

Employment Code Protected Disclosures



THE UNIVERSITY OF AUCKLAND
NEW ZEALAND

HR Policy and Guideline

Policy

This policy outlines the procedures to be followed in relation to protected disclosures under the terms of The Protected Disclosures Act 2000 ("the Act"). The Executive Officer is to be consulted for further guidance on these procedures.

Procedure

Preamble

This Act came into force on 1 January 2001 and applies to the University of Auckland.

The Act establishes a "whistleblower" protection scheme designed to facilitate the disclosure and investigation of serious wrongdoing by or within organizations. It provides immunity from civil, criminal or disciplinary proceedings for employees who make a disclosure in accordance with the provisions of the Act. The Act also protects whistleblowers against retaliatory action by their employer so long as the whistleblower has acted in accordance with the Act.

The protection afforded by the Act does not apply where the person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith. Disclosures to the media are not protected under the Act.

Definition of Serious Wrongdoing

"Serious Wrongdoing" is defined in the Act to include any serious wrongdoing of any of the following types:

- (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.

The Act also gives an extended meaning to "Employee" so as to include a former employee; a person seconded to the University; an individual who is engaged or contracted under a contract for services to do work for the University; and a person concerned in the management of the University.

Summary of the University's Obligations

The Act requires each public organization to set up internal procedures for receiving and dealing with information about serious wrongdoing in their organization. These procedures must identify the persons/officers in an organization to whom a disclosure may be made and effectively require that any employee who makes a protected disclosure or person who is accused of wrongdoing through a disclosure receives a fair hearing.

The following procedures are introduced to operate on a trial basis during 2001 to determine if they are appropriate for handling protected disclosures thereafter.

Protected Disclosure Procedures

1. The Council of the University of Auckland establishes these procedures in conformity with the Act and its duties under section 181(f) of the Education Act 1989.

Compliance with the Act

2. Consistent with the provisions of the Protected Disclosures Act 2000 the University wishes to promote the public interest:
 - (a) by facilitating the disclosure and investigation of matters of serious wrongdoing in or by the University; and

- (b) by protecting employees who, in accordance with the Act, make disclosures of information about serious wrongdoing in or by the University.

Disclosure

3. An employee wishing to disclose information about serious wrongdoing in or by the University may make a protected disclosure in accordance with the Act and these procedures.
4. An employee of the University may disclose information in the manner provided by the Act if:
 - (a) the information is about serious wrongdoing in or by the University; and
 - (b) the employee believes on reasonable grounds that the information is true or likely to be true; and
 - (c) the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
 - (d) the employee wishes the disclosure to be protected.
5. Disclosure of serious wrongdoing should be made without delay for either internal or external investigation. If the employee seeks assistance with preparing their disclosure they may approach the Executive Officer for such advice and assistance as may be appropriate in the circumstances.

Internal Investigation

6. Disclosure should be made, in the first instance, to the Executive Officer, Office of the Vice-Chancellor, unless the employee believes on reasonable grounds that the Executive Officer:
 - (a) is or may be involved in the serious wrongdoing alleged in the disclosure; or
 - (b) is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.

If so the disclosure should be made to the Registrar [and Assistant to the Vice Chancellor], unless the employee has either of those same beliefs about the Registrar. In that case the employee may make the disclosure to the Vice Chancellor. The office of the Vice-Chancellor is at 24 Princes Street, Auckland.

Duty of Recipient

7. Where the recipient of a disclosure becomes aware that they may have any involvement in the serious wrongdoing, or have any relationship or association with an alleged wrongdoer or any pre-conception that would make it inappropriate for the recipient to investigate the serious wrongdoing, the disclosure shall be referred in the prescribed sequence to whichever of the officers referred to in paragraph 6 has no such involvement, relationship, association or pre-conception. The employee making the disclosure shall be advised accordingly.

Conduct of Investigation

8. Every person to whom a disclosure is made or referred must:
 - (a) use their efforts not to disclose information that might identify the person who made the disclosure unless:
 - (i) that person 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 in the disclosure; or
 - Is essential to prevent serious risk to public health or public safety or the environment; or
 - Is essential having regard to the principles of natural justice.
 - (b) give full consideration to the information disclosed with an open mind and have due regard to all relevant considerations in deciding whether or not to investigate the alleged serious wrongdoing or take any action.
 - (c) advise the employee of their decision whether or not to investigate the alleged serious wrongdoing and the reasons for that decision within 20 working days after the date on which the disclosure was made.
 - (d) where they determine that the allegations should be investigated:
 - (i) ensure that the person(s) allegedly involved in the serious wrongdoing are informed of the allegations;

- (ii) afford a fair and unbiased hearing on due notice to the employee and the person(s) allegedly involved in the serious wrongdoing.
- (e) Report the outcome of the investigation to the employee, the person(s) allegedly involved and the Council of the University.

External Investigation

9. Where the employee making the disclosure believes on reasonable grounds that:
- (a) the Vice-Chancellor is or may be involved in the serious wrongdoing alleged in the disclosure; or
 - (b) the immediate reference to an appropriate authority is justified by reason of the urgency of the matter to 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 time on which the disclosure was made;

disclosure of the information may be made to an "appropriate authority" as defined in the Act. The Executive Officer or the Registrar will assist the employee if need be in selecting the appropriate authority.

Further Investigation

10. A disclosure of information may be made to a Minister of the Crown or an Ombudsman if the employee making the disclosure:
- (a) has already made substantially the same disclosure in accordance with clauses 6 to 8 or clause 9 of this procedure; and
 - (b) believes on reasonable grounds that the person or the appropriate authority to whom the disclosure was made:
 - (i) has decided not to investigate the matter; or
 - (ii) 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; or
 - (iii) 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 be; and
 - (c) continues to believe on reasonable grounds that the information disclosed is true or likely to be true.
11. A disclosure under clause 10 may be made to an Ombudsman only if it has not already been made to an Ombudsman (as an "appropriate authority") under clause 9.

This guideline is administered by the Executive Officer