

**WHISTLEBLOWERS PROTECTION ACT 2001  
DETAILED PROCEDURES**

**LA TROBE UNIVERSITY**

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## **1. STATEMENT OF SUPPORT TO WHISTLEBLOWERS**

The University is committed to the aims and objectives of the *Whistleblowers Protection Act 2001* (the Act). It does not tolerate improper conduct by its staff or Council members, nor the taking of reprisals against those who come forward to disclose such conduct.

The University recognises the value of transparency and accountability in its administrative and management practices, and supports the making of disclosures that reveal corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving a substantial risk to public health and safety or the environment.

The University will take all reasonable steps to protect people who make such disclosures from any detrimental action in reprisal for making the disclosure. It will also afford natural justice to the person who is the subject of the disclosure.

## **2. PURPOSE OF THESE PROCEDURES**

These procedures establish a system for reporting disclosures of improper conduct or detrimental action by the University, its staff or members of Council. The system enables such disclosures to be made to the nominated protected disclosure officer and coordinator. Disclosures may be made by staff, students, Council members or by members of the public.

These procedures are designed to complement normal communication channels between supervisors and staff of the University. Staff of the University are encouraged to continue to raise appropriate matters at any time with their supervisors. As an alternative, staff members may make a disclosure of improper conduct or detrimental action under the Act in accordance with these procedures.

## **3. OBJECTS OF THE ACT**

The *Whistleblowers Protection Act 2001* commenced operation on 1 January 2002. The purpose of the Act is to encourage and facilitate the making of disclosures of improper conduct by public officers and public bodies. The Act provides protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and rectifying action to be taken.

## **4. DEFINITIONS OF KEY TERMS**

Three key concepts in the reporting system are improper conduct, corrupt conduct and detrimental action. Definitions of these terms are set out below.

### **4.1 *Improper conduct***

A disclosure may be made about improper conduct by the University, its staff or Council members. Improper conduct means conduct that is corrupt, a substantial mismanagement of public resources, or conduct involving substantial risk to public health or safety or to

the environment. The conduct must be serious enough to constitute, if proved, a criminal offence or reasonable grounds for dismissal.

***Examples***

*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.*

See 4.2 below for specific examples of corrupt conduct.

**4.2 Corrupt conduct**

Corrupt conduct means:

- Conduct of any staff or Council member that adversely affects the honest performance of a staff or Council member or the University's functions;
- The performance of a staff or Council member's functions dishonestly or with inappropriate partiality;
- Conduct of a staff or Council member, former staff or Council member or the University that amounts to a breach of public trust;
- Conduct of a staff or Council member, former staff or Council member or the University 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 the above conduct.

***Examples***

*A staff or Council member 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 staff or Council member favours unmeritorious applications for jobs or student places by friends and relatives.*

*A staff or Council member sells confidential information.*

**4.3 Detrimental action**

The Act makes it an offence for a person to take detrimental action against a person in reprisal for a protected disclosure. Detrimental action includes:

- 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.

### ***Examples***

*The University refuses a deserved promotion of a person who makes a disclosure.*

*The University 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.*

*The University discriminates against the whistleblower or his or her family and associates in subsequent applications for jobs, permits or tenders.*

## **5. THE REPORTING SYSTEM**

### ***5.1 Contact persons within the University***

Disclosures of improper conduct or detrimental action by the University or its staff or Council members, may be made to the University's Protected Disclosure Officer and Coordinator:

Mr Cliff Picton, University Ombudsman  
La Trobe University Bundoora Victoria 3086  
Tel: (03) 9479 1897  
Fax: (03) 9479 3897

All correspondence, phone calls and e-mails from internal or external whistleblowers will be referred to the University Ombudsman.

Where a person is contemplating making a disclosure and is concerned about approaching the University Ombudsman in the workplace, he or she can call the University Ombudsman and request a meeting in a discreet location away from the workplace.

### ***5.2 Alternative contact persons***

A disclosure about improper conduct or detrimental action by the University or its staff or Council members may also be made directly to the Victorian Ombudsman:

Ombudsman Victoria  
Level 9, 459 Collins Street (North Tower)  
Melbourne Victoria 3000  
(DX 210174)  
Internet: [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)  
E-mail: [ombudvic@ombudsman.vic.gov.au](mailto:ombudvic@ombudsman.vic.gov.au)  
Tel: 9613 6222  
Toll Free: 1800 806 314  
Ombudsman: Dr George Brouwer

## **6. ROLES AND RESPONSIBILITIES**

### **6.1 *Staff, Council Members and Students***

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

All staff, Council members and students of the University 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.

### **6.2 *Protected Disclosure Officer and Coordinator***

The Protected Disclosure Officer and Coordinator 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 whistleblowers);
- Receive all phone calls, e-mails and letters from members of the public or staff or Council members seeking to make a disclosure;
- Commit to writing any disclosure made orally;
- Impartially assess the allegation and determine whether it is a disclosure made in accordance with Part 2 of the Act (that is, a protected disclosure );
- 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;
- Act as a central clearinghouse role in the internal reporting system;
- Impartially assess each disclosure to determine whether it is a public interest disclosure;
- Refer all public interest disclosures to the Victorian Ombudsman;
- Be responsible for carrying out, or appointing an investigator to carry out, an investigation referred to the University by the Victorian Ombudsman;
- Be responsible for overseeing and coordinating an investigation where another person has been appointed to carry out an investigation;
- 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 Vice-Chancellor of the University.

### **6.3 Investigator**

The investigator will be responsible for carrying out an internal investigation into a disclosure where the Victorian Ombudsman has referred a matter to the University. An investigator may be the University's Protected Disclosure Officer and Coordinator or another person from within University or a consultant appointed for that purpose by the University's Protected Disclosure Officer and Coordinator.

### **6.4 Welfare manager**

The University's Welfare Manager is:

Dr Kerry Ferguson, Pro-Vice-Chancellor (Equity and Student Services)  
La Trobe University Bundoora Victoria 3086  
Tel: (03) 9479 3523  
Fax: (03) 9479 3652

Dr Ferguson may appoint another person to undertake the role of Welfare Manager if appropriate in any particular case.

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 a disclosure; and
- Ensure the expectations of the whistleblower are realistic.

## **7. CONFIDENTIALITY**

The University will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring reprisals are not made against 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 of the Act constitutes an offence that is punishable by a maximum fine of 60 penalty units (\$6000) 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 University under the Act;
- When making a report or recommendation under the Act;
- When publishing statistics in the annual report of the University; 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 an annual report.

The University will ensure all files, whether paper or electronic, are kept in a secure room and can only be accessed by the Protected Disclosure Officer and Coordinator, the Investigator or Welfare Manager (in relation to welfare matters). All printed material will be kept in files that are clearly marked as a Whistleblower Protection Act matter, and warn of the criminal penalties that apply to any unauthorised divulging of information concerning a protected disclosure. All electronic files will be produced and stored on a stand-alone computer and be given password protection. Backup files will be kept on floppy disk or other suitable removable medium. All materials relevant to an investigation, such as tapes from interviews, will also be stored securely with the whistleblower files.

The University will not e-mail documents relevant to a whistleblower matter and will ensure all phone calls and meetings are conducted in private.

## **8. COLLATING AND PUBLISHING STATISTICS**

The University's Protected Disclosure Officer and Coordinator will establish a secure register to record the information required to be published in the annual report, and to generally keep account of the status of whistleblower disclosures. The register will be confidential and will not record any information that may identify the whistleblower.

The register will contain the following information:

- The number and types of disclosures made to the University during the year;
- The number of disclosures referred to the Victorian Ombudsman for determination as to whether they are public interest disclosures;
- The number and types of disclosed matters referred to the University by the Victorian Ombudsman for investigation;
- The number and types of disclosures referred by the University to the Victorian Ombudsman for investigation;
- The number and types of investigations taken over from the University by the Victorian Ombudsman;
- The number of requests made by a whistleblower to the Victorian Ombudsman to take over an investigation by the University;
- The number and types of disclosed matters that the University has declined to investigate;
- The number and types of disclosed matters that were substantiated upon investigation and the action taken on completion of the investigation; and
- Any recommendations made by the Victorian Ombudsman that relate to the University.

## **9. RECEIVING AND ASSESSING DISCLOSURES**

### ***9.1 Has the disclosure been made in accordance with Part 2 of the Act?***

Where a disclosure has been received by the University's Protected Disclosure Officer and Coordinator, he or she will assess whether the disclosure has been made in accordance with Part 2 of the Act and is, therefore, a protected disclosure.

### ***9.2 Has the disclosure been made to the appropriate person?***

For the disclosure to be responded to by the University, it must concern a staff member or Council member of the University. If the disclosure concerns an employee, 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. If the disclosure has been made anonymously, it should be referred to the Victorian Ombudsman.

### ***9.3 Does the disclosure contain the essential elements of a protected disclosure?***

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

- Did a natural person (that is, an individual person rather than a corporation) make the disclosure?
- Does the disclosure relate to conduct of the University or a staff or Council member of the University acting in their official capacity?
- Is the alleged conduct either improper conduct or detrimental action taken against a person in reprisal for making a protected disclosure?
- Does the person making a disclosure have reasonable grounds for believing the alleged conduct has occurred?

Where a disclosure is assessed to be a protected disclosure the University's Protected Disclosure Officer and Coordinator will determine whether the disclosure is a public interest disclosure.

Where a disclosure is assessed not to be a protected disclosure, the matter does not need to be dealt with under the Act. The University's Protected Disclosure Officer and Coordinator will decide how the matter should be responded to.

### ***9.4 Is the disclosure a public interest disclosure?***

Where the University's Protected Disclosure Officer and Coordinator has received a disclosure that has been assessed to be a protected disclosure, he or she will determine 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, the University's Protected Disclosure Officer and Coordinator will consider whether the disclosure **shows, or tends to show**, that the staff member or Council member of the University to whom the disclosure relates:

- Has engaged, is engaging or proposes to engage in improper conduct in his or her capacity as a member of staff or Council; or
- Has taken, is taking or proposes to take detrimental action in reprisal for the making of the protected disclosure.

Where the University's Protected Disclosure Officer and Coordinator concludes that the disclosure amounts to a public interest disclosure, he or she will:

1. Notify the person who made the disclosure of that conclusion; and
2. Refer the disclosure to the Victorian Ombudsman for formal determination as to whether it is indeed a public interest disclosure.

Where the University's Protected Disclosure Officer and Coordinator concludes that the disclosure is not a public interest disclosure, he or she will:

1. Notify the person who made the disclosure of that conclusion; and
2. Advise that person that he or she may request the University to refer the disclosure to the Victorian Ombudsman for a formal determination as to whether the disclosure is a public interest disclosure, and that this request must be made within 28 days of the notification.

In either case, the University's Protected Disclosure Officer and Coordinator will make the notification and the referral within 14 days of the conclusion being reached by the University. Notification to the whistleblower is not necessary where the disclosure has been made anonymously.

## **10. INVESTIGATIONS**

### ***10.1 Introduction***

Where the Victorian Ombudsman refers a protected disclosure to the University for investigation, the University's Protected Disclosure Officer and Coordinator will either investigate the protected disclosure or appoint an investigator to carry out the investigation.

The objectives of an investigation will be:

- To collate information relating to the allegation as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment;
- To consider the information collected and to draw conclusions objectively and impartially;
- To maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure; and
- To make recommendations arising from the conclusions drawn concerning remedial or other appropriate action.

## ***10.2 Terms of reference***

Before commencing an investigation, the University's Protected Disclosure Officer and Coordinator will draw up terms of reference and obtain authorisation for those terms by the Vice-Chancellor of the University. 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. The Vice-Chancellor may approve, if reasonable, an extension of time requested by the investigator. The terms of reference will require:

- The Investigator to make regular reports to the University's Protected Disclosure Officer and Coordinator if he or she is not the investigator;
- The University's Protected Disclosure Officer and Coordinator to keep the Victorian Ombudsman informed of general progress of the investigation.

## ***10.3 Investigation plan***

The investigator will prepare an investigation plan. Where the investigator is not the University's Protected Disclosure Officer and Coordinator, the plan must be approved by the University's Protected Disclosure Officer and Coordinator. The plan will list the issues to be substantiated and describe the avenue of inquiry. It will address the following issues:

- What is being alleged?
- What are the possible findings or offences?
- What are the facts in issue?
- How is the inquiry to be conducted?
- What resources are required?

At the commencement of the investigation, the whistleblower should be:

- Notified by the investigator that he or she has been appointed to conduct the investigation;
- Asked to clarify any matters; and
- Asked to provide any additional material he or she might have.

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.

## ***10.4 Natural justice***

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.

The University will have regard to the following issues in ensuring procedural fairness:

- 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 whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

#### ***10.5. Conduct of the investigation***

The investigator will make contemporaneous notes 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 the investigator will take all reasonable steps 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 investigator will warn the whistleblower and the Welfare Manager of this probability.

It is in the discretion of the investigator 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.

#### ***10.6 Referral of an investigation to the Victorian Ombudsman***

The University's Protected Disclosure Officer and Coordinator will make a decision regarding the referral of an investigation to the Victorian Ombudsman where, on the advice of the investigator or otherwise:

- The investigation is being obstructed by, for example, the non-cooperation of key witnesses; or
- The investigation has revealed conduct that may constitute a criminal offence.

#### ***10.7 Reporting requirements***

The University's Protected Disclosure Officer and Coordinator will ensure the whistleblower is kept regularly informed concerning the handling of a protected disclosure and an investigation.

The University's Protected Disclosure Officer and Coordinator will report to the Victorian Ombudsman about the progress of an investigation.

Where the Victorian 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.

## **11. ACTION TAKEN AFTER AN INVESTIGATION**

### ***11.1 Investigator's final report***

At the conclusion of an investigation conducted by a person other than the University's Protected Disclosure Officer and Coordinator, the investigator will submit a written report of his or her findings to the University's Protected Disclosure Officer and Coordinator. The report will contain:

- The allegation/s;
- An account of all relevant information received and, if the investigator has rejected evidence as being unreliable, the reasons for this opinion being formed;
- The conclusions reached and the basis for them; and
- Any recommendations arising from the conclusions.

Where an investigation has been conducted by the University's Protected Disclosure Officer and Coordinator, he or she will prepare the report.

Where the investigator has found that the conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:

- The steps that need to be taken by the University to prevent the conduct from continuing or occurring in the future; and
- Any action that should be taken by the University 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.

The investigator's report will be accompanied by:

- The transcript or other record of any oral evidence taken, including tape recordings; and
- All documents, statements or other exhibits received by the investigator and accepted as evidence during the course of the investigation.

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. The report will not disclose particulars likely to lead to the identification of the whistleblower.

### ***11.2 Action to be taken***

If the University's Protected Disclosure Officer and Coordinator is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the Vice-Chancellor the action that must be taken to prevent the conduct from continuing or occurring in the future. The University's Protected Disclosure Officer

and Coordinator may also recommend that action be taken to remedy any harm or loss arising from the conduct.

The University's Protected Disclosure Officer and Coordinator will provide a written report to the Minister responsible for the La Trobe University Act 1964, the Victorian Ombudsman, the Vice-Chancellor and the whistleblower setting out the findings of the investigation and any remedial steps taken.

Where the investigation concludes that the disclosed conduct did not occur, the University's Protected Disclosure Officer and Coordinator will report these findings to the Victorian Ombudsman and to the whistleblower.

## **12. MANAGING THE WELFARE OF THE WHISTLEBLOWER**

### ***12.1 Commitment to protecting whistleblowers***

The University is committed to the protection of genuine whistleblowers against detrimental action taken in reprisal for the making of protected disclosures. The University's Protected Disclosure Officer and Coordinator is responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Welfare Manager will assist all whistleblowers that have made a protected disclosure. The Welfare Manager will:

- Examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and, where the whistleblower is a staff member, 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 a disclosure;
- Keep a contemporaneous record of all aspects of the case management of the whistleblower including all contact and follow-up action; and
- Ensure the expectations of the whistleblower are realistic.

All staff and Council members will be advised that it is an offence for a person to take detrimental action in reprisal for a protected disclosure. The maximum penalty is a fine of 240 penalty units (\$24,000) or two years' imprisonment or both. The taking of detrimental action in breach of this provision can also be grounds for making a disclosure under the Act and can result in an investigation.

Detrimental action includes:

- 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).

## ***12.2 Keeping the whistleblower informed***

The University's Protected Disclosure Officer and Coordinator will ensure the whistleblower is kept informed of action taken in relation to his or her disclosure, and the time frames that apply. The whistleblower will be informed of the objectives of an investigation, the findings of an investigation, and the steps taken by the University to address any improper conduct that has been found to have occurred. The whistleblower will be given reasons for decisions made by the University in relation to a protected disclosure. All communication with the whistleblower will be in plain English.

## ***12.3 Occurrence of detrimental action***

If a whistleblower reports an incident of harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the disclosure, the Welfare Manager will:

- Record details of the incident;
- Advise the whistleblower of his or her rights under the Act; and
- Advise the University's Protected Disclosure Officer and Coordinator and the Vice-Chancellor of the detrimental action.

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. Where such detrimental action is reported, the University's Protected Disclosure Officer and Coordinator will assess the report as a new disclosure under the Act. Where the University's Protected Disclosure Officer and Coordinator is satisfied that the disclosure is a public interest disclosure, he or she will refer it to the Victorian Ombudsman. If the Victorian Ombudsman subsequently determines the matter to be a public interest disclosure, the Victorian Ombudsman may investigate the matter or refer it to another body for investigation as outlined in the Act.

## ***12.4 Whistleblowers implicated in improper conduct***

Where a person who makes a disclosure is implicated in misconduct, the University will handle the disclosure and protect the whistleblower from reprisals in accordance with the Act, the Victorian Ombudsman's guidelines and these procedures. The University acknowledges that 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.

The Vice-Chancellor will make the final decision on the advice of the University's Protected Disclosure Officer and 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. In

all cases where disciplinary or other action is being contemplated, the Vice-Chancellor must be satisfied that it has been clearly demonstrated that:

- 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);
- There are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances; and
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The University's Protected Disclosure Officer and Coordinator will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The University's Protected Disclosure Officer and Coordinator will clearly advise the whistleblower of the proposed action to be taken, and of any mitigating factors that have been taken into account.

### **13. MANAGEMENT OF THE PERSON AGAINST WHOM A DISCLOSURE HAS BEEN MADE**

The University recognises that staff or Council members against whom disclosures are made must also be supported during the handling and investigation of disclosures. The University will take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure will remain confidential.

The University's Protected Disclosure Officer and Coordinator will ensure the person who is the subject of any disclosure investigated by or on behalf of the University is:

- Informed as to the substance of the allegations;
- Given the opportunity to answer the allegations before a final decision is made;
- Informed as to the substance of any adverse comment that may be included in any report arising from the investigation; and has
- His or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the University's Protected Disclosure Officer and Coordinator will formally advise the person who is the subject of the disclosure of the outcome of the investigation.

The University will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the Vice-Chancellor will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

#### **14. CRIMINAL OFFENCES**

The University will ensure persons appointed to handle protected disclosures and all other staff and Council members are aware of the following offences created by the Act:

1. It is an offence for a person to take detrimental action against a person in reprisal for a protected disclosure being made. The Act provides a maximum penalty of a fine of 240 penalty units (\$24,000) or two years' imprisonment or both.
2. 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. The Act provides a maximum penalty of 60 penalty units (\$6,000) or six months' imprisonment or both.
3. It is an offence for a person to obstruct the Victorian Ombudsman in performing his or her responsibilities under the Act. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years' imprisonment or both.
4. It is an offence for a person to knowingly provide false information under the Act with the intention that it be acted on as a disclosed matter. The Act provides a maximum penalty of 240 penalty units (\$24,000) or two years' imprisonment or both.

#### **15. REVIEW**

These procedures will be reviewed annually to ensure they meet the objectives of the Act and accord with the Victorian Ombudsman's guidelines.

*Approved by Council Executive Committee on 15 May 2002*

*Updated 25 October 2006 (contact details of Protected Disclosure Officer and Coordinator, Ombudsman Victoria and Welfare Manager)*