

PROTECTED DISCLOSURES' – PROTECTION OF WHISTLEBLOWERS POLICY



Approved by:	Council		
Sponsor:	General Manager Corporate and Quality		
Department Responsible:	Corporate and Quality		
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1 PURPOSE

- 1.1 The "Protected Disclosures' – Protection of Whistleblowers" Policy (**Policy**) sets out how disclosers, may report serious wrongdoing such as corrupt, unlawful, or irregular activities, and what protections are provided in those circumstances.
- 1.2 This Policy aims to:
- a) provide guidance and encourage the disclosure and investigation of serious wrongdoing and to ensure protection for those who make disclosures in accordance with the Protected Disclosures (Protection of Whistleblowers) Act 2022 (**Act**)
 - b) ensure allegations of serious wrongdoing are investigated appropriately in a timely, fair, equitable and consistent manner
- 1.3 This Policy and any associated procedures do not authorise a person to disclose information protected by legal professional privilege or operation of law.

2 SCOPE

- 2.1 This Policy applies to:
- a) all current and former employees of the DCC, including temporary employees, contractors and secondees
 - b) any person who is or was previously involved in the operation or management of the DCC, including elected members, volunteers, secondees, any person engaged or contracted to provide service to the DCC, or those people with honorary employee status, are considered an 'employee' in this policy and therefore covered.
 - c) every business, service, or activity of the DCC

3 DEFINITIONS

For the purposes of this Policy all definitions have the same meaning as the Protected Disclosures (Protection of Whistleblowers) Act 2022 unless the context requires otherwise.

- 3.1 "**Appropriate Authority**" is an approved role within the DCC to which a protected disclosure may be made to in accordance with this policy. This includes:

- a) their direct manager or
- b) the Fraud Control Officer¹ (FCO)
- c) the Chief Executive Officer (CEO)
- d) the independent Chair of the DCC Audit and Risk Subcommittee²

3.2 **"Appropriate External Authority"** is an approved role outside of the DCC to which a protected disclosure may be made to in accordance with this policy.

- a) an appropriate external authority includes:
 - i. the Ombudsman
 - ii. the Commissioner of Police
 - iii. the Controller and Auditor-General
 - iv. the Director of the Serious Fraud Office
 - v. the Inspector-General of Intelligence and Security
 - vi. the Parliamentary Commissioner for the Environment
 - vii. the Independent Police Conduct Authority
 - viii. the Solicitor-General
 - ix. the Public Service Commission
 - x. the Health and Disability Commissioner
 - xi. the head of any public sector organisation (such as Audit NZ)
 - xii. any private sector body which comprises members of a particular profession or calling and which has power to discipline its members
- b) an appropriate external authority does not include:
 - i. a Minister of the Crown (except as noted in clause 4.2.3 below)
 - ii. a Member of Parliament
 - iii. the media

(Disclosures to the media are not protected under the Act and could actively undermine the integrity of any resulting investigation)

3.3 **"Discloser" (or "Whistleblower")** is the individual making the protected disclosure, or a person who discloses information in support of, or relating to, a protected disclosure.

3.4 **"Employee"**, in relation to the DCC means someone who is (or was formerly):

- a) an employee of the DCC
- b) volunteers working for the DCC without any expectation of reward for their work.
- c) a secondee to the DCC
- d) concerned in the management of the DCC

¹ Contact details for the Fraud Control Officer can be found on the Fraud Prevention Toolbox on Connect.

² Contact details for the Chair of the Audit and Risk Subcommittee can be found on the Fraud Prevention Toolbox on Connect.

- e) is or was engaged or contracted under a contract for services to do work for the DCC³ⁱ.

3.5 **"Protected Disclosure"** (or "disclosures") is a disclosure of information where a discloser:

- a) believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the DCC
- b) discloses information about that in accordance with the Act
- c) does not disclose it in bad faith
- d) wishes their disclosure to be protected

3.6 **"Serious wrongdoing"** includes any act, omission, or course of conduct that is:

- e) an offence
- f) a serious risk to public health, or public safety, or the health or safety of any individual, or the environment
- g) a serious risk to the maintenance of the law including the prevention, investigation, and detection of offences, or the right to a fair trial
- h) an unlawful, a corrupt, or an irregular use of public funds or public resources
- i) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement by an employee or a person performing a function, duty, or exercising power on behalf of the DCC

3.7 **"Receiver"** means the receiver of the protected disclosure who is either:

- a) the relevant DCC officer or Committee Chair identified in this Policy
- b) an appropriate external authority

4.1 POLICY

4.1.1 The DCC is committed to promoting high standards of ethical and accountable conduct and will not tolerate any form of wrongdoing.

4.1.2 A discloser is recognised as a part of promoting the integrity, accountability, and good management at the DCC.

4.1.3 A discloser has all the protections set out in the Act and this Policy.

4.1.4 A discloser will have their confidentiality protected, except in specific circumstances as set out in the Act and this Policy.

³ Those employees (of contractors) cannot necessarily be protected from their employer and any actions they may take, but the DCC can ensure that parties are aware of the requirements and remedies of the Act.

4.1.5 All disclosures will be actioned in accordance with the Act, Policy, and associated procedures. Response to and/or subsequent investigations will be carried out promptly, appropriately and in a fair, equitable and consistent manner.

4.1.6 If a discloser is making a disclosure that they know to be false or makes any disclosure in bad faith, they will not be protected by the Act or by section 66(1) of the Human Rights Act 1993 and may also be subject to disciplinary action if they are a current employee.

4.2 Disclosure to an Appropriate Authority

4.2.1 Should a discloser suspect that a DCC employee is or was involved in serious wrongdoing, they are encouraged to disclose this information without delay to an Appropriate Authority.

4.2.2 A discloser can go to an Appropriate External Authority⁴ in the following instances:

- c) where a discloser reasonably believes that the CEO is or may be involved in the serious wrongdoing
- d) if they reasonably believe that the disclosure is a matter of urgency or for other exceptional circumstances
- e) after 20 working days a discloser has not received confirmation that their disclosure is being actioned in accordance with the Act

4.2.3 As a last resort a discloser may be made to a Minister of the Crown where they reasonably believe that no satisfactory and timely investigation or action has been carried out by an appropriate authority.

4.3 Confidentiality

4.3.1 The receiver of the protected disclosure must use their best endeavours not to disclose information that might identify a discloser, unless:

- a) the discloser consents to the release of the identifying information
- b) the receiver of the protected disclosure reasonably believes that disclosure of identifying information is essential:
 - i. for the effective investigation of the allegations in the protected disclosure
 - ii. to prevent serious risk to public health or public safety or the environment
 - iii. having regard to the principles of natural justice
 - iv. to an investigation by a law enforcement or regulatory agency for law enforcement

4.3.2 Disclosures may be made anonymously. All disclosers' retain their rights under the Act and this Policy regardless of whether they identify themselves at the time of disclosure or make an anonymous disclosure.

4.3.3 A request for information under the Local Government Official Information and Meetings Act 1987 (other than one made by a member of a law enforcement or regulatory agency for the

⁴ Known as Appropriate Authorities in the Act

purposes of investigating an offence) must be refused, as contrary to the Act, if it might identify a discloser.

4.4 Protection under the Act

4.4.1 No actual, or threat of, civil, criminal, or disciplinary proceedings can be taken against a discloser for making a protected disclosure, or for referring one to an Appropriate External Authority.

4.4.2 The DCC must not retaliate or threaten to retaliate against a discloser who intends to or has made a protected disclosure⁵. Where the disclosure is an employee the DCC must not do or organise to do any of the following:

- a) dismiss them
- b) refuse or not offer or give them the same employment terms, work conditions, fringe benefits, or opportunities for training, promotion, and transfer available to other employees with the same (or substantially similar) qualifications, experience, or skills employed in the same (or substantially similar) circumstances
- c) subject them to detriment or disadvantage (including any effect on their employment, job performance, or job satisfaction) when other employees in work of that description are not or would not be subjected to that detriment or disadvantage
- d) retire them (or require or cause them to retire or resign)

4.4.3 A discloser must not be treated, or threatened to be treated, in any way, this includes being subjected to harassment, discrimination, or victimisation for exercising their rights under the Act⁶ and this Policy.

4.4.4 In the first instance, if a discloser is concerned about anything relating to the protected disclosure they have made, they should talk to the person to whom they made the protected disclosure.

4.4.5 If there are still concerns a discloser can talk to an Appropriate Authority or and Appropriate External Authority.

4.5 Responsibility to Act

4.5.1 Should it be considered that the disclosure may be more appropriately investigated by another party, the disclosure may be referred to an Appropriate External Authority only after consulting with the discloser.

- a) a referred disclosure continues to be protected under the Act and this Policy
- b) the organisation or authority that has received the referral becomes the receiver of the disclosure and the Act and this Policy apply accordingly

4.5.2 The receiver of the disclosure must promptly take the steps set out in section 13 of the Act:

- a) acknowledge receipt of the disclosure in writing to the disclosing party (unless the disclosure was made anonymously)

⁵ As per section 21 of the Act

⁶ As per section 22 of the Act

- b) immediately notify the FCO for the purposes of formally recording it on the “Protected Disclosure Register”
- c) consider the disclosure is a protected disclosure under the Act. This can be done in consultation with the FCO or an Alternative External Authority
- d) deal with the matter by carrying out one or more of the following:
 - i. Investigating the disclosure
 - ii. Addressing any serious wrongdoing by acting or recommending action
 - iii. Referring the disclosure – see 4.5.1
 - iv. Deciding that no action is required
- e) inform the discloser (with reasons) on:
 - i. what the receiver has or is doing to deal with the matter
 - ii. if there are going to be delays beyond the 20 working days since the disclosure, due to it being impracticable, inform the discloser how long the receiver expects to take to deal with the matter
 - iii. update the discloser about progress
 - iv. if an investigation will not take place

4.5.3 All investigations will be conducted with impartiality and in a fair and equitable manner, in line with the principles of natural justice, and this Policy.

4.6 Failure to Act

4.6.1 Where reasonably practicable all protected disclosures must be actioned within 20 working days.

4.6.2 Any failure to act within the timeframe specified in this Policy should be raised by the discloser with the CEO or an Appropriate Authority.

4.6.3 A discloser is entitled to disclose further to an Appropriate External Authority (including a Minister of the Crown or the Ombudsman), if a discloser believes on reasonable grounds that the receiver to whom the disclosure was made:

- a) has not acted as they should under section 13 of the Act
- b) has not dealt with the matter to address the serious wrongdoing.

4.6.4 Any disclosure may be made to the Ombudsman only if it has not already been made to an Ombudsman under section 4.2 above.

4.7 False allegations

4.7.1 If a discloser believes on reasonable grounds that the information they disclose is about a serious wrongdoing, but the belief is found to be mistaken, a discloser remains entitled to the protections conferred by the Act and this Policy.

4.7.2 The protections conferred by the Act and this Policy do not apply where a discloser makes an allegation disclosure knowing it to be false or to be in bad faith.

4.8 Employees Information and Guidance

4.8.1 The DCC shall ensure this Policy is published and understood by all DCC employees.

4.8.2 DCC employees may approach the Human Resources department at any time for questions about the interpretation or application of the Policy.

4.8.3 External information and guidance may also be sought at any time from the Office of the Ombudsman. The Office of the Ombudsman is available on 0800 802 602 or at www.ombudsman.parliament.nz

Relevant Legislation:	Protected Disclosures (Protection of Whistleblowers) Act 2022 Human Rights Act 1993
Associated Documents:	Asset Disposal and Write-Off Policy and Procedures Bullying Harassment and Discrimination Policy Conflict of Interest Policy Fraud, Bribery and Corruption Prevention Policy Fraud, Bribery and Corruption Prevention Policy Fraud Prevention Toolbox and Guidance Gifts and Hospitality Policy and Procedures HR Manual Procurement and Contract Management Policy and Procedures Sensitive Expenditure Policy and Procedures Staff Code of Conduct