

PROTECTED DISCLOSURES POLICY

Category	Governance
Policy Owner	General Counsel
Last review	November 2024
Next review	November 2029
Approved by	Vice Chancellor
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1. PURPOSE

This Policy outlines the requirements of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the Act). The purpose is to protect the public interest by:

- (a) ensuring a common understanding and approach in dealing with Protected Disclosures;
- (b) to encourage Employees to make disclosures;
- (c) to facilitate the timely and appropriate investigation of suspected Serious Wrongdoing in, or by the University;
- (d) to set standards to protect those who make a disclosure of Serious Wrongdoing; and
- (e) outlining the procedures to be followed to investigate an allegation of Serious Wrongdoing.

2. POLICY

1) Serious Wrongdoing

According to the Act, Serious Wrongdoing includes any act, omission, or course of conduct in (or by) the University that constitutes one or more of the following:

- (a) an offence; or
- (b) a serious risk to public health or safety or the health or safety of an individual or the environment; or
- (c) a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences or the right to a fair trial; or
- (d) involves unlawful, Corrupt, or irregular use of public funds or public resources; or
- (e) oppressive, unlawfully discriminatory, or grossly negligent or gross mismanagement by a University employee or a person performing a function, or duty or exercising or a power on behalf of the University.

2) Principles

To facilitate the disclosure and investigation of an alleged Serious Wrongdoing, the University will:

- (a) build and maintain a culture that promotes speaking up;
- (b) give advice and support to Disclosers;
- (c) protect a Discloser from unfair treatment or Retaliation.
- (d) keep an accurate record of concerns;
- (e) treat information that may expose the identity of a Discloser confidential as far as this is possible in accordance with the Privacy Act 2020;
- (f) respond appropriately to concerns and adhere to the principles of natural justice.

3) What is a Protected Disclosure

A disclosure will be considered a Protected Disclosure if:

- (a) the allegation involves Serious Wrongdoing in, or by the University and the Discloser has reasonable

- grounds to believe the information is true, or likely to be true;
- (b) the information is disclosed in accordance with this Policy; and
 - (c) the disclosure is not made in bad faith.

4) Making a Protected Disclosure

All Employees, secondees, contractors, volunteers, students and members of the Council of the University must disclose matters of Serious Wrongdoing in the University, or by the University, or related to the University, and if requested, assist the investigation of Serious Wrongdoing.

A Protected Disclosure should be made in writing using the form in Appendix 1. A verbal disclosure can be made but should subsequently be recorded in writing by the Discloser or the Receiver, so it can be acted on appropriately.

Because of the potential seriousness of an allegation of Serious Wrongdoing confidentiality over the information disclosed must be maintained as much as possible.

It is not appropriate for an allegation of Serious Wrongdoing to be made to unauthorised third parties such as the media or to members of the public.

Those who have disclosed Serious Wrongdoing, or are contemplating such a disclosure, will be at their request, provided access to any necessary counselling, support or advice which might become necessary as a result of the reporting process. This includes access to the University's Employee Assistance Programme (EAP), as well as internal support provided by identified management and peers not involved in investigating the disclosure, and by People and Culture.

5) Seeking Advice and Making a Protected Disclosure:

An Employee can seek advice from, or make a Protected Disclosure to:

- (a) their manager; or
- (b) their manager's manager; or
- (c) The Group Director People and Culture; or
- (d) Any member of the University Executive; or
- (e) General Counsel; or
- (f) the Vice-Chancellor - if they believe on reasonable grounds that a member of the University Executive or a member of Council may be involved in the serious Wrongdoing or has a relationship or association with an alleged wrongdoer; or
- (g) the Chancellor or Pro Chancellor (if the allegation of Serious Wrongdoing involves a member of Council).

If a Discloser is of the view that due to the urgency of the matter, or there is no response within 20 days of making the disclosure, a Protected Disclosure may be made to an Appropriate Authority, such as the Office of the Ombudsman, the Office of the Auditor General, the Office of the Parliamentary Commissioner for the Environment, the Serious Fraud Office, the Inspector General of Intelligence and Security, the Independent Police Conduct Authority, the Solicitor General, the Public Service Commission, the Health and Disability Commissioner, or the membership body of a particular profession or trade with the power to investigate its members.

6) Protections for the Discloser

The University will not treat or threaten to treat a person less favourably than others or Retaliate against any Employee/Discloser for:

- a) seeking advice on making a Protected Disclosure;
- b) making a Protected Disclosure;
- c) encouraging another person to make a Protected Disclosure; or
- d) giving information in support of a Protected Disclosure.

A Discloser also has immunity from civil and criminal proceedings for making the disclosure, unless they are personally involved in the Serious Wrongdoing.

The University will refuse a request for information under the Official Information Act 1982 if it might identify a person who has made a Protected Disclosure unless the request is made by the NZ Police for the purpose of investigating an offence.

A Discloser is still entitled to the protections provided in this Policy if mistaken and there is no finding of Serious Wrongdoing.

If a Discloser feels they have been victimised or Retaliated against for making a Protected Disclosure, they may take a personal grievance and/or make a complaint under the Human Rights Act 1993.

The protections conferred by the Act, this Policy, and section 66(1)(a) of the Human Rights Act 1993 do not apply to a disclosure that is known by the Discloser to be false or is made in bad faith or the information being disclosed is protected by legal professional privilege.

7) Receiving a Disclosure

If a Receiver is approached for advice or support about a Protected Disclosure they must refer the disclosure to another person in section 5 above if:

- (a) they are aware that they may have some involvement in the alleged Serious Wrongdoing; or
- (b) they have a close relationship or association with the alleged wrongdoer.

8) Procedure

All Protected Disclosures will be dealt with promptly.

The Receiver of the Protected Disclosure will consult with the Discloser if the Protected Disclosure is to be referred to General Counsel or to a person listed in section 5 above.

If General Counsel considers it appropriate, the matter may be referred to the Vice-Chancellor following consultation with the Discloser.

If the Receiver considers it appropriate, the disclosure may be referred to an Appropriate Authority.

A Protected Disclosure may be referred on more than one occasion.

(a) Receiving a Protected Disclosure

- I. When a Receiver receives a Protected Disclosure, they must give it full consideration and decide whether the Protected Disclosure should be investigated or whether any further action should be taken.
- II. A Receiver may seek advice from General Counsel, or a person listed in Section 5 above.
- III. General Counsel may direct another to make preliminary inquiries or gather evidence or perform any work as necessary to assist with the decision whether to investigate the allegation of Serious Wrongdoing.
- IV. The Receiver, or a person who has been referred the Protected Disclosure, will notify the Discloser within 20 working days, from the date the Protected Disclosure was received, of the decision whether the alleged Serious Wrongdoing will be investigated and provide reasons for the decision. If this timeframe is not possible an expected date will be given.
- V. A decision not to investigate an allegation of Serious Wrongdoing must be recorded in writing and does not prevent the University from taking further action in relation to matters raised in the disclosure. If the Discloser genuinely believes that the allegation qualifies as Serious Wrongdoing, the Discloser may refer that disclosure to an Appropriate Authority.

(b) Investigating the Protected Disclosure.

- I. An investigation will be conducted by the Receiver or other person the Receiver considers to be appropriate, which may include persons external to the University.
- II. In making a decision who should investigate, the Director People and Culture or another listed in section 5 above may be consulted.
- III. The investigator will determine whether or not the allegation of Serious Wrongdoing is substantiated, and whether the conduct constitutes Serious Wrongdoing.
- IV. The University will decide what if any action is appropriate based on the findings of the

investigation.

- V. The University will refer a matter to an Appropriate Authority where the Protected Disclosure concerns security, intelligence, or international relations. Where possible, the University will consult with the Discloser if such disclosure is required.

9) Confidentiality

The Receiver of a Protected Disclosure, and any person approached for advice, assistance, or support, should not disclose information that might identify the Discloser unless they have consent from the Discloser to do so.

However, the Receiver or any investigator appointed by the University may disclose information that might identify Discloser if they believe this is essential:

- (a) for the effective investigation of the Protected Disclosure; or
- (b) to prevent serious risk to public health, public safety, the health or safety of any individual, or the environment; or
- (c) to comply with the principles of natural justice; or
- (d) if the University is subject to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

Where identifying information is to be disclosed, the Receiver or investigator will consult the Discloser about the intended release. However, if there is a serious risk to public health, public safety, the health and safety of any individual, or the environment, or to an impending investigation by a law enforcement or regulatory agency for the purposes of law enforcement, it may be impracticable to consult with the Discloser. In such circumstances, the Receiver will inform the Discloser that their information has been disclosed after the identifying information has been released.

3. DEFINITIONS

Act:	means the Protected Disclosures (Protection of Whistleblowers) Act 2022.
Appropriate Authority:	has the meaning given in section 25 of the Act and includes the head of any public sector organisation, the University Council or any of the persons or bodies listed in Schedule 2 of the Act.
Corrupt:	refers to the abuse of entrusted power for private gain (e.g. soliciting or receiving gifts or other gratuities to perform part of an official function, or omit to perform an official duty). It includes dishonest activity in which a manager, staff member or contractor of the University acts contrary to the interests of the University and abuses their position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity
Discloser:	means a person who makes a Protected Disclosure in accordance with the Act.
Employee:	includes any current Employee of the University and for the purposes of this policy extends to: <ul style="list-style-type: none">(a) a former Employee;(b) a homemaker;(c) a person seconded to the University;(d) an individual who is contracted under a contract for services to do work for the University;(e) a person concerned in the management of the University; or(f) a person who works for the University as a volunteer.
Protected Disclosure:	refers to a disclosure of information being protected when: <ul style="list-style-type: none">(a) the information is about Serious Wrongdoing in or by the University; and(b) the Discloser believes on reasonable grounds that the information is true or likely to be true; and

- (c) the Discloser wishes to disclose the information so that the Serious Wrongdoing can be investigated; and
- (d) wishes the disclosure to be protected.

Receiver: means a person who receives the Protected Disclosure or who is approached for advice and/or support regarding a Protected Disclosure.

Retaliate/Retaliation: includes any act that adversely affects the employment, or working conditions, of the individual, or any threat to do so.

Serious Wrongdoing: Under the Protected Disclosures Act, include:

- (a) unlawful, Corrupt or irregular use of public funds or resources;
- (b) an act, omission or conduct that constitutes a serious risk to public health or safety or the environment;
- (c) an act, omission, or 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;
- (d) an act, omission, or conduct that constitutes an offence; or
- (e) an act, omission or conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent or that constitutes gross mismanagement.

University: means Auckland University of Technology including all subsidiaries.

4. SCOPE

This Policy applies to individuals who currently have, or previously had, an employment-type relationship with the University as a staff member, secondee, contractor, volunteer or member of the Board or other governing body of the University concerned in its management. In this Policy, these persons will be collectively referred to as Disclosers.

5. LEGISLATION AND COMPLIANCE

The University shall comply with all applicable New Zealand laws, legislation and regulations.

See also the Register of Key Legislation and specifically:

Protected Disclosures (Protection of Whistleblowers) Act 2022

Human Rights Act 1993

Privacy Act 2020

Employment Relations Act 2000

6. RELATED PROCEDURES / DOCUMENTS

Conflict of Interest Policy

Conflict of Interest Procedures

Employee Discipline Policy

Disciplinary Procedures

Fraud Policy

7. DOCUMENT MANAGEMENT AND CONTROL

Policy Owner: General Counsel

Last review: November 2024

Next review: November 2029

Approved by: Vice Chancellor

Effective date: 12 December 2024

APPENDIX 1

PROTECTED DISCLOSURE FORM

Describe the Protected Disclosure

Please provide a description of the incident, or event, and the names of people involved, the faculty, division or University area where it occurred, when it happened, where it happened how it happened and any other information you think important or relevant. *You may continue on a separate sheet and/or **attach** evidence.*

Please note:

- (a) You are entitled to protection even if the allegation of Serious Wrongdoing is not made out.
- (b) The protections conferred by the Act, this Policy, and section 66(1)(a) of the Human Rights Act 1993 do not apply to Disclosures that are deliberately made in bad faith or that you know to be untrue, or if the information being disclosed is protected by legal professional privilege.
- (c) If you suffer Retaliation by University as a result of making this Protected Disclosure, you can take a personal grievance or make a complaint under the Human Rights Act 1993.
- (d) The University will take all practicable steps to protect your identity, however, it may be necessary in some circumstances for the University to disclose your identity and the information contained in your Protected Disclosure.

You can make this Protected Disclosure anonymously if you chose.

Name:

Date: