detrimental action

Includes:

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

but does not include management action in relation to an employee whistleblower taken for a substantial reason other than the employee having made a protected disclosure.

For detrimental action to occur, it must be taken, or threatened to be taken by Monash University or a public officer, against the whistleblower or any person in reprisal for the making, intent to make, cooperation or intent to cooperate in relation to a protected disclosure or its investigation. Detrimental action can also occur if a person has incited another person to take detrimental action.

Disclosure

A report made by a person about improper conduct or, detrimental action in reprisal for making a protected disclosure, by public bodies or public officers in accordance with Part 2 of the PD Act. A disclosure may be made in accordance with the PD Act even if it is a complaint made under another Act.

Employee

Individuals employed by Monash University.

IBAC

The Independent Broad-based Anti-corruption Commission.

Improper conduct

Corrupt conduct; or conduct:

● of any person that adversely affects the honest performance of an employee, Council member or the University of an employee or the University’s functions; or
● of an employee, Council member or the University that constitutes or involves the dishonest performance of an employee or the University’s functions; or
● conduct of a current or former employee or Council member or the University that constitutes or involves knowingly or recklessly breaching public trust; or
● of a current or former employee or Council member or the University that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or
● that could constitute a conspiracy or attempt to engage in any conduct referred to in paragraphs (a) to (d) above;
of a current or former employee or Council member or the University in their capacity of a public officer or public body that:

- involves a substantial mismanagement of public resources; or
- involves conduct involving substantial risk to public health or safety; or
- involves conduct involving substantial risk to the environment;

that would, if proved, constitute a criminal offence or reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of an employee or Council member who was, or is, engaged in that conduct.

Protected disclosure

A disclosure that satisfies Part 2 of the PD Act. It includes a disclosure of information by an individual that shows or tends to show, or a disclosure of information that the individual believes on reasonable grounds that the information shows or tends to show, that Monash University, an employee, former employee or Council member;

- has engaged, is engaging or proposes to engage in improper conduct in their capacity as a public officer or public body; or
- has taken, is taking or proposes to take detrimental action as a public officer or public body in contravention of section 45 of the PD Act.

Protected disclosure coordinator

The person at Monash University who is appointed to liaise between Monash University and IBAC and the Ombudsman.

Substantial mismanagement of public resources

IBAC advises that 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’.

Substantial risk to public health, safety or the environment

IBAC advises that 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.

Whistleblower

Any person internal or external to the University who makes a disclosure of alleged improper conduct or detrimental action by the University or an employee or Council member to IBAC in accordance with the PD Act. A whistleblower may be anonymous.

ADMINISTRATION

Parent policy

Integrity and respect

Supporting policies

- Employment conditions
- Equal opportunity
- Ethics Statement
- Fraud and Corruption
- Leave and wellbeing
- Pay, benefits and entitlements
- Probation, performance and promotion
- Recruitment and appointment

Supporting procedures

- Fraud and Corruption: Control
- Fraud and Corruption: Reporting

Supporting documents

- Checklist for Whistleblowers at Monash University
- IBAC supporting material and guidelines on IBAC’s website
- Monash University Enterprise Agreement (Academic and Professional Staff) 2014 – Part H

Legislation mandating compliance

- Independent Broad-based Anti-Corruption Commission Act 2011
- Ombudsman Act 1973
- Protected Disclosure Act 2012

Responsibility for implementation

General Counsel

Approval body