



Whistleblower Policy

Human Resources Policy Group

1 Purpose

The purpose of this policy is to provide guidance on the protections available when, and the procedures for, making a disclosure of serious wrongdoing under the [Protected Disclosures Act 2000 \(the 'PD Act'\)](#). (“Serious wrongdoing” has a specific meaning – refer to the definitions section at the end of this policy.)

The purpose of the PD Act is to promote the public interest by facilitating the disclosure and investigation of matters of serious wrongdoing in or by the University and by protecting Employees who, in accordance with this policy and the PD Act, make disclosures of information about serious wrongdoing in or by the University.

The University encourages a culture where people can ask questions and raise concerns informally where practicable, with a view to discussing and resolving them at the lowest appropriate level. The intent of this policy is to provide guidance to those Employees who wish to raise concerns of more serious wrongdoing, which may not be suitable for informal discussion and/or low-level resolution, and which come within the mechanisms of the PD Act.

2 Application of Policy

The Whistleblower Policy is a University-wide policy. It is intended to guide the application of the PD Act, and to provide procedures for disclosures in accordance with the PD Act. Reference should also be made to the PD Act itself when considering the policy.

3 Policy Content

3.1 *Who Can Make A Disclosure?*

Any Employee (as defined below) can make a disclosure.

3.2 *Protected Disclosures under the PD Act*

- (a) An Employee may make a protected disclosure under the PD Act if:
- (i) The disclosure is about serious wrongdoing in or by the University; and
 - (ii) The Employee believes on reasonable grounds that the information s/he wishes to disclose is true or likely to be true; and
 - (iii) The Employee wishes to disclose this information so that the serious wrongdoing can be investigated; and
 - (iv) The Employee wishes the disclosure to be protected.

- (b) When making a disclosure under this policy, it is recommended that the Employee advises that their disclosure is about apparent serious wrongdoing in or by the University, and that it is being made under the PD Act. However, a failure to do so will not preclude a disclosure being later considered as protected under the provisions of the PD Act.
- (c) If an Employee believes, on reasonable grounds, that the information s/he wishes to disclose about serious wrongdoing in or by the University is true or likely to be true, but that belief is mistaken, the information will nevertheless be treated as a protected disclosure under the PD Act.

3.3 Making a Disclosure of Serious Wrongdoing Using the University's Internal Procedures

- (a) Described below are a number of procedures for receiving and investigating disclosures of serious wrongdoing and, while the procedures set out below consist of a hierarchy, the Employee is able to decide how they feel most comfortable making a disclosure of serious wrongdoing. Note that the Employee making such a disclosure is required by the PD Act to do so in accordance with the procedures set out below.
- (b) An Employee who wishes to make a disclosure should, in the first instance, report the disclosure to the Disclosure Officer or the Employee's manager, unless:
 - (i) The Employee reasonably believes the Disclosure Officer, or the manager is or may be involved in the serious wrongdoing alleged in the disclosure; or
 - (ii) The Employee reasonably believes that the Disclosure Officer or the manager has a relationship or association with someone who is or may be involved in the serious wrongdoing alleged in the disclosure, so it would not be appropriate to make the disclosure to them; or
 - (iii) The Employee wishes to make the disclosure to a same gender person (for example, if the matter is of a sexual nature); or
 - (iv) The Employee wishes instead to make the disclosure to a senior member of the University's management (refer (c)).
- (c) Despite (b), at any time, an employee may report the disclosure to a person in an appropriate senior managerial position within the University (e.g. a CSU Director, Dean, or Head of School).
- (d) If the Employee reasonably believes that s/he cannot approach the Disclosure Officer, their manager, or a person in an appropriate senior managerial position within the University (e.g. a CSU Director, Dean, or Head of School), because they are or may be involved or associated with the serious wrongdoing alleged in the disclosure, the Employee should report the disclosure to the Vice-Chancellor or a member of the Senior Leadership Team.
- (e) If the Employee reasonably believes that s/he cannot approach the Disclosure Officer, their manager, or a person in an appropriate senior managerial position within the University (e.g. the Vice-Chancellor or a member of the Senior Leadership Team), because they are or may be involved or associated with the serious wrongdoing alleged in the disclosure, the Employee should report the disclosure to the Chancellor and/or other Members of Council (other than the Vice-Chancellor).

- (f) If the Employee reasonably believes that s/he cannot approach any level of the University, up to and including the Chancellor, because they may be involved or associated with the serious wrongdoing alleged in the disclosure; or the immediate reference to an appropriate authority external to the University is justified by reason of the urgency of the matter to which the disclosure relates (or some other exceptional circumstances); or there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the date on which the disclosure was made, the Employee may report the disclosure to an appropriate authority external to the University, which includes:
- (i) the Commissioner of Police;
 - (ii) the Controller and Auditor-General;
 - (iii) the Director of the Serious Fraud Office;
 - (iv) the Inspector General of Intelligence and Security;
 - (v) an Ombudsman;
 - (vi) the Parliamentary Commissioner for the Environment;
 - (vii) the Independent Police Conduct Authority;
 - (viii) the Solicitor-General;
 - (ix) the State Services Commissioner;
 - (x) the Health and Disability Commissioner;
 - (xi) the head of any public sector organisation;
 - (xii) a private sector body which comprises members of a particular profession or calling and which has power to discipline its members.
- (g) The Employee may make a disclosure to an Ombudsman or to any Minister of the Crown, if the Employee making the disclosure:
- (i) Has already made substantially the same disclosure to an authorised representative of the University in accordance with this policy or to an appropriate authority; and
 - (ii) Believes on reasonable grounds that the authorised person or appropriate authority to whom the disclosure was made:
 - has decided not to investigate the matter; or
 - has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or
 - has investigated the matter but has not taken any action in respect of the matter, nor recommended the taking of action in respect of the matter, as the case may require; and
 - (iii) Continues to believe on reasonable grounds that the information disclosed is true or likely to be true.

3.4 Obligations of Employees Who Make Disclosures

- (a) When considering how to make a disclosure of serious wrongdoing, Employees should consider the University's core ethical values of respect, responsibility, fairness, integrity and empathy. Employees should also bear in mind paragraph 3.9 of this policy (Limitation on Protections).

- (b) In that regard, it is not appropriate nor protected by the PD Act, or this policy, for an Employee to report alleged serious wrongdoing to a person who is not authorised to receive that disclosure such as the media or members of the public. In addition, Employees making a report of serious wrongdoing are required to act professionally and with due regard to the potential seriousness of the allegations, including maintaining appropriate confidentiality over the information that the Employee discloses to a person authorised to receive the disclosure under this policy.
- (c) If an Employee making a disclosure acts in a manner which is inconsistent with paragraph 3.4 (a) and/or (b) above, this may be dealt with under the [Staff Conduct Policy](#).

3.5 Submission of a Disclosure

- (a) The submission of a disclosure must be made as soon as is practicable. If an Employee makes the disclosure to someone at the University other than the Disclosure Officer, that person shall promptly notify the Disclosure Officer (unless the circumstances in paragraphs 3.3(b)(i) or 3.3(b)(ii) apply).
- (b) Once a disclosure has been submitted and specified as a protected disclosure under the PD Act, the Recipient must promptly notify a member of the Senior Leadership Team of having received a disclosure under this policy. In the event that the disclosure involves an allegation that a member (or members) of the Senior Leadership Team is or may be involved or associate with the serious wrongdoing alleged in the disclosure, the Recipient must notify a member of the Senior Leadership Team who is not alleged to be so involved or associated.

3.6 Investigation of a Disclosure

- (a) Upon receipt of a disclosure, the Recipient will assess whether the disclosure meets the criteria (as set out above in paragraph 3.2). If the Recipient is someone other than the Disclosure Officer, the Recipient may seek assistance and advice from the Disclosure Officer in conducting this assessment and any subsequent investigation or other action.
- (b) If it is decided that a matter that has been complained about does not amount to serious wrongdoing, the matter may nevertheless still be investigated in accordance with the Staff Conduct Policy. The Recipient will notify the complainant as soon as practicable that the investigation is to be dealt with in this manner and that the procedures set out in the Staff Conduct Policy will forthwith apply to the investigation.
- (c) If it is decided that the disclosure should be investigated as an allegation of serious wrongdoing, any action or recommended action (such as the commencement of a formal investigation) will be communicated to the complainant as swiftly as the circumstances allow and, in any event, no later than 20 working days after the date on which the disclosure was made, with the investigation to be conducted and completed as soon as practicable thereafter.
- (d) Any investigation will be conducted by the reporting manager or such other person as the Recipient considers to be appropriate, which may include a person independent to the University. In making any decision as to who should investigate any disclosure, the Director, Human Resources or other authorised member of Human Resources may be consulted.

- (e) An investigation carried out under paragraph 3.6(c) will be conducted in accordance with the principles of natural justice (including with fairness and impartiality).
- (f) The investigator will determine whether or not the allegation of serious wrongdoing is substantiated. The University will decide what further action may be appropriate as a result of the investigator's findings.

3.7 Escalation

- (a) If the investigation into a disclosure has not been commenced in the timeframe specified in paragraph 3.6(c), the Employee may refer the disclosure to the Vice-Chancellor for consideration by them or their delegate as soon as practicable.
- (b) Where a decision has been made to take no action in respect of a disclosure under the PD Act and the Employee continues to believe on reasonable grounds that the matter is true, the Employee may refer that disclosure to an Ombudsman or Minister of the Crown as provided for in paragraph 3.3(g).
- (c) Where appropriate, and at an appropriate time, the University will refer a matter to the Police and/or other relevant regulatory authorities where the matter disclosed is about serious criminal activity.

3.8 Protections for Employees Who Make Disclosures

- (a) The PD Act exists to enable Employees to feel safe in making protected disclosures, and to trust that the University will act upon a genuine protected disclosure. Employees will not be disciplined, victimised or discriminated against by reason of, in good faith, disclosing information they honestly believe to be serious wrongdoing under the provisions of the PD Act, or under this policy in accordance with the PD Act. Protections under the PD Act extend to:
 - (i) Employees who make a protected disclosure; and
 - (ii) Employees who volunteer information in support of a protected disclosure (made by another Employee) as if the information volunteered were a protected disclosure of information.

The University's employee assistance programme may also be available to provide assistance to an Employee making a protected disclosure. Employees who are unsure whether they are able to access this programme should speak with their Human Resources contact in the first instance.

- (b) Every person to whom a disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the Employee who made the disclosure or an Employee who volunteers information in support of that disclosure unless:
 - (i) That Employee consents in writing to the disclosure of that information; or
 - (ii) The person who has acquired knowledge of the disclosure reasonably believes that disclosure of identifying information is essential:
 - to the effective investigation of the allegations; or
 - to prevent serious risk to public health or public safety or the environment; or
 - in regard to the principles of natural justice.

- (c) Subject to paragraph 3.9, no Employee who:
- (i) Makes a protected disclosure of information or who volunteers information in support of a protected disclosure; or
 - (ii) Refers a protected disclosure of information to an appropriate authority for investigation;

is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information.

3.9 Limitation on Protections

- (a) The protections conferred by the PD Act, this policy, and by section 66(1)(a) of the Human Rights Act 1993 do not apply:
- (i) Where the Employee who makes a disclosure of information makes an allegation known to that Employee to be false or otherwise acts in bad faith; or
 - (ii) Where the Employee provides information in support of a protected disclosure only after being required to do so by law or after being approached during the course of an investigation of the matter. In this case, the Employee has not *volunteered* supporting information.

3.10 Retaliatory Action and Victimisation

- (a) Where an Employee feels they have been victimised or retaliated against for making a disclosure of serious wrongdoing under the PD Act, they may take a personal grievance under the [Employment Relations Act 2000](#) or make a complaint under the [Human Rights Act 1993](#).
- (b) The University treats any allegation of victimisation or retaliation seriously. Allegations of this nature that are established may result in disciplinary action under the [Staff Conduct Policy](#).

4 Definitions

In this policy, unless the context otherwise requires, the following definitions shall apply:

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| Disclosure Officer: | The University's General Counsel or delegate. |
| Employee: | Any existing or former employee, or a home worker, or a person seconded to the University, or a contractor to the University, or a person concerned in the management of the University (including a person who is a member of Council), or a person who works for the University as a volunteer without reward or expectation of reward for that work. |
| Recipient: | The Disclosure Officer or other person authorised under this policy to receive disclosures of serious wrongdoing from Employees. |
| Serious Wrongdoing: | <p>Includes any serious wrongdoing of the following types, whether the wrongdoing occurs before or after the commencement of the PD Act:</p> <ul style="list-style-type: none">(a) An unlawful, corrupt, or irregular use of public funds or public resources; or(b) An act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or(c) An act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial; or(d) An act, omission, or course of conduct that constitutes an offence; or(e) An act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement; or(f) matters of a serious nature relating to conduct of a sexual nature. |
| University: | Victoria University of Wellington, including its subsidiaries and controlled entities. |

5 Related Documents

Education Act 1989

Employment Relations Act 2000

Human Rights Act 1993

Protected Disclosures Act 2000

[Staff Conduct Policy](#)

Previous version: [archived Disclosure of Wrongdoing \(Whistleblower\) Policy](#)

6 Document Management and Control

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