

Protected Disclosures Policy



Responsibility for policy: Senior Legal Counsel

Approving authority: Vice-Chancellor

Last reviewed: TBC 2022

Next review: TBC 2027

Application

1. This policy applies to all current and former staff and current and former members of the University of Waikato Council, University Committees, Boards and Trust Boards.

Purpose

2. The purpose of this policy is to set out:
 - a. the processes by which serious wrongdoing in the University should be reported, with reference where applicable to the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#), and
 - b. a person's rights and responsibilities associated with protected disclosures.

Scope

3. The processes in this policy are intended only for situations involving allegations of serious wrongdoing (as defined in clause 6 of this policy) where the University's usual reporting or complaints processes, e.g. a grievance under the [Staff Code of Conduct](#) are not appropriate.
4. This policy is separate from, and additional to, any rights and obligations that an individual may have under the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#).

Related documents

5. The following documents set out further information relevant to this policy:
 - [Bullying and Harassment Policy](#)
 - [Employment Relations Act 2000](#)
 - [Fraud and Corruption Policy](#)
 - [Fraud and Corruption Response Plan](#)
 - [Human Rights Act 1993](#)
 - [Official Information Act 1982](#)
 - [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#)
 - [Staff Code of Conduct](#)

Definitions

6. In this policy:

protected disclosure has the meaning defined in the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#)

serious wrongdoing has the meaning defined in the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) and includes

 - a. an unlawful, corrupt, or irregular use of funds or resources of the University of Waikato

- b. an act, omission or course of conduct that constitutes a serious risk to public health, public safety, the health or safety of any individual, or the environment
- 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
- d. an act, omission or course of conduct that constitutes oppressive, improperly discriminatory or grossly negligent conduct, or constitutes gross mismanagement by an employee

Internal Authority means any of the following:

- the Chancellor
- the Vice-Chancellor
- the Senior Legal Counsel

External Authority means one of the various officials and organisations included in the definition of “appropriate authority” in the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#).

Processes and responsibilities

7. A current staff member who has information about serious wrongdoing, believes the information is true or likely to be true and wishes to make a protected disclosure rather than using any other University reporting or complaints process, is encouraged to make the disclosure to their line manager in the first instance.
8. A line manager to whom a protected disclosure is made must refer the disclosure to an Internal Authority.
9. A current staff member who prefers to make a disclosure to someone other than their line manager for any reason may make a protected disclosure by either reporting it directly to an Internal Authority or reporting it by email to uniconcerns@nwm.co.nz, which is an external email address independently hosted and monitored by the University’s lawyers, Norris Ward McKinnon.
10. A person to whom this policy applies who is not a current staff member may make a protected disclosure through either of the mechanisms outlined in clause 9 of this policy.
11. A protected disclosure reported to <mailto:uniconcerns@nwm.co.nz> will be received by Norris Ward McKinnon; a member of Norris Ward McKinnon will ensure that the person making the disclosure is aware of the University’s Protected Disclosures Policy and associated processes, with a view to ensuring that the matter is addressed in accordance with this policy and the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#).
12. A person may make a protected disclosure directly to an External Authority if the person making the disclosure believes on reasonable grounds that:
 - a. the Vice-Chancellor or Chancellor or Senior Legal Counsel is or may be involved in the serious wrong-doing alleged in the disclosure, or
 - b. immediate reference to an External Authority is justified by reason of the urgency of the matter which the disclosure relates, or some other exceptional circumstance, or
 - c. 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.

Responsibilities of Internal Authorities

13. An Internal Authority has a responsibility to arrange for the investigation of a protected disclosure referred to them under this policy and must ensure that every effort is made to complete an investigation within 20 working days of the protected disclosure.
14. An Internal Authority will not arrange for the investigation of a protected disclosure that is frivolous, vexatious, trivial or made in bad faith. If an Internal Authority believes a protected disclosure to be frivolous, vexatious, trivial or made in bad faith, the Internal Authority must inform the person making the disclosure of:
 - a. the Internal Authority's belief and intention not to arrange for the investigation of the disclosure, and
 - b. the person's right to make the disclosure to an External Authority, if they wish to do so.
15. If a protected disclosure involves fraud or corruption, and is not considered to be frivolous, vexatious, trivial or made in bad faith, the Internal Authority must conduct the investigation in accordance with the University's [Fraud and Corruption Response Plan](#).
16. Where a protected disclosure involves a matter other than fraud or corruption, the Internal Authority has the discretion to establish the process for investigating it.
17. The Internal Authority is responsible for advising the person who made the protected disclosure about the likely timeframe of the investigation and, when the time comes, if appropriate, the outcome.
18. In carrying out any investigation, and subject to clause 22 of this policy, the Internal Authority is entitled to use any information or material included in the protected disclosure that they consider relevant and necessary to the proper carrying out of the investigation.
19. If serious wrongdoing or any other conduct contrary to the best interests of the University is found to have been committed, the Internal Authority may refer the matter to be dealt with by an appropriate process. Examples of processes that may follow any investigation are:
 - a. action under the [Staff Code of Conduct](#) if it involves a current staff member
 - b. referring the matter to the Police if it appears that a crime may have been committed.
20. If serious wrongdoing is found to have been committed by a person to whom this policy applies other than a current staff member, any action or process to deal with the wrongdoing must be decided in consultation with the Vice-Chancellor and, if the Vice-Chancellor agrees, the Chancellor.

Protections for, and obligations of, those who make protected disclosures

21. The University recognises that making disclosures of serious wrongdoing can be stressful and, in the case of current staff, encourages those who wish to do so to seek access to confidential counselling services through the [Employee Assistance Programme](#).
22. An Internal Authority must make all reasonable efforts to protect the identity of a person making a disclosure under this policy, unless that person gives consent in writing that their identity may be disclosed.

23. The [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) sets out additional protections that will be extended in some cases to those making a protected disclosure; these include:
- a. immunity from civil and criminal proceedings for making the disclosure, provided the disclosure is made in good faith and is not frivolous, vexatious or trivial
 - b. immunity from disciplinary action for making the disclosure, provided the disclosure is made in good faith and is not frivolous, vexatious or trivial
 - c. the right of a staff member making a disclosure to raise a personal grievance against the University if they are subject to retaliatory action or unjustified disadvantage by the University.
24. A person who makes a protected disclosure under this policy must engage with the University in good faith and, to the fullest extent permitted by law, must treat the matter, including the outcome of an investigation, as confidential to the parties concerned; reasons for this include:
- a. to avoid undermining and damaging the protected disclosures process
 - b. to avoid biasing anyone who may need to be interviewed
 - c. to avoid unnecessary interruptions to the operations of the University
 - d. to help prevent harassment of anyone involved in the process, and
 - e. to help ensure a truly unprejudiced process.

Responsibility for monitoring compliance

25. The Senior Legal Counsel is responsible for monitoring compliance with this policy and reporting any breaches to the Vice-Chancellor.

Breaches

26. A current staff member who makes a protected disclosure contrary to this policy, or a line manager who does not respond to disclosures in accordance with this policy, may be subject to disciplinary action under the [Staff Code of Conduct](#); examples of situations where a disclosure will not be protected under this policy are if:
- a. the person making the disclosure knows the disclosure is false, or
 - b. the person making the disclosure is acting in bad faith.
27. If a breach of this policy is found to have been committed by a person to whom this policy applies other than a current staff member, any action or process to deal with the breach must be decided in consultation with the Vice-Chancellor and, if the Vice-Chancellor agrees, the Chancellor.