

The University of New England.

INTERNAL REPORTING POLICY UNDER THE N.S.W. PROTECTED DISCLOSURES ACT, 1994.

1. Support for Persons Who Make Disclosures.

1.1 The University does not tolerate corrupt conduct, maladministration, or serious and substantial waste of public money.

1.2 The University is committed to the aims and objectives of The Protected Disclosures Act, 1994. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

1.3 The University will make all reasonable steps to provide protection to staff who makes such disclosures from any detrimental action in reprisal for the making of the disclosure.

2. Purpose of the Policy

2.1 This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by The University or its staff. The system enables such internal disclosures to be made to the Disclosure Co-ordinator or a Nominated Disclosure Officer as an alternative to the Vice-Chancellor.

2.2 This policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a formal protected disclosure within this policy.

3. Objective of the Act.

3.1 The Protected Disclosures Act, 1994 commenced operation on 1st March, 1995. The purpose of the Act is to ensure that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in disclosures are properly investigated.

3.2 The Act aims to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures; and

- providing for those disclosures to be properly investigated and dealt with.

4. Definitions

4.1 Three key concepts in the internal reporting system are "corrupt conduct", "maladministration" and "serious and substantial waste of public money". Definitions of these concepts are outlined below.

- **Corrupt Conduct.**

"Corrupt conduct" is defined in the Independent Commission Against Corruption Act, 1988 [" the I.C.A.C. Act"] (Sections 8 and 9). The definition used in the act is intentionally quite broad. Corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms, ie, taking or offering bribes, public officials dishonestly using the influence, blackmail, fraud, election bribery and illegal gambling are some examples.

- **Maladministration.**

"Maladministration" is defined in the Protected Disclosures Act, 1994 as conduct that involves action or inaction of a serious nature that is:

contrary to law (s.11 (2)(a)) - for example:

- decisions or actions contrary to the law;
- decisions or actions ultra vires (i.e The decision-maker had no power to make the decision or to do the act.);
- Decisions or actions contrary to lawful and reasonable orders from persons or bodies. with authority to make or give such orders;
- breach of natural justice/procedural fairness;
- improper exercise of a delegated power (i.e. Decisions or actions not authorised by delegation or acting under the direction of another;
- unauthorised disclosure of confidential information; or
- decisions or actions induced or affected by fraud.

unreasonable (s.11 (2)(b)): - for example

- decisions or actions inconsistent with adopted guidelines or policy; or with other decisions or actions which involve similar facts or circumstances not justified by any

evidence, or so unreasonable that no reasonable person could so decide or act (ie. irrational);

- arbitrary, partial, unfair or inequitable decisions or actions;
- policy applied inflexibly without regard to the merits of individual cases;
- decisions or actions made or taken without obvious relationships to the facts or circumstances;
- relevant considerations not adequately taken into account or irrelevant considerations taken into account;
- serious delay in making decisions or in taking action;
- failure to give notice of rights;
- wrong, inaccurate or misleading advice leading to detriment;
- failure to apply the law;
- failure to rectify identified mistakes, errors, oversights or improprieties;
- decisions or actions based on incorrect or misinterpreted information; or
- failures to properly investigate.

unjust - (s.11 (2)(b)) - for example:

- decisions or actions not justified by any evidence, so unreasonable that no reasonable person

could so decide or act; or

- partial, unfair or inequitable decisions or actions.

oppressive (s.11 (2)(b)) - for example:

- unconscionable decisions or actions;

- abuse of power, intimidation or harassment; or

- means used not reasonably proportional to the ends to be achieved.

improperly discriminatory (s.11 (2)(b)) - for example:

- inconsistent application of laws, policies or practices when there is no reasonable, justifiable

or appropriate reason to do so; or

- distinctions applied not authorised by law, or failure to make a distinction that is authorised

or required by law.

based wholly or partly on improper motives (s.11 (2)(c)) - for example:

- decisions or actions for a purpose other than that for which power conferred

(i.e. in order to achieve a particular outcome);

- conflicts of interest;

- bad faith or dishonesty;

- seeking or accepting gifts or benefits in connection with the performance of official duties; or

- missuses of public property, official services or facilities.

- Serious and Substantial Waste.

The term "serious and substantial waste" is not defined in the Protected Disclosures Act, 1994.

The N.S.W. Auditor - General provides the following working definition:

"Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste."

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

Types:

Absolute - serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$500,000.

Systemic - the waste indicates a pattern that results from a system weakness within the public authority.

Material - the serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to effect a public authority's expenditure or is/was material to such an extent so as to effect a public authority's capacity to perform its primary function(s).

Material By Nature But Not By Amount - the serious and substantial waste may not be material in financial terms but may be significant by virtue of its nature. That is to say it may be improper or inappropriate. [Alternatively, this type of waste may constitute "maladministration" as defined in the Protected Disclosures Act, 1994].

- Waste can take many forms, for example:
- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;

too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;

- personnel being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment; and
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices that fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest price is not obtained for comparable goods and services.

5. Disclosures Protected Under the Act.

5.1 What disclosures are protected?

Disclosures are protected under the Act if they:

(a) are made -

- in accordance with this Internal Reporting Policy;
- to the Vice-Chancellor of the University; or
- to one of the investigating authorities nominated in the Act; and

(b) show or tend to show, corrupt conduct, maladministration, or serious and substantial waste of public money by The University or any one of its staff; and

(c) are made voluntarily.

5.2 What disclosures are not protected?

A disclosure is not protected under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

It is an offence to wilfully make a false or misleading statement when making a disclosure.

6. Reporting Under the Internal Reporting System.

The positions to whom internal disclosures can be made in accordance with the Internal Reporting System (as shown on the Annexure to this policy) are:

- the Disclosure Co-ordinator [Director, Human Resource Services - ext 2100];

and

- the following Nominated Disclosure Officers:

A Pro Vice-Chancellor

The Executive Director (Business and Administration)

An Executive Dean of a Faculty

The Internal Auditor.

The UNE Ombudsman

Where persons contemplating making a disclosure are concerned about publicly approaching the Disclosure Coordinator or a nominated Disclosure Officer (or The Vice-Chancellor), they can ring the relevant officer and request a meeting in a discreet location away from the normal workplace.

7. Roles and Responsibilities.

This Internal Reporting Policy places responsibilities upon people at all levels within The University:

7.1 Employees.

Employees are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All University employees have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

7.2 Nominated Disclosure Officers.

Nominated Disclosure Officers are responsible for receiving forwarding and or acting upon disclosures in accordance with the Policy. Nominated Disclosure Officers will:

- (a) clearly explain to persons making disclosures what will happen in relation to the information received;
- (b) when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace);
- (c) reduce to writing and date any disclosures received orally (and have the person making the disclosure sign the document);
- (d) deal with disclosures impartially;
- (e) forward disclosures to the Disclosure Co-ordinator for assessment;
- (f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures , and the persons who are the subject of disclosures, are kept confidential; and
- (g) support persons who make disclosures and protect them from victimisation, harassment or any other form of reprisal.

7.3 Disclosure Co-ordinator.

The disclosure Co-Ordinator has a pivotal position in the internal reporting system and acts as a clearinghouse for disclosures. The Disclosure Coordinator will:

- (a) provide an alternative internal reporting channel to Nominated Disclosure Officers and to the Vice-Chancellor;
- (b) impartially assess each disclosure to determine:
 - whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
 - the appropriate action to be taken in relation to the disclosure, for example:
 - * no action/decline;
 - * the appropriate person to take responsibility for dealing with the disclosure;
 - * preliminary or informal investigation;
 - * formal investigation;
 - * prosecution or disciplinary action;

* referral to an investigating authority for investigation or other appropriate action; or

* referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).

(c) consult with the Vice-Chancellor;

(d) be responsible for carrying out or coordinating any internal investigations arising out of a disclosure, subject to the direction of the Vice-Chancellor in carrying out his/her functions;

(e) report to the Vice-Chancellor on the findings of any investigation and recommended remedial action;

(f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and also persons who are the subject of the disclosures, are kept confidential;

(g) support persons who make disclosures and actively protect them from victimisation, harassment or any other form of reprisal; and

(h) report actual or suspected corrupt conduct to the Vice-Chancellor in a timely manner, so as to enable that officer to comply with the ICAC Act.

7.3 Principal Officer.

Disclosures may be made directly to the Vice-Chancellor. Rather than by way of the internal reporting system established under this policy. The Vice-Chancellor will:

(a) impartially assess each disclosure to determine:

- whether the disclosure appears to be a protected disclosure within the meaning of the Act; and

- the appropriate action to be taken in relation to the disclosure, for example:

* no action/decline;

* the appropriate person to take responsibility for dealing with the disclosure;

* preliminary or informal investigation;

* formal investigation;

* prosecution or disciplinary action;

* referral to an investigating authority for investigation or other appropriate action; or

· referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).

(b) receive reports from the Disclosure Co-ordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;

(c) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential;

(d) have primary responsibility for protecting staff who make disclosures, or provide information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;

(e) be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and

(f) report criminal offences to the N.S.W. Police and actual or suspected conduct to the N.S.W. I.C.A.C (under s.11 of the I.C.A.C. Act).

8. Alternative Avenues for Disclosures.

8.1 Alternative avenues available to staff for making a protected disclosure under the Act (other than by means of the internal reporting system established under this Policy for the purpose of the Act) are as follows:

- to the Vice-Chancellor (see 7. Above); or
- to one of the investigating authorities listed under the Act; (ie in N.S.W., The I.C.A.C., The Ombudsman, The Auditor-General, The Police Integrity Commission (the PIC) or The Inspector of the PIC).

8.2 N.B. Disclosures made to a journalist or to a Member of Parliament will only be protected if certain conditions are met:

- the person making the disclosure to a journalist or Member of Parliament must have already made substantially the same disclosure through the internal reporting system or to the Vice-Chancellor or to an investigating authority in accordance with the Act;
- the public official must have reasonable grounds for believing that the information provided in the disclosure is substantially true, and the disclosure must be substantially true; and
- the investigating authority, public authority or officer to whom the matter was originally referred has:
 - decided not to investigate the matter;
 - decided to investigate the matter but has not completed the investigation within 6 months of the original disclosure;
 - investigated the matter but not recommended any action in respect of the matter; or

- failed to notify the person making the disclosure, within six months of the disclosure, of whether the matter is to be investigated.

9. The Rights of Persons Who Are the Subject of Disclosures.

The rights of persons the subject of disclosures will also be protected .In this regard:

(1) the confidentiality of the identity of the persons the subject of disclosures will be protected/maintained (where this is both possible and reasonable);

(2) disclosures will be assessed and acted on impartially, fairly and reasonably;

(3) responsible officers who receive disclosures in accordance with this Policy are obliged to :

- protect/maintain the confidentiality of the identity of persons the subject of the disclosures;

- assess disclosures impartially: and

- act fairly to persons who are the subject of disclosures;

(4) disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of whistleblowers and also the persons who are the subject of disclosures.

(5) where investigations or other enquires do not substantiate disclosures, the fact that the investigation/inquiry, and the identity of persons the subject of disclosures will be kept confidential, unless the persons the subject of disclosures request otherwise;

(6) the persons the subject of disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of an authority , have the right to

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- be informed as to the substance of the allegations;

- be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and

- be given a reasonable opportunity to put their case (either orally or in writing) to persons carrying out the investigation for or on behalf of The University, before any final decision /determination/report/memorandum/letter or the like is made;

(7) where the allegations in a disclosure have been investigated by or behalf of The University, and the person who was the subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, they should be formally advised as to the outcome of the investigation, regardless of the outcome; and

(8) where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person who was the subject of the disclosure is entitled to the support of The University and its senior management. (N.B. The nature of the support that would be reasonable and appropriate would depend on the circumstances of the case, but could include a public statement of support or a letter setting out the University's views that the allegations were clearly wrong or unsubstantiated.)

10. Protection Available Under the Act.

10.1 Protection Against Reprisals.

The act provides protection by imposing penalties on a person who takes "detrimental action" against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. "Detrimental action" means action causing, compromising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceedings.

In any such proceedings the whistleblower only needs to show that he or she made a protected disclosure and, as a consequence, suffered "detrimental action." It then lies on the defendant to prove that the detrimental action shown to have been taken against the whistleblower was not substantially in reprisal for the person making the protected disclosure.

Any member of staff that believes that "detrimental action" is being taken against them substantially in reprisal for the making of internal disclosures to or in accordance with this Policy should immediately bring the allegations to the attention of The Vice-Chancellor.

If a member of staff who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact The N.S.W. I.C.A.C. or The N.S.W. Ombudsman.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice or guidance to the person concerned.

10.2 Protection Against Actions.

The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against any Act that imposes a duty to maintain confidentiality to any information disclosed.

10.3 Confidentiality.

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirements are where:

- the persons consent in writing to the disclosure of that information;
- it is essential, having regard to the principle of natural justice that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer or public official is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively, or disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by The Vice-Chancellor. *1 In all cases the person who made the disclosure will be consulted before such a decision is made.

N.B. *1 If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority.

10.4 Freedom of Information Exemption.

Under the N.S.W. Freedom of Information Act, 1989, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to protected disclosure within the meaning of The Act.

11. Notification of Action Taken or Proposed.

A person who makes a protected disclosure must be notified, within 6 months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

If a disclosure is made in accordance with this Policy, the Disclosure Co -Ordinator is responsible for the 6-month notification to the person who made the disclosure, unless this responsibility has been retained by or allocated to another officer by The Vice-Chancellor.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the disclosure. This should include a statement of the reasons for the decision made on or action taken in response to the disclosure.

The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances listed in section 19(3)(a)-(c) of the Act (relating to disclosures to members of Parliament (M.P.) and to journalists) apply, i.e. whether:

- (1) a decision was made not to investigate the matter;
- (2) a decision was made to investigate the matter, but the investigation was not completed within 6 months of the original decision being made;
- (3) the matter was investigated but no recommendation was made for the taking of any action in respect of the matter; or
- (4) the matter was investigated but no notification to the person making the disclosure, was made within 6 months of the disclosure being made, of whether or not the matter is to be investigated.

Without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an M.P. or journalist.

12. Review.

This Policy shall be reviewed annually to ensure that it meets the object of the legislation, and facilitates the making of disclosures under The Act.