



Ballarat Cemeteries

FRAUD AND PROTECTED DISCLOSURES POLICY



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1. POLICY STATEMENT

Intent:

The purpose of this document is to describe the roles and responsibilities within Ballarat Cemeteries regarding the management of fraud and corruption, the process of reporting fraud and corruption and the procedures for handling disclosures of improper conduct including detrimental action taken by public bodies or public officers performing public functions.

Statement:

Management and Trust Board Members of the Ballarat Cemeteries are committed to ensuring an ethical and high-integrity workplace. Management will not tolerate any level of fraud or corruption, and are responsible for conveying and promoting this message to staff.

The Ballarat Cemeteries Code of Conduct supports this policy in its value and ethic determination.

2. APPLICABILITY

The Policy applies to all Trust Members, full-time and part-time employees, temporary and casual employees engaged by Ballarat General Cemeteries Trust.

3. DEFINITIONS

Fraud

The Ballarat Cemeteries has adopted the following definition of fraud, contained in the Australian Standard: Fraud and Corruption Control AS 8001-2008:

“Dishonest activity causing actual or potential financial loss to any person or entity including theft of moneys or other property by employees or persons external to the entity 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 non-business purpose or the improper use of information or position for financial benefit.”

Corruption

The Ballarat Cemeteries has adopted the following definition of corruption, contained in the Australian Standard: Fraud and Corruption Control AS 8001-2008:

“Dishonest activity in which a director, executive manager, manager, employee or contractor of an entity acts contrary to the interests of the entity and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity.”



- Public Body** As defined by legislation includes:
- a public sector body within the meaning of s 4(1) of the Public Administration Act 2004
 - a body, whether corporate or unincorporated, established by or under an Act for a public purpose, including a university
 - a body that is performing a public function on behalf of the State or a public body or public officer (whether under contract or otherwise)
 - any other body or entity prescribed for the purposes of this definition

- Public Officer** As defined by legislation includes:
- a person employed in any capacity or holding any office in the public sector within the meaning of section 4(1) of the Public Administration Act 2004
 - a person to whom a provision of the Public Administration Act 2004 applies as a result of the application of Part 7 of that Act
 -



- any other person in the service of the Crown or a public body
- a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise)
- a person who holds, or a person who is a member of a class of persons who hold, an office prescribed to be a public office for the purposes of this definition
- an employee of, or any person otherwise engaged by, or acting on behalf of, or acting as a deputy or delegate of, a public body or a public officer.

PD Act Protected Disclosure Act 2012 (Vic)

WP Act Whistle-blowers Protection Act 2001

IBAC Independent Broad-Based Anti-Corruption Commission

Disclosure A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the PD Act

Protected A disclosure made in accordance with the requirements of Part 2 of the PD Act, **Disclosure** and in accordance with the prescribed procedure under the PD Act

Detrimental Action To take detrimental action against another person in reprisal for someone making a protected disclosure. Includes the following:

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



4. FRAUD AND CORRUPTION PREVENTION

4.1. ENSURING SENIOR MANAGEMENT COMMITMENT

The Ballarat Cemeteries Management and Trust Board are committed to ensuring an ethical and high-integrity workplace and will not tolerate any level of fraud or corruption, and are responsible for conveying and promoting this message to staff.

4.2. FRAUD AND CORRUPTION RELATED RISK ASSESSMENT

A Risk Assessment will be undertaken on all potential fraud and corruption opportunities within the Ballarat Cemeteries. These could include:-

- information technology and information security
- electronic commerce, electronic service delivery and the Internet
- grants, funding agreements, and other payments or benefits programs
- tendering processes, purchasing and contract management
- services provided to the community
- revenue collection
- use of credit cards
- travel allowance and other common allowances
- salaries, and
- property (including intellectual property) and other physical assets including physical security.

The outcome of the risk assessment process will be the development of action items designed to mitigate and manage identified fraud and corruption related risks. These items via the internal and external audits will be reported to the Audit and Risk Committee with outstanding actions being reported until completed.

4.3. COMMUNICATION AND AWARENESS OF FRAUD AND CORRUPTION

The executive of Ballarat Cemeteries will ensure all staff attend education regarding this policy and ensure that all staff sign a document that they understand and are committed to fraud corruption and identification of risk areas within the Ballarat Cemeteries .

4.4. EMPLOYMENT SCREENING

All potential employees will undergo employment checks as identified within the HR manual and recruitment policies. All qualifications will be checked with the accredited organisation.

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4.5. SUPPLIER SCREENING

When sourcing a new supplier/vendor the organisation will undertake various checks to ensure the validity of a supplier/vendor: These checks may include:-

- searching open source locations such as the Internet for any adverse news on the supplier and the supplier's key controllers such as the company's owner/s, the CEO and/or its senior manager/s
- consulting with other companies who use the supplier to identify any concerns, and
- evaluating any suspicious activity observed by your organisation during the life of the relationship, such as presentation of incomplete, incorrect or inflated invoices.

4.6. EXCESS ANNUAL LEAVE

Staff holding excess annual leave can be an indicator of fraudulent activity. Annual leave is reported to every Trust Board meeting for monitoring. Ultimately it is the responsibility of management to ensure staff are taking their leave within the HR policy framework.

5. FRAUD AND CORRUPTION DETECTION AND REPORTING

5.1. FRAUD AND CORRUPTION DETECTION PROGRAM

Detection controls serve as the strongest deterrents to fraudulent or corrupt behaviour. Detection methods include but are not limited to anonymous reporting mechanisms (whistle blowing) and proactive fraud detection procedures specifically designed to identify fraudulent activity.

- The Ballarat Cemeteries uses proactive fraud detection procedures – such as data analysis, continuous auditing techniques, and other technology tools - to detect fraudulent and corrupt activities as part of internal audit and external audit reviews. These are established as part of the audit plans on an annual basis.

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5.2. MANAGING A REPORT OF FRAUD OR CORRUPTION

The Ballarat Cemeteries are a DHHS reporting agency and are required to notify DHHS, the Auditor General, and the Minister for Finance upon becoming aware of suspected fraud or corruption within or concerning our organisation. Section 4.5.4 of the Finance Ministers Standing Directions states:

The Responsible Body must ensure that all cases of suspected or actual theft, arson, irregularity or fraud in connection with the receipt or disposal of money, stores or other property of any kind whatsoever under the control of a public sector agency are notified to the Minister for Finance and the Auditor-General as follows:

- in respect to the receipt or disposal of money:
 - if the amount is equal to or exceeds \$1,000, at the time of the occurrence with an incident report to be provided within two months; or
 - if the amount is less than \$1,000 annually for the period ending 30 June together with an incident report.
- in respect to stores and property of any kind:
 - if the value is equal to or exceeds \$20,000, at the time of occurrence with an incident report to be provided within two months; or
 - if the value is less than \$20,000, annually for the period ending 30 June together with an incident report.

An incident report prepared for the purposes above must state, in addition to any other information that it appears appropriate to include:

- whether internal controls and systems have been reviewed
- whether any weaknesses in internal controls and systems have been identified and have or will be rectified
- the status of any proceedings, investigations or disciplinary actions; and
- what has been recovered, whether by way of money, stores, other property or insurance.

Considering the above statutory reporting requirement, the Ballarat *Cemeteries* will undertake an initial investigation of a potential fraud or corruption report within the following guidelines:-

- Initial investigations will be undertaken as soon as possible after the awareness of a potential problem is found.
- The CEO will determine if an incident is a reportable incident to a competent authority for investigation, such as the Victoria Police or in the case of public bodies, to the Independent Broad-based Anti-corruption Commission (IBAC).
- Staff management will be within the current policy requirements and advice is to be sought from the contracted HR advisory service.
- Confidentiality will be maintained at all time.
- Accurate recording of action and information will be documented in written form.
- The CEO may engage professional services with specialist investigative skills as required to assist with the investigation.

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6. RESPONDING TO FRAUD AND CORRUPTION INCIDENTS

6.1. PROCEDURES FOR THE INVESTIGATION OF DETECTED OR SUSPECTED FRAUD OR CORRUPTION

If a complaint is received by an employee's supervisor a written summary should be requested from the complainant. Where the complainant does not wish to provide a written summary the supervisor should take detailed written notes of the meeting. Supervisors are required to maintain confidentiality with respect to complaints or matters referred to them.

Any statements, reports or letters containing potentially defamatory statements should be clearly marked 'Private and Confidential' to the addressee.

Great care needs to be taken in the investigation of suspected improprieties or irregularities, which fall within the definitions of the Policy and these Administrative Procedures, so as to avoid incorrect accusations or alerting individuals against whom an allegation has been made that a matter has been raised and an investigation is underway, and also to avoid making statements which could expose the maker to legal liability. Accordingly, the complainant or supervisor should not:

- attempt to personally conduct investigations or interviews in order to determine whether or not a suspected activity is improper;
- contact the suspected individual(s) to determine facts or demand restitution; or
- discuss any facts, suspicions or allegations associated with the case with anyone, unless specifically directed by a the Chief Executive Officer, the law enforcement or regulatory agencies.

The supervisor should report the matter(s) to the Chief Executive Officer within one working day of their acquiring knowledge of the matter(s), or in cases where this is not practicable, as soon as is possible.

The Chief Executive Officer will initially conduct a preliminary fact finding review

Confidentiality concerning the complainant and the information will be maintained at all stages.

After the preliminary review of the complaint / matter / suggestion the CEO may request assistance from Staff for independent evidence as to the validity of the complaint, advice as to possible causes and corrective action.

When an audit reveals an allegation of corrupt or criminal conduct, criminal involvement or serious improper conduct, the Chief Executive Officer shall be notified immediately. Assistance may be sought from other areas, as necessary.

In order to avoid damaging the reputations of innocent persons initially suspected of wrongful conduct, and to protect the Ballarat *Cemeteries* from potential civil liability, the results of the audits/investigations will be disclosed or discussed only with those persons who require the knowledge in the proper performance of their office or function.

Appropriate personnel action shall be initiated by the CEO. This action may cover suspension with pay while the matter is being investigated through to the termination of any staff member involved in the fraud.

Where appropriate, the staff member involved in the fraud shall be given twenty four hours to respond in writing to the written request for information concerning the suspected fraud.

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The CEO will ensure that appropriate documentation of the facts has been achieved in order to permit:

- appropriate personnel action;
- protection of innocent persons;
- support appropriate civil or criminal actions;
- documentation of claims against the Ballarat Cemeteries insurers;
- preservation of the integrity of any criminal investigation and prosecution; and
- avoidance of any unnecessary litigation.

Everybody must co-operate fully with law enforcement and regulatory agencies, including reporting to such agencies and support of prosecution, where necessary.

6.2. DISCIPLINARY PROCEDURES

If the investigation reveals conduct that is not criminal in nature but is instead a breach of our policies and procedures advice will be sought from our Legal or HR advisors and that advice will be followed as far as is practicable.

6.3. INTERNAL CONTROL REVIEW FOLLOWING DISCOVERY OF FRAUD

After receipt of a report/complaint of fraud or corrupt conduct the Ballarat *Cemeteries* will undertake a post incident review. The review will include consideration of:-

- new or strengthened controls
- revised policy or procedure
- additional staff training, and
- increased frequency of Internal Audit review.

The report review will be provided to the Audit and Risk Committee.

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7. PLANNING AND RESOURCING

7.1. PROGRAM FOR FRAUD CONTROL PLANNING AND REVIEW

Management and the Audit and Risk Committee will review this document:-

- Every 2 years
- After a fraud or corruption incident
- Due to changes in legislation or
- A directive of policy change by the governing department or state government.

7.2. EXTERNAL ASSISTANCE

The CEO, Trust Board and Trust Committees may engage any additional assistance from suitably qualified organisations to assist with investigation, adherence or management of the requirements of this policy.

7.3. INTERNAL AUDIT ACTIVITY IN FRAUD AND CORRUPTION CONTROL

The Internal and External audit programs will include the monitoring of Fraud, Corruption and Protected Disclosures compliance.

All findings will be directly reported to the CEO and the Audit and Risk Committee. If there is a requirement to notify IBAC this will be done immediately on receipt of knowledge of a proposed incident or activity.

8. MAKING AND HANDLING PROTECTED DISCLOSURES (WHISTLEBLOWER)

Ballarat Cemeteries is **not** a public body prescribed under the PD Act to receive a protected disclosure.

Disclosures about Ballarat Cemeteries, its employees, officers or members should be made directly to the Independent Broad-Based Anti-Corruption Commission (IBAC).

Address: Independent Broad-Based Anti-Corruption Commission
GPO Box 24234
Melbourne VIC 3001
Internet: <http://www.ibac.vic.gov.au>
Phone: 1300 735 135

Disclosures about detrimental action can be made to the Ballarat Cemeteries Protected Disclosure Coordinator, (if different to the CEO), the Chief Executive Officer or to IBAC.

Chief Executive Officer
1250 Doveton Street North
Ballarat Vic 3350
Tel: (03) 5332 1469 or 0419 304 117



8.1. PROTECTED DISCLOSURE PROCEDURE

These procedures provide information about protected disclosures under the PD Act and establish procedures for reporting detrimental action by the Ballarat Cemeteries or its employees.

8.2. WHAT IS A DISCLOSURE?

A disclosure is a report made by a person about improper conduct of public bodies or public officers to any of the organisations specified in Part 2 of the PD Act.

In the case of Ballarat Cemeteries, disclosures under part 2 of the PD Act must be made directly to IBAC.

A disclosure can also be made about detrimental action against a person by public bodies or public officers in reprisal for the making of a protected disclosure by any person.

Disclosures about detrimental action can be made to the Ballarat Cemeteries Chief Executive Officer or to IBAC. Ballarat Cemeteries will consider all the circumstances and take all necessary steps to protect the discloser from detrimental action or disclosure.

A complaint or allegation that is already in the public domain will not normally be a protected disclosure. For example, if the matter has already been subject to media or other public commentary. The term “disclosure” is interpreted under the PD Act in the ordinary sense of the word as a ‘revelation’ to the person receiving it.

The disclosure can relate to improper conduct or detrimental action against a person that may already have taken place, may be occurring now, or the public officer or public body may be intending to do it in the future. Disclosures can be made about conduct that occurred prior to the commencement of the PD Act on 10 February 2013.

A disclosure made in accordance with the requirements of Part 2 of the PD Act, may also be a complaint, notification or disclosure made under another Act.

For a disclosure to be a protected disclosure, it must be made in accordance with the requirements of Part 2 of the PD Act, and in accordance with the prescribed procedure under the PD Act.

8.3. WHAT IS NOT A PROTECTED DISCLOSURE?

A complaint will not be a protected disclosure if it is:

- made to an entity that cannot receive disclosures, for example if it is made to Ballarat Cemeteries
- the discloser expressly states in writing that the disclosure is not a disclosure under the PD Act, or
- the disclosure does not meet all the requirements under Part 2 of the PD Act and the prescribed procedures in the Regulations.

8.4. WHO CAN MAKE A DISCLOSURE?

Any person can make a disclosure about improper conduct by public bodies and public officers. This includes a person who is a member, officer or employee of a public body or public officer.

The person making the disclosure must be an individual or a group of individuals making joint disclosures. A company or business cannot make a disclosure.

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8.5. TO WHOM CAN A DISCLOSURE BE MADE?

In the case of a disclosure relating to Ballarat Cemeteries or its personnel, the disclosure is to be made to IBAC.

8.6. ABOUT WHAT CAN A DISCLOSURE BE MADE?

A disclosure, for the purposes of the PD Act, must be about the conduct of a person, public officer or public body in their capacity as a public body or public officer as

The alleged conduct is either improper conduct or detrimental action taken against a person in reprisal for a projected disclosure.

AND EITHER

The information shows or tends to show that the improperly conduct or detrimental action against a person has occurred is occurring, or is proposed to be engaged in by a person

OR

The discloser believes on reasonable grounds the information shows or tends to show the improperly conduct or detrimental action against a person has occurred, is occurring, or is proposed to be engaged in by a person

8.7. DEFINING IMPROPER CONDUCT AND DETRIMENTAL ACTION

Improper conduct is defined in section 4 of the PD Act to mean:

- Corrupt conduct (as defined in the IBAC Act), or
- Specified conduct.

In order for this conduct to be corrupt conduct it would, at its lowest, need to fall into the category that, if proved, it would constitute either a criminal offence, or reasonable grounds for dismissing the officer who was, or is, engaged in that conduct.



'Improper conduct' is defined as:
'CORRUPT CONDUCT' or 'SPECIFIED CONDUCT'

Corrupt conduct is:

Conduct that:

- adversely affects the honest performance of functions by a public officer or public body;
- involves the dishonest performance of functions by a public officer or public body;
- involves a breach of public trust;
- involves a misuse of information acquired in the performance of functions as a public officer or public body; or
- involves a conspiracy or an attempt to engage in any of the above conduct

AND

- would constitute:
 - an indictable offence;
 - an attempt to pervert the course of justice;
 - bribery of a public official; or
 - perverting the course of justice.

Specified conduct is:

Corrupt conduct that would not constitute an indictable offence, but would constitute either a criminal offence or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct

OR

Conduct that:

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

AND

- would constitute a criminal offence, or reasonable grounds for dismissing or terminating the services of the officer engaged in the conduct, an attempt to pervert the course of justice, bribery of a public official or perverting the course of justice.

'Detrimental conduct' is defined as:

Action taken against a person who has made a protected disclosure which:

- Causes injury, loss or damage;
- intimidation or harassment; or
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business (including disciplinary action).

Detrimental action is not: legitimate management action where there are good and sufficient grounds that would justify the action against any other person in the same circumstances.

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



Examples of detrimental action - A public body demotes, transfers, isolates in the workplace or changes the duties of a person who has made a disclosure due to the making of a disclosure. A public body discriminates against the person who makes a disclosure or his or her family and associates in subsequent applications for jobs, permits or tenders.

8.8. HANDLING DISCLOSURES

If the disclosure does not meet all the requirements to be a protected disclosure under the PD Act, then Ballarat Cemeteries may consider dealing with it under its own complaint handling process.

The CEO may notify IBAC of any matter that they believe on reasonable grounds constitutes corrupt conduct (section 57 of IBAC Act).

8.9. PROTECTIONS FOR PERSONS MAKING DISCLOSURE

If a Ballarat Cemeteries employee has made a protected disclosure to IBAC and believes on reasonable grounds that detrimental action will be, is being, or has been taken against them, the employee may request a transfer to another area.

However, a discloser is not protected if they commit an offence under section 72 or 73 of the PD Act, as follows:

- A person must not provide false or misleading information, or further information that relates to a protected disclosure, that the person knows to be false or misleading in a material particular, intending that the information be acted on as a protected disclosure
- A person must not claim that a matter is the subject of a protected disclosure knowing the claim to be false
- A person must not falsely claim that a matter is the subject of a protected disclosure that IBAC has determined to be a protected disclosure complaint

Offences of this nature may attract a penalty such as a fine, imprisonment, or both.

8.10. ADDITIONAL LIMITATIONS ON PROTECTIONS

An employee who makes a disclosure is not protected from legitimate management action taken by Ballarat Cemeteries, and may be held responsible for their own conduct that they disclose as part of the protected disclosure.

The Chief Executive Officer will make the final decision as to whether disciplinary or other action will be taken against an employee discloser. Where disciplinary or other action relates to conduct that is the subject of the protected disclosure, the disciplinary or other action will only be taken after the disclosed matter has been dealt with appropriately.

An employee making the protected disclosure is not subject to criminal or civil liability for making the disclosure under section 39 of the PD Act. However section 42 of the PD Act specifically provides that a person remains liable for their own conduct even though the person has made a disclosure of that conduct under the PD Act.

8.11. OFFENCES FOR MAKING AN UNAUTHORISED DISCLOSURE

The PD Act contains a number of offence provisions relating to unauthorised disclosure of information by either disclosers or persons who have received disclosures.

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Disclosers commit an offence if they disclose that:

- Their disclosure has been notified to IBAC for assessment, subject to specific exceptions
- IBAC or the Victorian Inspectorate has determined their disclosure to be a protected disclosure complaint, subject to specific exceptions

These offences can also be committed by other people who receive the above types of information from the discloser, subject to the same exceptions as apply to the discloser.

9. APPOINTING A WELFARE MANAGER

If Ballarat Cemeteries becomes aware that an employee has made a protected disclosure, the CEO may appoint a Welfare Officer for the employee making a protected disclosure, following due consideration of any risks faced by the employee. At the same time there may also be welfare needs of other people who may be involved in the investigation.

The Welfare Officer may monitor the needs of the discloser/co-operator and provide practical advice and support. In most circumstances, the Welfare Officer will only be required where a protected disclosure complaint proceeds to investigation, but each case will be assessed on its own merits.

The Welfare Officer (if appointed) will not be expected to go beyond what is reasonable in providing support. The Welfare Officer will discuss the issue of reasonable expectations with the discloser or co-operator.

9.1. WELFARE MANAGEMENT OF PERSONS WHO ARE THE SUBJECT OF PROTECTED DISCLOSURES

Ballarat Cemeteries will also meet the welfare needs of a person who is the subject of a protected disclosure. Until a protected disclosure complaint is resolved – through its dismissal, investigation, or where some other outcome is reached – information about the person is only an allegation. This person is also likely to need support once they become aware that they are the subject of a disclosure.

10. COMPLIANCE RESPONSIBILITIES

- Staff - have the responsibility minimise the possibility of fraud and corruption, reporting any known or suspected fraudulent or corrupt activity
- Managers/Executives - foster the highest standards of ethical behaviour, support staff understanding and compliance with this framework, create and foster a culture that encourages open discussion, conduct risk assessments, identify, analyse, evaluate, prioritise and treat any fraud and corruption related risks
- Trust Board and Audit committees - oversee the overall approach including the effectiveness of this framework.

11. CHARTER OF HUMAN RIGHTS COMPLIANCE

It is considered that this policy does not impact on any human rights identified in the Charter of Human Rights Act 2007.

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12. REFERENCES AND RELATED POLICIES

	Include - Name, Reference and location of reference
Act	Cemeteries and Crematoria Act 2003 Financial Management Act 1994 Protected Disclosure Act 2012; Australian Standard on Fraud and Corruption Control (AS8001:2008); AS/NZS ISO 31000:2009 Risk Management; Public Records Act 1973.
Regulations	Cemeteries and Crematoria Regulations 2015
Guidance notes	VPS – Fraud, Corruption and Protected disclosure framework VPS - Risk Management Framework VPS - Gifts, Benefits and Hospitality Policy Framework
Australian Standards	
Related Policies	Code of Conduct Conflict of Interest Policy Gift, Benefits and Hospitality Policy Risk Management Policy

13. DOCUMENT CONTROL INFORMATION

DOCUMENT CONTROL

Policy Name	Fraud and Protected Disclosure Policy		
Trust Policy	✓	Operational Policy	✓
File Location	F:/Docs/Policies/		
Document status	Final		
Version	1	Version Date	08/03/2016
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DOCUMENT HISTORY

	Version	Date	Author
Initial Draft	1	01/03/2018	CEO
Approved Audit and Risk Committee	1	13/03/2018	Committee
Approved Trust			
Next Review date		2020	

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