

## PP075 Whistleblowers Procedure

### 1. Purpose

To communicate the process for reporting disclosures of improper conduct or detrimental action by Wodonga Institute of TAFE or its staff members, how these disclosures will be addressed and articulate the protection of a person(s) who make a report.

### 2. Scope

This procedure applies to all staff and Board members of Wodonga TAFE and members of the public.

### 3. Scheduled Review Date

1 November 2014

### 4. References

Whistleblowers Protection Act 2001  
POL08 Whistleblowers Policy  
PC001 Staff Code of Conduct  
PP042 Staff Discipline Procedure

### 5. Definitions

See Wodonga TAFE glossary on StaffNet for current definitions.

For the purposes of this procedure:

**Improper conduct** means conduct that is:

- corrupt
- a substantial mismanagement of public resources
- a substantial risk to public health or safety or
- a substantial risk to environment.

**Corrupt conduct** is defined to mean

- conduct of any person (whether or not a public official) that adversely affects the honest performance of a public officer's or public body's functions
- conduct of a public officer that amounts to the performance of their functions dishonestly or with inappropriate partiality
- conduct of a public officer, former 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
- a conspiracy or attempt to engage in any of the above conduct.

**Detrimental action** is defined as including:

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

**The Institute** means Wodonga Institute of TAFE.

## 6. Reporting disclosures under the Whistleblowers Act 2001

### 6.1 Contact person within Wodonga Institute of TAFE

Protected Disclosure Coordinator  
Mr Leslie Burr  
General Manager - Learning Innovation and Organisational Development  
Phone: 02 6055 6774 (W) 0409 907694 (M)

All correspondence, phone calls and emails from internal or external whistleblowers will be referred to the Protected Disclosure Coordinator (PDC). Contact can be made with the PDC to request a meeting in a discreet location away from the workplace.

### 6.2 Alternative contact persons

A disclosure about improper conduct, corrupt conduct or detrimental action by The Institute or its employees may also be made directly to the Ombudsman.

The Ombudsman Victoria  
Level 9, 459 Collins Street (North Tower)  
MELBOURNE VIC 3000  
Website: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
Email Address: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
Phone: 03 9613 6222  
Toll Free: 1800 806 314 (regional only)  
TTY via the National Relay Service: 133 677 or 1300 555 727 ([www.relayservice.com.au](http://www.relayservice.com.au))  
(a phone solution for people who are deaf or have a hearing or speech impairment)

## 7. Roles and Responsibilities

### Staff Members

Staff members are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All staff members of Wodonga Institute of TAFE have an important role to play in supporting those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure.

### Protected Disclosure Coordinator

The Protected Disclosure Coordinator has a central clearinghouse role in the internal reporting system. He or she will:

- receive all disclosures forwarded from the protected disclosure officers;
- 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 the Ombudsman;
- be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the public body by the Ombudsman;
- be responsible for overseeing and coordinating an investigation where an investigator has been appointed;
- appoint a welfare manager to support the whistleblower and to protect him or her from any reprisals;
- advise the whistleblower 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 whistleblower and the identity of the person who is the subject of the disclosure are kept confidential, and
- liaise with the chief executive officer of the public body

### **Investigator**

The investigator will be responsible for carrying out an internal investigation into a disclosure where the Ombudsman has referred a matter to the public body. An investigator may be a person from within an organisation or a consultant engaged for the purpose.

### **Welfare Manager**

The welfare manager is responsible for looking after the general welfare of the whistleblower. The welfare manager will:

- examine 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 him or her;
- listen and respond to any concerns of harassment, intimidation or victimisation in reprisal for making disclosure, and
- ensure the expectations of the whistleblower are realistic.

## **8. Confidentiality**

The Institute will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring reprisals are not made to a whistleblower.

The Act requires any person who receives information due to the handling or investigation of a protected disclosure, not to disclose that information except in certain limited circumstances. Disclosure of information in breach of section 22 constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6,000) or six months imprisonment or both.

The circumstances in which a person may disclose information obtained about a protected disclosure 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, and
- 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 whistleblower. The Act also prohibits the identification of the person who is the subject of the disclosure in any particulars included in the Annual Report.

The Institute will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the protected disclosure coordinator, the investigator or welfare manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as Whistleblowers Protection Act 2001. All electronic files will be produced and stored on a stand-alone device and be given password protection. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the whistleblower files.

The Institute will not email documents relevant to a whistleblower matter and will ensure all phone calls and meetings are conducted in private.

## 9. Procedure

### Receiving and assessing disclosures

Item	Action/Comment	Responsibility
1.	Disclosure is made to the Protected Disclosure Coordinator.	Staff or member of the public
2.	The disclosure is assessed whether it has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.	Protected Disclosure Coordinator
3.	<p>For the disclosure to be responded to by Wodonga Institute of TAFE it is assessed to ensure it concerns a staff member, member or officer of Wodonga Institute of TAFE. If the disclosure concerns a staff member, officer or member of another public body, the person who has made the disclosure must be advised of the correct person or body to whom the disclosure should be directed. (refer to table in 5.2). If the disclosure has been made anonymously it should be referred to the Ombudsman.</p> <p>The disclosure is assessed to determine if it contains the essential elements of a protected disclosure and satisfy the following criteria:</p> <ul style="list-style-type: none"> <li>• a natural person (that is, an individual person rather than a corporation) made the disclosure</li> <li>• the disclosure relates to conduct of a public body or public officer acting in their official capacity</li> <li>• whether the alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure</li> <li>• the person making a disclosure has reasonable grounds for believing the alleged conduct has occurred.</li> </ul> <p>The disclosure is also assessed to determine if the disclosure is a public interest disclosure.</p> <p>Where a disclosure is assessed to be a protected disclosure, the matter does not need to be dealt with under the Act and the Protected Disclosure Coordinator will decide how the matter should be responded.</p>	Protected Disclosure Coordinator
4.	<p><b>Public interest disclosure</b></p> <p>When a disclosure that has been assessed to be a protected disclosure, it will be determined whether the disclosure amounts to a public interest disclosure. This assessment will be made within 45 days of the receipt of the disclosure. In reaching a conclusion as to whether a protected disclosure is a public interest disclosure, consideration is given as to whether the disclosure shows, or tends to show, that the public officer to whom the disclosure relates:</p> <ul style="list-style-type: none"> <li>• has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a public officer or</li> <li>• has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure.</li> </ul> <p>When concluded that the disclosure amounts to a public interest disclosure, the matter will be:</p> <ol style="list-style-type: none"> <li>1. notified to the person who made the disclosure of that conclusion, and</li> <li>2. referred to the Ombudsman for formal determination as to whether it is indeed a public interest disclosure</li> </ol>	Protected Disclosure Coordinator

Item	Action/Comment	Responsibility
	In either case, the notification and referral will be completed within 14 days of the conclusion being reached by the public body. Notification to the whistleblower is not necessary where the disclosure has been made anonymously.	

**Investigations**

Item	Action/Comment	Responsibility
<b>5.</b>	<p><b>Introduction</b></p> <p>Where the Ombudsman refers a protected disclosure to the Institute for investigation, an investigator will be appointed to carry out the investigation.</p> <p>The objectives of an investigation will be:</p> <ul style="list-style-type: none"> <li>to collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;</li> <li>to consider the information collected and to draw conclusions objectively and impartially;</li> <li>to maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure, and</li> <li>to make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.</li> </ul>	Protected Disclosure Coordinator
<b>6.</b>	<p><b>Terms of reference</b></p> <p>Before commencing an investigation, terms of reference will be drawn up and authorisation obtained for those terms by the Chief Executive Officer.</p> <p>The terms of reference will set a date by which the investigation report is to be concluded and will describe the resources available to the investigator to complete the investigation within the time set.</p> <p>Extension of time can be requested by the investigator and may be approved if reasonable.</p> <p>The terms of reference will require the investigator to make regular reports to the protected disclosure coordinator who, in turn, is to keep the Ombudsman informed of general progress.</p>	Protected Disclosure Coordinator  Protected Disclosure Coordinator and investigator
<b>7.</b>	<p><b>Investigation plan</b></p> <p>An investigation plan is prepared for approval by the Protected Disclosure Coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:</p> <ul style="list-style-type: none"> <li>What is being alleged?</li> <li>What are the possible findings or offences?</li> <li>What are the facts in issue?</li> <li>How is the inquiry to be conducted?</li> <li>What resources are required?</li> </ul> <p>At the commencement of the investigation, the whistleblower should be:</p> <ul style="list-style-type: none"> <li>notified by the investigator that he or she has been appointed to conduct the investigation;</li> <li>asked to clarify any matters, and</li> <li>asked to provide any additional material he or she might have.</li> </ul>	Investigator

Item	Action/Comment	Responsibility
	The investigator will be sensitive to the whistleblower's possible fear of reprisals and will be aware of the statutory protections provided to the whistleblower.	
<b>8.</b>	<p><b>Natural justice</b></p> <p>The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision maker. Maintaining procedural fairness protects the rights of individuals and enhances public confidence in the process.</p> <p>The Institute will have regard to the following issues in ensuring procedural fairness:</p> <ul style="list-style-type: none"> <li>• the person who is the subject of the disclosure is entitled to know the allegations made against him or her and must be advised of the allegation as soon as the disclosure is received or the investigation has commenced;</li> <li>• 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;</li> <li>• all relevant parties to a matter should be heard and all submissions should be considered;</li> <li>• a decision should not be made until all reasonable inquiries have been made;</li> <li>• the investigator or any decision maker should not have a personal or direct interest in the matter being investigated;</li> <li>• all proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process, and</li> <li>• the investigator must be impartial in assessing the credibility of the whistleblowers and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.</li> </ul>	Investigator
<b>9.</b>	<p><b>Conduct of the investigation</b></p> <p>Contemporaneous notes will be made of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and all reasonable steps taken to protect the identity of the whistleblower. Where disclosure of the identity of the whistleblower cannot be avoided due to the nature of the allegations, the whistleblower will be warned, along with the Welfare Manager, of this probability.</p> <p>Discretion is available to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.</p>	Investigator
<b>10.</b>	<p><b>Referral of an investigation to the Ombudsman</b></p> <p>A decision will be made regarding the referral of an investigation to the Ombudsman where, on the advice of the investigator:</p> <ul style="list-style-type: none"> <li>• the investigation is being obstructed by, for example, the non-cooperation of key witnesses or</li> <li>• the investigation has revealed conduct that may constitute a criminal offence.</li> </ul>	Protected Disclosure Coordinator

Item	Action/Comment	Responsibility
11.	<p><b>Reporting requirements</b></p> <p>The whistleblower is to be kept regularly informed concerning the handling of a protected disclosure and an investigation.</p> <p>A report will be made to the Ombudsman about the progress of an investigation.</p> <p>Where the Ombudsman or the whistleblower requests information about the progress of an investigation, that information will be provided within 28 days of the date of the request.</p>	Protected Disclosure Coordinator
12.	<p><b>Investigator's final report</b></p> <p>At the conclusion of the investigation, a written report is submitted of the findings to the Protected Disclosure Coordinator. The report will contain:</p> <ul style="list-style-type: none"> <li>• the allegation(s);</li> <li>• an account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;</li> <li>• the conclusions reached and the basis for them, and</li> <li>• any recommendations arising from the conclusions.</li> </ul> <p>Where it is found that the conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:</p> <ul style="list-style-type: none"> <li>• the steps that need to be taken by the Institute to prevent the conduct from continuing or occurring in the future, and</li> <li>• any action that should be taken by the Institute to remedy any harm or loss arising from the conduct. This action may include bringing disciplinary proceedings against the person responsible for the conduct and referring the matter to an appropriate authority for further consideration.</li> </ul> <p>The report will be accompanied by:</p> <ul style="list-style-type: none"> <li>• the transcript or other record of any oral evidence taken, including tape recordings, and</li> <li>• all documents, statements or other exhibits received by the officer and accepted as evidence during the course of the investigation.</li> </ul> <p>Where the investigator's report is to include an adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.</p> <p>The report will not disclose particulars likely to lead to the identification of the whistleblower.</p>	Investigator
13.	<p><b>Action to be taken</b></p> <p>If satisfied that the investigation has found that the disclosed conduct has occurred, the required action that must be taken to prevent the conduct from continuing or occurring in the future will be recommended to the Chief Executive Officer.</p> <p>Any additional recommendations for action to be taken to remedy any harm or loss arising from the conduct may also be made to the Chief Executive Officer.</p> <p>A written report will be provided to the Minister of the relevant Government</p>	Protected Disclosure Coordinator



Item	Action/Comment	Responsibility
	<ul style="list-style-type: none"> <li>• advise the whistleblower of his or her rights under the Act, and</li> <li>• advise the Protected Disclosure Coordinator or Chief Executive Officer of the detrimental action.</li> </ul> <p>The taking of detrimental action in reprisal for the making of a disclosure can be an offence against the Act as well as grounds for making a further disclosure.</p> <p>Where such detrimental action is reported, the report will be assessed as a new disclosure under the Act. Where satisfied that the disclosure is a public interest disclosure, it will be referred to the Ombudsman. If the Ombudsman subsequently determines the matter to be a public interest disclosure, the Ombudsman may investigate the matter or refer it to another body for investigation as outlined in the Act</p>	Protected Disclosure Coordinator
17.	<p><b>Whistleblowers implicated in improper conduct</b></p> <p>Where a person who makes a disclosure is implicated in misconduct, the Institute will handle the disclosure and protect the whistleblower from reprisals in accordance with the Act, the Ombudsman’s guidelines and these procedures.</p> <p>The Institute acknowledges the act of whistleblowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in improper conduct. Section 17 of the Act specifically provides that a person’s liability for his or her own conduct is not affected by the person’s disclosure of that conduct under the Act. However, in some circumstances, an admission may be a mitigating factor when considering disciplinary or other action.</p> <p>The Chief Executive Officer will make the final decision on the advice of the Protected Disclosure Coordinator as to whether disciplinary or other action will 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 only be taken after the disclosed matter has been appropriately dealt with.</p> <p>In all cases where disciplinary or other action is being contemplated, the Chief Executive Officer must be satisfied that it has been clearly demonstrated that:</p> <ul style="list-style-type: none"> <li>• the intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information);</li> <li>• there are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances, and</li> <li>• there are good and sufficient grounds that justify exercising any discretion to Institute disciplinary action or other action.</li> </ul> <p>The process will be thoroughly documented including recording the reasons why the disciplinary action or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure.</p> <p>The Whistleblower will be clearly advised of the proposed action to be taken, and of any mitigating factors that have been taken into account.</p>	<p>Chief Executive Officer/Protected Disclosure Officer</p> <p>Chief Executive Officer</p> <p>Protected Disclosure Coordinator</p>



Item	Action/Comment	Responsibility
	<ul style="list-style-type: none"> <li>the number and types of disclosed matters that the public body has declined to investigate;</li> <li>the number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation, and</li> <li>any recommendations made by the Ombudsman that relate to the public body.</li> </ul>	

## 10. Record, Retention and Archiving

Record Title	Retention Requirement	Location of Storage/Archive/Other Requirements
<i>Whistleblowers Protection Act 2001</i> Files (printed and electronic material)	PROS 07/01, class 10.6.1	Permanent – retain as State Archives
Whistleblowers Register	PROS 07/01, class 10.6.1	Permanent – retain as State Archives

## 11. Appendix

### Appendix 1: Examples of Improper Conduct, Corrupt Conduct and Detrimental Action

## 12. Record of Revision

Date	Summary of change

## Appendix 1: Examples of Improper Conduct, Corrupt Conduct and Detrimental Action

(Source: Whistleblowers protection Act 2001 Ombudsman's Guidelines, August 2009)

### Examples of Improper Conduct

- To avoid closure of a town's only industry, an environmental health officer ignores or conceals evidence of illegal dumping of waste.
- An agricultural officer delays or declines imposing quarantine to allow a financially distressed farmer to sell diseased stock.
- A building inspector tolerates poor practices and structural defects in the work of a leading local builder.

### Examples of Corrupt Conduct

- A public officer takes a bribe or receives a payment other than his or her wages or salary in exchange for the discharge of a public duty.
- A public officer favours unmeritorious applications for jobs or permits by friends and relatives.
- A public officer sells confidential information.

### Examples of Detrimental Action

- A public body refuses a deserved promotion of a person who makes a disclosure.
- A public body demotes, transfers, isolates in the workplace or changes the duties of a whistleblower due to the making of a disclosure.
- A person threatens, abuses or carries out other forms of harassment directly or indirectly against the whistleblower or his or her family or friends.
- A public body discriminates against the whistleblower or his or her family and associates in subsequent applications for jobs, permits or tenders.