

Improper Conduct

1.0 Policy Statement

As a public sector entity, integrity is a key cornerstone of Bendigo Kangan Institute's (BKI) operations. Maintaining integrity and ensuring high levels of public trust and confidence is critical to the ethical and proper performance of the institute. At BKI, we recognise that the community has a legitimate expectation that BKI's workforce and those engaged to undertake work on behalf of BKI, act legally, ethically and at all times, in the public interest.

BKI acknowledges it can be stressful and not an easy decision to speak up about suspected improper conduct. We support integrity by encouraging a 'Speak Up' culture and thank students, employees, contractors and members of the public for raising any concerns about suspected improper conduct.

BKI does not tolerate improper conduct or action being taken against those who speak up against improper conduct.

This policy reflects BKI's obligations under the *Public Interest Disclosure Act 2012 (the PID Act)* and the *Independent Broad-based Anti-corruption Commission Act 2011 (the IBAC Act)*. BKI is committed to the aims and intentions of the PID Act and IBAC Act.

2.0 Policy Purpose

This policy forms part of BKI's *Integrity Framework* and is developed to:

- encourage and facilitate disclosures of improper conduct about BKI, its employees and contractors
- encourage and facilitate disclosures of action taken against people who speak up about improper conduct or assist an associated investigation
- facilitate the protection of people who speak up about improper conduct or who have action taken against them for doing so
- ensure allegations of improper conduct are properly investigated
- provide for the confidentiality of disclosures and the identity of those who disclose improper conduct
- facilitate the proper notification of allegations of improper conduct to IBAC.

2.1 Scope

This policy and procedure covers reports and disclosure of improper and corrupt conduct about BKI, its employees and contractors. It constitutes BKI's procedures for the purposes of section 58 of the PID Act and its contents include:

3.0 What is 'improper conduct'?

3.1 Why report suspected improper conduct?

4.0 What is a public interest disclosure?

4.1 Who can make a public interest disclosure?

5.0 The role of IBAC

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This policy does not cover administrative student complaints and employee grievance complaints. If you want to make a complaint or provide feedback that is not about improper conduct you can:

- Use BKI's Student Complaints and Grievance Policy. Information about this is available [here](#).
- Use BKI's employee Grievance Policy, available on BKI's intranet.
- Contact the [Victorian Ombudsman](#).¹

3.0 What is 'improper conduct'?

Conduct that may be improper conduct varies in degrees and seriousness. It can include serious corrupt conduct of a public officer or public body that is punishable by imprisonment of five years or more. It can also include dishonest conduct, such as misusing a corporate credit card, or conduct that is a substantial risk to public health or safety, such as ignoring safety problems with public infrastructure.²

Detrimental action is also considered to be improper conduct. Detrimental action occurs when a person takes, threatens to take or incites others to take action that is intimidating, harassing or adverse to someone on the belief they have or will make a disclosure or assist in the investigation of a disclosure.³

Taking detrimental action against someone is a criminal offence under the PID Act.

3.1 Why report suspected improper conduct?

Improper can:

- lead to public funding being diverted away from supports and services intended for the Victorian community
- waste public money and resources
- undermine the community's trust in and respect for government
- if left unchecked, support ongoing criminal activity; and
- result in spending significant public funds to investigate a bigger problem later.

There is no consequence for reporting suspected improper conduct. If you report suspicious conduct in good faith and the conduct can be reasonably explained, no action will be taken against you. Your report will be looked into seriously and if proven, appropriate action will be taken. Reporting improper conduct can also lead to improvements in policies and procedures, preventing similar conduct from arising again in future.

¹ The Victorian Ombudsman can receive complaints about the administrative decisions and actions of BKI, including delays in making decisions or taking actions. It generally expects that a person with a complaint makes their complaint to the agency subject to the complaint first.

² *Public Interest Disclosure Act 2012* (Vic), s 4.

³ *Public Interest Disclosure Act 2012* (Vic), s 43(1). Action is not detrimental action if it constitutes reasonable management action, provided the action is not taken against someone *because* they made a disclosure or are assisting in the investigation of one.

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4.0 What is a public interest disclosure complaint?

A public interest disclosure complaint:

- is a report about 'improper conduct' by a public officer or body (or a person trying to influence a public officer or body)
- that has been determined by the Independent Broad-based Anti-corruption Commission (IBAC) to be a public interest disclosure complaint.

A disclosure can relate to conduct or action that has already taken place, may be occurring now, or may happen in the future.

4.1 Who can make a public interest disclosure?

Anybody, including a student, employee, contractor or member of the public can make a disclosure. A disclosure may be made:

- by a group of individuals
- using the discloser's name, made anonymously or with a pseudonym.

Disclosures cannot be made by a company or a business.

5.0 The role of IBAC

BKI is a Victorian Public Body subject to the Act, **but it is not authorised to receive a public interest disclosure (PID)**. This means any disclosure about BKI, its employees or contractors must be made direct to IBAC.

IBAC is responsible for determining whether a complaint is a public interest disclosure and if a person requires protection.

IBAC can choose to:

- decline to look at a complaint
- investigate a public interest disclosure itself
- refer a complaint (whether determined to be a public interest disclosure or not) to the Victorian Ombudsman for consideration
- refer the complaint to BKI for further consideration.

IBAC will only notify BKI of a disclosure about BKI if it decides it is necessary. If IBAC does notify BKI of the identity of a discloser, or someone cooperating with an investigation, BKI must keep this information confidential and is responsible for providing that person with reasonable welfare support.

Read about the role of BKI's Public Interest Disclosure Coordinators and the support available to reporters to assist them in making a disclosure below under section **10.0**.

6.0 What protections apply?

If IBAC assesses a report / disclosure to be a public interest disclosure:

- the identity of the discloser will be protected
- the discloser's family, friends and colleagues will be protected from being fired or

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- bullied for having made a complaint
- the discloser will receive protection from defamation and detrimental action in reprisal for making a public interest disclosure
- the discloser will be immune from:
 - civil or criminal liability as well as administrative action (including disciplinary action) for making a disclosure
 - consequences associated with breaching any obligations made by oaths or obligations of confidentiality or the restriction on disclosure of information.

7.0 Confidentiality

Confidentiality requirements apply to reports made to IBAC. This means that people who disclose suspected improper conduct to IBAC or are involved in the investigation of a public interest complaint may not be able to share information about that conduct or the investigation with other people.

In some cases, it can be a criminal offence to disclose information about a public interest disclosure complaint. Exceptions apply, allowing disclosers, witnesses and subjects to disclosures to speak with:

- a spouse
- a registered health practitioner
- a support person
- employee assistance programs
- a lawyer
- the Fair Work Commission and WorkCover

If a discloser, witness or subject to a disclosure tells one of the above persons about conduct that is subject to a public interest disclosure complaint, they must also tell them that the information is confidential and cannot be disclosed further.

IBAC can provide more information about the confidentiality requirements that apply.

8.0 Offences

There are a number of criminal offences set out under the PID Act. The key offences to be aware of are:

1. It is an offence to take or threaten detrimental action against another person in reprisal for a public interest disclosure.
2. It is an offence to disclose the content, or information about the content, of a disclosure that has been notified to IBAC, or information which is likely to lead to the identification of the person who made that disclosure unless permitted to by the Act.
3. It is an offence for any person to:
 - provide false or misleading information
 - claim a matter is the subject of a public interest disclosure knowing the claim to be false
 - falsely claim that a matter is the subject of a disclosure that IBAC has determined to be a public interest disclosure complaint
 - disclose that a disclosure has been notified to IBAC for assessment, that IBAC has determined the matter is a public interest disclosure or that the matter is being investigated as a public interest disclosure, unless permitted to do so by the Act.

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9. How to report suspected improper conduct

BKI encourages the reporting of improper conduct. A person who wants to report suspected improper conduct has three options: Report to IBAC, Speak with a PIDC or complete a 'Speak Up' report. These options are detailed below:

9.1 Option 1: Report to IBAC

With or without the support of a BKI PIDC, you can make a report to the Independent Broad-based Anti-corruption Commission (IBAC). IBAC is the authority that determines whether a report is a public interest complaint and if a person needs protection.

You do not need to tell anyone that you have made a report to IBAC.

You can make this report verbally, in writing and/or anonymously. Details on how to do this are available on [IBAC's website](#) or by contacting IBAC:

- By phone on 1300 735 135
- For TTY users: phone 1800 555 677 then ask for 1300 735 135
- For Speak and Listen users: phone 1800 555 727 then ask for 1300 735 135
- For Internet relay users: connect to the National Relay Service (NRS) then ask for 1300 737 135

People seeking protection under the PID Act should consider whether their complaint is a complaint about improper conduct before making a report. If your complaint is not about improper conduct, consider other employee and student complaint handling channels. Before making a report to IBAC, it can be useful to:

- be informed and discreet
- get information from the PIDC or from IBAC about the reporting process
- if you can, collect information that supports your report
- to limit the risk that evidence is compromised, don't tell others in the organisation that you are going to make a report.

9.2 Option 2: Speak with a BKI Public Interest Disclosure Coordinator

People can ask any of BKI's nominated PIDCs about the reporting process. To find out who BKI's PIDCs are see [here](#). The PIDC will:

- explain the reporting process to IBAC and the protections available under the PIDC
- offer you support, including assistance in making a report to IBAC
- tell you how information you provide will be considered confidentially and internally.

For more information about the role of PIDCs, see section **10.0** below.

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9.3 Option 3: Lodge a 'Speak Up' report

You can also report your concerns by using BKI's confidential [Speak Up Service](#) or by calling Speak Up on 1800 945 045.

As with reports of suspected improper conduct direct to a PIDC, if a matter is reported via Speak Up, it will be treated confidentially and the information will be considered internally.

10.0 Public Interest Disclosure Coordinators

BKI has systems in place to manage confidentiality, welfare support and responses to reports of improper conduct. This includes nominated Public Interest Disclosure Coordinators (PIDCs) who play a critical role in fulfilling the aims of the PID Act. BKI's nominated PIDCs are:

1. Manager, Risk and Compliance (this role also performs the function of Integrity and Corruption Officer)
2. Head of Risk, Compliance and Audit
3. Senior HR Business Partner
4. General Counsel
5. Chief Operating Officer (VETASSES and eWorks)

BKI's PIDCs are trained in processes associated with reporting and investigating reports of improper conduct. They are available to provide a safe space to discuss the process, offer support and facilitate the reporting of improper conduct to IBAC. PIDCs maintain a trusted relationship with reporters, assuring concerns are managed confidentially, and without fear of retribution or reprisal.

Public Interest Disclosure Coordinators are not responsible for investigating suspected improper conduct or notifying a matter to IBAC. See further *Integrity Investigation Procedure*. PIDCs are responsible for:

Welfare management:	Facilitating people who speak up about and support the investigation of improper conduct to access relevant support services. This can include <ul style="list-style-type: none">• appointing a person to support a discloser or witness• referring a discloser or witness to support services, such as its Employee Assistance Program (EAP) or student support service, TalkCampus.
Increasing awareness:	Making staff aware of the public interest disclosure regime upon contact and encouraging reports of improper conduct.
Investigation support:	Assisting investigations conduct by IBAC, the Victorian Ombudsman, BKI's Integrity and Corruption Officer and anybody engaged by BKI to conduct an investigation.
Process support:	Explaining the disclosure process to people and providing general advice about improper conduct and the protections under the PID Act. Assisting disclosers to make a report of improper conduct, including detrimental action to IBAC.
Protecting Confidentiality:	Take all necessary steps to provide for the confidentiality of information reported to them. ⁴

⁴ Public Interest Disclosure Coordinators may escalate a concern to the CEO and/or the Board Chair as appropriate. In doing

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Notify:	Notify the Integrity and Corruption Officer of a report of improper conduct, who will notify the CEO. ⁵
Collect records and reporting:	<ul style="list-style-type: none">• tracking actions taken and where appropriate, provide an update on the matter to the discloser.⁶• managing a secure filing system and processes to ensure confidentiality; and• collating and reporting statistics on reported improper conduct.
Compliance:	Handling the consideration of reported improper conduct consistent with any guidelines issued by IBAC.

11.0 Integrity and Corruption Officer

The Integrity and Corruption Officer sits within BKI's Risk and Integrity team. As the primary Public Interest Disclosure Coordinator, the Integrity and Corruption Officer receives referrals from other Public Interest Disclosure Coordinators about reports of improper conduct and is responsible for:

Initial analysis	Conduct initial analysis of all reports against existing integrity frameworks. Discreetly collect basic information to inform proposed steps and direction
Escalation	Escalate matters to the CEO and the Board Chair as appropriate
Advisory	Provide advice to the CEO and the Board Chair on the internal handling and investigation of reports of improper conduct
Relationship management	Manage the relationship with external investigators who are engaged on behalf of BKI to investigate reports of improper conduct
Engage with Human Resources	Share with the Human Resource Services the insights from Integrity Investigations and initial assessment, as appropriate

12.0 Internal and external reporting

BKI's Board and Audit and Risk Management Committee receive anonymised information about:

- the number of reports received via BKI's Speak Up service
- the number of reports received via contact to a nominated PIDC
- the number of matters referred to, enquired into or investigated by the IBAC and the Victorian Ombudsman.

The Integrity and Corruption Officer is responsible for facilitating this report to the Board and the Audit and Risk Management Committee. This report enables continuous improvement to BKI's anti- corruption measures.

so, the PIDC will take steps to ensure the anonymity of the person who raised the concern.

⁵ Where a disclosure is about the CEO, the PIDC will notify the Board Chair.

⁶ It may not be appropriate to provide specific information about an investigation. This is particularly the case where the alleged conduct relates to personnel, where there are other surrounding welfare concerns or where providing this information may result in a breach of privacy. In these cases, the PIDC will endeavour to provide information about the progress of a matter

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12.1 Mandatory notification of corrupt conduct

Separate to the PID Act, BKI is required to notify IBAC and the Minister for Training and Skills where BKI suspects on reasonable grounds that corrupt conduct has occurred or is occurring.⁷ Sometimes, reported conduct can be both improper conduct for the purposes of the Public Interest Disclosure Act and corrupt conduct for the purposes of the IBAC Act.

Where a PIDC becomes aware of suspected corrupt conduct because of a report, they will:

- advise the employee, contractor or student that they should consider making a report to IBAC
- consider the matter internally, and
- refer the matter to the Integrity and Corruption Officer to facilitate a report to IBAC, consistent with BKI's mandatory reporting obligations.

Suspected corrupt conduct must be notified to IBAC as soon as practicable after a reasonable suspicion of corrupt conduct is formed. This responsibility sits with BKI's CEO. As part of this process, where the available material is not sufficient to form a suspicion on reasonable grounds, the CEO may choose to gather more information and reassess their position. The CEO will generally do this through Risk and Integrity and/or Legal.

12.2 Roles and Responsibilities

In addition to the critical role of BKI's Public Interest Disclosure Coordinators, others roles at BKI perform a function with respect to handling complaints about improper conduct:

Chief Executive Officer (CEO)	Notify IBAC as soon as practicable about suspected corrupt conduct.
COO and then the Chief Governance and Quality Officer⁸	Responsible for BKI's Public Interest Disclosure Policy, ensures the relevant processes to facilitate the escalation of matters are in place and embeds BKI's commitment to supporting integrity and a speak-up culture.
Integrity and Corruption Officer	The Integrity and Corruption Officer sits within BKI's Risk and Integrity team. As the primary Public Interest Disclosure Coordinator, the Integrity and Corruption Officer receives referrals from other Public Interest Disclosure Coordinators about reports of improper conduct and is responsible for: <ul style="list-style-type: none">• escalating matters to the CEO and the Board Chair as appropriate• providing advice to the CEO and the Board Chair on the internal handling and investigation of reports of improper conduct• managing the relationship with external investigators who are engaged on behalf of BKI to investigate reports of improper conduct• sharing with the Human Resource Services the insights from Integrity Investigations.

13. Related Policies and Procedures

- Fraud, Bribery and Corruption Policy
- Fraud, Bribery and Corruption Management Procedure
- Employee Conflict of Interest Policy
- Employee Code of Conduct Policy
- Integrity Framework

⁷ *IBAC Act 2011 (Vic)*, section 57; Standing Directions under the *Financial Management Act 1994 (Vic)*, Direction 3.5.3(a).

⁸ As of 1 January 2020, the Chief Governance and Quality Officer will be responsible for this policy.

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- Staff Grievances Policy
- Student Complaints and Grievance Policy
- Privacy Policy
- Integrity Investigation Procedure

14. References

[Public Interest Disclosure Act 2012 \(Vic\)](#)

[Charter of Human Rights and Responsibilities Act 2006](#)

[\(Vic\) Public Administration Act 2004 \(Vic\)](#)

[Code of Conduct for Victorian Public Sector Employees 2015](#)

[Independent Broad-based Anti-Corruption Commission Act 2011](#)

[IBAC Guidelines for Public Interest Disclosure Welfare](#)

[Management IBAC Guidelines for Handling Public Interest](#)

[Disclosures](#)

[IBAC Directions for making mandatory notifications of suspected corruption](#)

15. Definitions

Word/Term	Definition
BKI	Bendigo Kangan Institute, registered entity trading as Bendigo TAFE Kangan Institute, VETASSESS and eWorks.
Bribery	Providing, causing, offering or promising to provide any advantage to another person where the advantage is not legitimately due.
Corruption	As defined under section 4 of the <i>Independent Broad-based Anti-corruption Act 2011</i> (Vic), prescribed conduct that constitutes a 'relevant offence'. A relevant offence is an indictable offence, which is a criminal offence punishable by five years imprisonment or more, or the common law offences of bribery of a public official, perjury, misconduct in public office and perverting the course of justice.
Detrimental Action	Taking, threatening or inciting someone to take action causing injury, loss or damage, intimidating or harassing a person involved in making a Public Interest Disclosure or assisting in the investigation of a Public Interest Disclosure.
Discloser	A person or a group of people who makes a Disclosure of misconduct, suspected fraud, bribery and/or corruption.
Fraud	According to AS 8001 Fraud, Bribery and Corruption Control, fraud is dishonest activity causing actual or potential financial loss to BKI, any person or any other entity including theft of money or other property by employees or persons external to BKI and where deception is used at the time, immediately before or immediately following the activity. This also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or the improper use of information or position for personal financial benefit. The theft of property BKI belonging by a person or persons internal to BKI but where deception is not used is also considered fraud.

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IBAC	The Independent Broad-Based Anti-Corruption Commission – The Victorian body established to receive, assess and investigate disclosures about improper conduct, corruption and detrimental action taken in reprisal for a disclosure by public bodies or public officers. http://www.ibac.vic.gov.au/
Improper Conduct	<p>Defined under section 4 of the <i>Public Interest Disclosure Act 2012 (Vic)</i> and includes:</p> <ul style="list-style-type: none"> • corrupt conduct • criminal offence • serious professional misconduct • dishonest performance of public functions • intentional or reckless breach of public trust • intentional or reckless misuse of information • substantial mismanagement of public resources • substantial risk to health or safety of a person • substantial risk to the environment • conduct of any person that adversely affects the honest performance by a public officer of their functions • conduct of any person that is intended to adversely affect the effective performance by a public officer of their functions for the benefit of another person. <p>Less serious or trivial conduct is excluded from the definition of improper conduct.</p>
Public Interest Disclosure (PID)	A PID is a complaint that has been determined by IBAC to be a public interest disclosure and warranting the legal protections under the PID Act.
Public Interest Disclosure Act	<p>The Public Interest Disclosure Act 2012 (the Act) is a Victorian law that provides a mechanism for people to make disclosures about improper conduct within the public sector with protection from reprisal. The Act's purposes include:</p> <ul style="list-style-type: none"> • encouraging and facilitating disclosures of improper conduct and detrimental action • to provide protection for persons who make these disclosures and persons who may suffer detrimental action • to ensure that those disclosures are properly assessed and, where necessary, investigated • to provide for the confidentiality of the content of those disclosures and the identity of persons who make those disclosures.

16. Version Control and Change History

Approved By	Position	Version	Date Reviewed	Next Review	Comments	Document Owner
Board	Board	1.0	04/12/2014	31/12/2015		Chief Business Performance and Assurance Officer
CEO	N/A	2.0	02/03/2015	31/12/2015		COO
CEO	CEO	3.0		21/09/2017		CEO
CEO	CEO	3.1	05/10/2017	4/10/2018		CEO

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ARMC	COO	4.0 (updated)	25/8/2020	30/06/2021		Chief Operating Officer (COO)
ARMC (Nov 2020)	COO	4.1 (updated)	21/09/2020	20/09/2023	Replaces the Protected Disclosure Policy.	Chief Operating Officer and then the Chief Governance and Quality Officer ⁹

⁹ As of 1 January 2020, the Chief Governance and Quality Officer will be responsible for this policy.