1. Purpose

The purpose of this Public Interest Disclosure Internal Reporting Policy (Policy), together with the Public Interest Disclosures Procedure (PID Procedure), is to:

a. establish TAFE NSW’s commitment and framework for the making and management of reports about wrongdoing as well as the protection and support for staff who make reports;
b. provide guidance and instruction to everyone working for TAFE NSW on how to report wrongdoing, including those that qualify for protection under the Public Interest Disclosure Act 1994 (NSW) (PID Act) and the Corporations Act 2001 (Cth) (Corporations Act); and
c. explain roles and responsibilities in relation to reports about wrongdoing to ensure reports are managed fairly, according to legislation and in line with the public interest.

2. Scope

This Policy applies to:

a. permanent employees, whether full-time or part-time
b. temporary or casual employees
c. consultants
d. individual contractors providing services to TAFE NSW
e. employees of contractors providing services to TAFE NSW
f. other people who perform public official functions whose conduct and activities could be investigated by an investigating authority, including volunteers
g. public officials of another public authority who report wrongdoing relating to TAFE NSW.

In relation to reports under the Corporations Act, the Policy also applies to a person who is a relative of the persons set out above or a dependent of one of those persons or of the spouse of such a person.

3. Policy

3.1 TAFE NSW Commitment

This Policy has been developed in accordance with the provisions of the PID Act and the Corporations Act and provides a framework for the making and management of disclosures as well as the protection and support for people who make them.
The reporting of suspected wrongdoing by staff is vital to the integrity of the public sector. Staff who are prepared to raise their concerns about corrupt conduct, maladministration or other serious wrongdoing are one of the most important and accurate sources of information for identifying and addressing serious problems within an organisation.

Managers and supervisors are responsible for establishing and maintaining a positive reporting environment that encourages staff to adopt an ‘if in doubt, report’ approach. Staff should feel that it is a part of their job to report wrongdoing and will not suffer reprisals for reporting incidents.

An ethical work environment gives people confidence that allegations will be taken seriously and receive the appropriate response.

TAFE NSW is committed to protecting staff who make disclosures concerning corrupt conduct, maladministration, serious substantial waste of public money, government information contraventions and other kinds of wrongdoing covered by this Policy and the PID Procedure.

### 3.2 What should be reported?

You should report any suspected wrongdoing within TAFE NSW, or any activities or incidents you see within TAFE NSW that you believe are wrong. This includes reports under the PID Act or Corporations Act as well as reports of other wrongdoing.

#### a Reports under the PID Act

Reports containing any of the five categories of serious misconduct – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, and local government pecuniary interest contravention – which meet the criteria under the PID Act, will be dealt with under the PID Act and according to this Policy.

i. **Corrupt conduct:** Corrupt conduct is the dishonest or partial exercise of official functions by a public official. For example:
   a) the improper use of knowledge, power or position for personal gain or the advantage of others
   b) acting dishonestly or unfairly, or breaching public trust
   c) a public official being influenced by a member of public to use their position in a way that is dishonest, biased or breaches public trust.

ii. **Maladministration:** Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive, improperly discriminatory or based wholly or partly on improper motives. For example:
   a) making a decision and/or taking action that is unlawful
   b) refusing to grant someone a license for reasons that are not related to the merits of their application.
iii. **Serious and substantial waste of public money:** Serious and substantial waste is the uneconomical, inefficient, or ineffective use of resources that could result in losing or wasting public money. For example:
   a) not following a competitive tendering process for a large-scale contract
   b) having bad or no processes in place for a system involving large amounts of public funds.

iv. **Breach of the GIPA Act:** A breach of the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act) is a failure to properly fulfil functions under that Act. For example:
   a) destroying, concealing or altering records to prevent them from being released
   b) knowingly making decisions that are contrary to the legislation
   c) directing another person to make a decision that is contrary to the legislation.

v. **Local government pecuniary interest contravention:** A local government pecuniary interest contravention is a failure to comply with requirements under the *Local Government Act 1993* (NSW) relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at council and council committee meetings and leave the meeting while the matter is being discussed. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

b  **Reports under the Corporations Act**
Reports that relate to conduct:
   i. that concerns misconduct or an improper state of affairs or circumstances in relation to TAFE NSW; or
   ii. by TAFE NSW or one of its officers or employees that constitutes an offence against the Corporations Act or other specified financial services legislation; an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more; or represents a danger to the public or the financial system, which meet the criteria under the Corporations Act, will be dealt with under the Corporations Act and according to this Policy.

c  **Other wrongdoing**
All other wrongdoing or suspected wrongdoing should be reported to a manager or other appropriate person, to be dealt with in line with the relevant policies. For example:
   i. harassment or unlawful discrimination practices that endanger the health or safety of staff or the public. Even if your report is not dealt with as a PID, TAFE NSW recognises such reports may raise important issues. We will respond to all reports and make every attempt to protect the staff member making the report from reprisal action.
3.3 When will a report be treated as a public interest disclosure?

TAFE NSW will treat a report as a public interest disclosure (or PID) if it meets the criteria of a PID under the PID Act or the Corporations Act.

a Reports under the PID Act

Under the PID Act, the report must meet all the requirements under the PID Act to be treated as a public interest disclosure. The requirements are:

i. The report must be about one of the following five categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, or local government pecuniary interest contravention.

ii. The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.

iii. The report must be made to the Managing Director, Public Interest Disclosure Coordinator, Nominated Disclosure Officer, an investigating authority or in limited circumstances to a member of Parliament or journalist.

b Reports under the Corporations Act

Under the Corporations Act, the report must meet all the requirements under the Corporations Act to be treated as a public interest disclosure. The requirements are:

i. the reporter must be an eligible whistleblower (referred to as an eligible reporter);

ii. the report must be about a disclosable matter (see definitions); and

iii. the report must be made to an eligible recipient (see definitions).

3.4 How to make a report and actions TAFE NSW will take in response

For detailed information about how to make a report and what actions TAFE NSW takes in response to a report, please refer to the PID Procedure.

3.5 Protection against reprisals

TAFE NSW will not tolerate any reprisal against staff who report wrongdoing or are believed to have reported wrongdoing.

The PID Act and Corporations Act provide protection for staff who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.
Detrimental action includes action causing, comprising or involving any of the following:

a. injury, damage or loss  
b. intimidation or harassment  
c. discrimination, disadvantage or adverse treatment in relation to employment  
d. dismissal from, or prejudice in, employment  
e. disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also misconduct which may result in disciplinary action.

The PID Act and Corporations Act do not protect staff from disciplinary or other management action where TAFE NSW has reasonable grounds to take such action.

3.6 Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell the Public Interest Disclosures Coordinator or the Managing Director immediately. For more information, please refer to the PID Procedure.

3.7 Protection against legal action

If you make a public interest disclosure in accordance with the PID Act or Corporations Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the public interest disclosure. You will not have breached any confidentiality or secrecy obligations.

However, the protections do not grant immunity for any misconduct an eligible reporter has engaged in that is revealed in their disclosure.

3.8 Support for those reporting wrongdoing

TAFE NSW will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management or counselling services.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the Nominated Disclosure Coordinator.
3.9 Sanctions for making false or misleading statements

It is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. TAFE NSW will not support staff who wilfully make false or misleading reports. Such conduct may also be a breach of the code of conduct resulting in disciplinary action.

Further, false, or misleading reports will not attract the protections available under either the PID Act or the Corporations Act.

3.10 The rights of persons the subject of a report

TAFE NSW is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time, you will be:

a. advised of the details of the allegation
b. advised of your rights and obligations under the relevant related policies and procedures
c. kept informed about the progress of any investigation
d. given a reasonable opportunity to respond to any allegation made against you
e. told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

3.11 Breaches of this Policy

TAFE NSW may commence applicable disciplinary action if a person to whom this Policy applies breaches this Policy (or the PID Procedure), including and up to termination of employment.
### 4. Responsibilities

<table>
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<tr>
<th>Position</th>
<th>Responsibility</th>
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| Managing Director             | The Managing Director has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture and ensuring TAFE NSW complies with the PID Act and Corporations Act. The Managing Director can receive reports from staff and has a responsibility to:  
  - assess reports received by or referred to them, to determine whether the report should be treated as a public interest disclosure, and to decide how the report will be dealt with  
  - ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report  
  - make decisions following any investigation or appoint an appropriate decision-maker  
  - take appropriate remedial action where wrongdoing is substantiated, or systemic problems are identified  
  - refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)  
  - refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC. |
| Public Interest Disclosures Coordinator | The Disclosures Coordinator has a central role in TAFE NSW’s internal reporting system. The Disclosures Coordinator can receive and assess reports and is the primary point of contact in TAFE NSW for the reporter. The Disclosures Coordinator has a responsibility to:  
  - assess reports to determine whether a report should be treated as a public interest disclosure, and to decide how each report will be dealt with  
  - coordinate TAFE NSW’s response to a report  
  - acknowledge reports and provide updates and feedback to the reporter  
  - assess whether it is possible and appropriate to keep the reporter’s identity confidential  
  - assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified  
  - where required, provide, or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report  
  - ensure TAFE NSW complies with the PID Act and the relevant sections of the Corporations Act  
  - provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act. |
## Nominated Disclosure Officers

Disclosures Officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing, and assist staff to make reports. Disclosures Officers have a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure staff can make reports privately and discreetly when requested, if necessary, away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out a preliminary assessment and forward reports to the Disclosures Coordinator or Managing Director for full assessment.

## Managers and Supervisors

Supervisors and line managers play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors and line managers should be aware of the internal reporting policy and are responsible for creating a local work environment where staff are comfortable and confident about reporting wrongdoing. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within TAFE NSW and support staff when they do
- identify reports made to them in the course of their work which could be a public interest disclosure, and assist the staff member make the report to an officer authorised to receive public interest disclosures under this policy
- implement local management strategies, in consultation with the Disclosures Coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the disclosures coordinator or Managing Director immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing.
Position | Responsibility
--- | ---
Staff (staff, contractors, consultants) | Staff play an important role in contributing to a workplace where known or suspected wrongdoing is reported and dealt with appropriately. All staff are obliged to:
- report all known or suspected wrongdoing and support those who have made reports of wrongdoing
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation, and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of officers the subject of reports.
Staff must not:
- victimise or harass anyone who has made a report
- make false or misleading reports of wrongdoing.
Additionally, the behaviour of all staff involved in the internal reporting process are obliged to adhere to TAFE NSW’s Code of Conduct. A breach of the code could result in disciplinary action.

5. Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
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<td>Eligible Reporter</td>
<td>A person set out in the scope of this Policy as a person the Policy applies to.</td>
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</table>
| Eligible Recipient | For reports under the Corporations Act, an eligible recipient includes:
- an officer or senior manager of TAFE NSW;
- the internal or external auditor or actuary of TAFE NSW; and
- a person authorised by TAFE NSW to receive disclosures as detailed in the PID Procedure. |
<p>| Disclosable matter | A matter that concerns misconduct or an improper state of affairs or circumstances in relation to TAFE NSW; or by TAFE NSW, or one of its officers or employees that constitutes an offence against the Corporations Act or other specified financial services legislation; an offence against other Commonwealth legislation that is punishable by imprisonment for 12 months or more; or represents a danger to the public or the financial system, which meet the criteria under the Corporations Act, will be dealt with under the Corporations Act and according to this Policy. |
| Nominated Disclosure Officer | Means an employee authorised by TAFE NSW to receive a PID. You can find a list of Nominated Disclosures Officers <a href="http://staff.tafensw.edu.au">here</a>. |</p>
<table>
<thead>
<tr>
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<tr>
<td>Public Interest Disclosure (PID)</td>
<td>Means a report made under the PID Act or the Corporation Act that meet the requirements of the relevant legislation.</td>
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<tr>
<td>Corruption or Corrupt Conduct</td>
<td>The improper use of knowledge, power or position for personal gain or the advantage of others. Acting dishonestly or unfairly or breaching the public trust. A member of the public influencing a public official to use their position in a way that is dishonest, biased or breaches the public trust. The <em>Independent Commission Against Corruption Act 1988</em> further defines corruption.</td>
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<tr>
<td>Fraud</td>
<td>Fraud is the use of deceit to obtain unfair advantage to the detriment of others. It may involve money, equipment or academic standing.</td>
</tr>
<tr>
<td>Maladministration</td>
<td>Conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.</td>
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<tr>
<td>Misconduct</td>
<td>Conduct which constitutes a ground for disciplinary action whilst acting in their capacity as a public official; where such conduct contravenes TAFE NSW’s Code of Conduct</td>
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<tr>
<td>Serious and substantial waste of public money</td>
<td>Involves the uneconomical, inefficient, or ineffective use of resources which results in loss/wastage of public funds/resources. In addressing any report of serious and substantial waste, regard will be had to the nature and materiality of the waste.</td>
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6. Related documents

This Policy should be read in conjunction with:

a. Legislation:
   i. *Public Interest Disclosures Act 1994* (NSW)
   ii. *Independent Commission Against Corruption Act 1988* (NSW)
   iii. *Government Information (Public Access) Act 2009* (NSW)
   iv. *Corporations Act 2001* (Cth)
   v. *Ombudsman Act 1974* (NSW)

b. TAFE NSW policies and procedures:
   i. Code of Conduct and Ethical Practices
   ii. PID Procedure

c. TAFE NSW reporting link:

| For a reporter | Reporting Form |

7. Contacts

<table>
<thead>
<tr>
<th>Accountable Officer</th>
<th>Chief Operating Officer</th>
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<tr>
<td>Responsible Officer</td>
<td>General Manager, Governance Legal &amp; Risk</td>
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<tr>
<td>Day to Day</td>
<td>Chief Audit Executive</td>
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8. Document History

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<th>No</th>
<th>Effective</th>
<th>Approved by</th>
<th>Amendment</th>
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<tr>
<td>1</td>
<td>13 June 2017</td>
<td>TAFE NSW Executive Leadership Team</td>
<td>WDCSG220170011</td>
</tr>
<tr>
<td>2</td>
<td>30/6/2022</td>
<td>Chief Operating Officer</td>
<td>Revisions to incorporate requirements under the Corporations Act, the NSW Ombudsman model policy, and TAFE NSW’s Ways of Working requirements</td>
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