



OTAGO POLYTECHNIC COUNCIL POLICY		Number: CP0009.04
Title:	Protected Disclosure of Serious Wrongdoing (Whistleblowing)	
Baldrige Criteria:	Workforce	
Chief Executive Approval:	Effective Date: 3 May 2019	Review Date: April 2020
Previous Policy No:	MP0442	Status: Current
Contact Authority:	Secretary to Council	

Background

The Protected Disclosures Act 2000 aims to promote the public interest:

- a. by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation; and
- b. by protecting employees who, in accordance with the Act, make disclosures of information about serious wrongdoing in or by an organisation.

Under the Protected Disclosures Act Otago Polytechnic is required to have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in or by Otago Polytechnic. This policy sets out those procedures.

Purpose

1. To identify the procedures for making, receiving, dealing with and investigating information about Serious Wrongdoing in or by Otago Polytechnic.
2. To facilitate the disclosure and investigation of Serious Wrongdoing in or by Otago Polytechnic in line with the Protected Disclosures Act.
3. To identify protections available to employees who, in accordance with the Protected Disclosures Act, make disclosures of information about Serious Wrongdoing.
4. The policy is for the specific purposes listed in purpose statements 1–3. It is not intended to replace existing policies and procedures for dealing with employee relations, discipline or staffing issues.

Definitions

In this policy:

"Employee" includes:

- a. current and former employees;
- b. a person seconded to Otago Polytechnic;
- c. an individual who is engaged or contracted under a contract for services to do work for Otago Polytechnic;
- d. a person concerned in the management or governance of Otago Polytechnic;
- e. a person who works for Otago Polytechnic as a volunteer without reward or expectation of reward.

"Serious Wrongdoing" includes any serious wrongdoing of any of the following types:

- a. an unlawful, corrupt, or irregular use of funds or resources of Otago Polytechnic; 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;
- f. whether the wrongdoing occurs before or after the commencement of the Protected Disclosures Act

Statutory Compliance

Protected Disclosures Act 2000, and all subsequent amendments

Protected Disclosures Amendment Act 2009, and all subsequent amendments

Policy and procedure

These Procedures must be adhered to when receiving and dealing with information about Serious Wrongdoing in or by Otago Polytechnic.

Protected Disclosures:

1. If an employee of Otago Polytechnic discloses information in the manner provided for in this policy and:
 - 1.1 the information is about Serious Wrongdoing in or by Otago Polytechnic; and
 - 1.2 the employee believes on reasonable grounds that the information is true or likely to be true; and



1.3 the employee wishes to disclose the information so that the Serious Wrongdoing can be investigated; and

1.4 the employee wishes the disclosure to be protected;

the disclosure will be a protected disclosure of information for the purposes of the Protected Disclosures Act.

Making The Disclosure

2. A disclosure of information about Serious Wrongdoing in or by Otago Polytechnic should be made in writing, by letter or email to Deputy Chief Executive, People, Performance and Development.

3. If you believe on reasonable grounds that Otago Polytechnic's Deputy Chief Executive, People, Performance and Development:

3.1. is or may be involved in the Serious Wrongdoing alleged in the disclosure; or

3.2. 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;

then disclosure may instead be made to Otago Polytechnic's Chief Executive or the Te Kaihāpai.

4. If you believe on reasonable grounds that:

4.1. Otago Polytechnic's Chief Executive is or may be involved in the Serious Wrongdoing alleged in the disclosure; or

4.2. Otago Polytechnic's Chief Executive 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; and

4.3. 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 circumstances;

then disclosure may instead be made to an **Appropriate Authority**.

5. **"Appropriate Authority"** without limiting the meaning of that term:

5.1. includes in the first instance the Council Chair followed by :

- a. the Chair of Finance and Audit Committee;
- b. the Commissioner of Police;
- c. the Controller and Auditor-General;
- d. the Director of the Serious Fraud Office;
- e. the Inspector-General of Intelligence and Security;
- f. an Ombudsman;
- g. the Parliamentary Commissioner for the Environment;
- h. the Police Complaints Authority;
- i. the Solicitor-General;
- j. the State Services Commissioner;
- k. the Health and Disability Commissioner; and

5.2. includes the head of every public sector organisation, whether or not mentioned in clause 5.1; and

5.3. includes a private sector body which comprises members of a particular profession or calling and which has power to discipline its members; but

5.4. does not include:

- a. a Minister of the Crown; or
- b. a member of Parliament.

Information to be provided at time of Disclosure ("The Disclosure Statement")

6. In disclosing information about Serious Wrongdoing in or by Otago Polytechnic, you must:

- a. Identify yourself;
- b. Identify the person or persons you believe are involved in the Serious Wrongdoing;
- c. Specify the nature of the Serious Wrongdoing;
- d. Provide a return address; and
- e. Sign and date your Disclosure Statement. Any anonymous disclosure received by Otago Polytechnic will be handled using the Otago Polytechnic processes for an anonymous complaint.



Manner of Investigation

7. On receipt of a Disclosure Statement the Deputy Chief Executive, People, Performance and Development, Chief Executive or the Te Kaihāpai (or an alternate investigator appointed by them) will:
 - 7.1. in writing, acknowledge receipt of the Disclosure Statement;
 - 7.2. in compliance with the principles of natural justice, take whatever actions he or she deems appropriate to provide a fair, unbiased and impartial investigation;
 - 7.3. within 20 working days after the date on which the disclosure was made, provide a written report to the employee setting out:
 - a. The nature of the allegation; and
 - b. Any responses to the allegation; and
 - c. What action, if any, has been taken; and / or
 - d. What recommendations have or will be made.
8. Every person to whom a protected disclosure is made or referred must use their best endeavours not to disclose information that might identify the employee, unless:
 - 8.1. the employee consents in writing to the disclosure of that information; or
 - 8.2. the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information:
 - a. is essential to the effective investigation of the allegations in the protected disclosure; or
 - b. is essential to prevent serious risk to public health or public safety or the environment; or
 - c. is essential having regard to the principles of natural justice.

Additional Disclosures

9. If you make a disclosure of information about Serious Wrongdoing in or by Otago Polytechnic and believe on reasonable grounds that 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, you may make a disclosure of information to an Appropriate Authority.
10. A disclosure of information about Serious Wrongdoing in or by Otago Polytechnic may be made to a **Minister of the Crown** or an **Ombudsman** if you:
 - 10.1. have already made substantially the same disclosure according to these Procedures; and
 - 10.2. believe on reasonable grounds that the person or Appropriate Authority to whom the disclosure was made:
 - a. has decided not to investigate the matter; or
 - b. 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
 - c. 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
 - d. continue to believe on reasonable grounds that the information disclosed is true or is likely to be true.
 - 10.3. A Disclosure under clause 10 of these procedures may be made to an Ombudsman only if it has not already been made to an Ombudsman under clause 5.1 of these procedures.

Protection Of Employees Making Disclosures

11. The Protected Disclosures Act offers the following protections to an employee who makes a protected disclosure of information about Serious Wrongdoing in accordance with the Act:
 - 11.1. The employee may have a personal grievance and may be able to access the anti-discrimination provisions of the Human Rights Act in respect of any retaliatory action from their employer or former employer;
 - 11.2. The employee has immunity from any civil or criminal proceedings, or disciplinary hearing, by reason of having made or referred that disclosure of information;



11.3. Best endeavours will be made not to disclose information that might identify the employee, unless:

- a. the employee consents in writing to the disclosure of that information; or
- b. a person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information:
 - is essential to the effective investigation of the allegations in the protected 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.

11.4. A request for information under the Official Information Act 1982 may be refused, as contrary to the Protected Disclosures Act, if it might identify the employee.

12. The protections provided in the Protected Disclosures Act will not be available to an employee who:

12.1. makes an allegation known to that person to be false; or

12.2. otherwise acts in bad faith; or

12.3. does not disclose information in the manner provided in these Procedures, provided that protections are still available if there is only a technical failure to comply with the Procedures. For example, if the protected disclosure is made to the Chief Executive rather than the Deputy Chief Executive, People, Performance and Development but the employee has followed these Procedures in all other ways then that disclosure would be protected (ref section 6A of the Protected Disclosures Act).

Protection of Persons volunteering supporting information

13. A person who volunteers supporting information in relation to any protected disclosure of serious wrongdoing will enjoy the same protections concerning their disclosure.

14. A person has not volunteered information if they give the supporting information only after being required to do so because of an investigation or only after they have been approached during the course of an investigation

Approved by Council

Date: 3 May 2019

