

Protected Disclosures (Protection of Whistleblowers) Policy

What is a protected disclosure?

1. The Protected Disclosures (Protection of Whistleblowers) Act 2022 (the Act) is designed to support the disclosure and investigation of serious wrongdoing in an organisation and protect the people who make the disclosure.
2. Education New Zealand Manapou ki to Ao is required under the Act to have an internal procedure for receiving and dealing with information about serious wrongdoing that identifies who a disclosure can be made to and that maintains the principles of natural justice.
3. We are committed to providing a safe and secure work environment that values our people. As a good employer we comply with legislative requirements, and we encourage best practice by supporting a culture of Aroha, Manaakitanga, and Kaitiakitanga where your courage in speaking up is respected and protected.

What are the definitions of serious wrongdoing?

4. Under the Act serious wrongdoing is defined as any of following:
 - An offence
 - An oppressive, unlawfully discriminatory, or grossly negligent conduct (or gross mismanagement) by a public sector employee or any person acting on behalf of a public sector organisation or the Government
 - Corrupt, or irregular use of public funds or resources of a public sector organisation
 - An act, omission or course of conduct that creates a serious risk to the health and safety of an individual (which could include instances of sexual harassment and bullying), or could mean a serious risk to public health, or public safety or the environment
 - An act, omission, or course of conduct is a serious risk to the maintenance of the law

What is not a serious wrongdoing?

5. If the matter relates to dissatisfaction with the leadership of Education New Zealand, or more minor misconduct matters, this may not amount to serious wrongdoing and therefore may not be covered by the Act. The Act also does not cover employment issues that are covered by the Employment Relations Act 2000.

Who is covered by the Act?

6. Anyone who has or is working for us, including current staff, former staff, contractors, seconded staff, and Board members of Education New Zealand. We are all responsible for familiarising ourselves with its contents.

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What protection will I have?

6. You can be assured that we will do our best to keep your identity confidential. You cannot be prosecuted for reason of making a disclosure, and nor can you be disciplined or dismissed by Education New Zealand for doing so. If you encounter retaliation, you may lodge a personal grievance. Retaliation is defined as dismissing the employee, treating the employee less favourably than other similar employees, or subjecting them to any detriment or disadvantage. You are also protected by the Human Rights Act 1993 and Employment Relations Act 2000.
7. There is a requirement to act in good faith when making a disclosure of serious wrongdoing and the guarantee of protection is invalid if you knowingly make a false declaration. You are not allowed under the Act to disclose any information protected by legal professional privilege which includes legal advice given to Education New Zealand.

What are our obligations?

8. The Act requires public sector organisations to have appropriate procedures for dealing with protected disclosures. These procedures must:
 - Comply with natural justice principles
 - Identify potential receivers of the complaint, and
 - Refer to the ability to disclose the complaint to other persons in some circumstances
 - Procedures must be consistent with the process outlined in the table below and include protection against retaliation and provide practical assistance and advice to whistleblowers.

How do I make a protected disclosure?

9. Making a judgement about whether the issue(s) you want to raise warrants protected disclosure or if it is more appropriate to raise it as part of a 'business as usual' discussion with your manager, things to consider are:
 - Is the information about serious wrongdoing in or by Education New Zealand?
 - Do you believe the information to be true or likely to be true?
 - Do you want the serious wrongdoing to be investigated?
 - Do you want your disclosure to be protected?

You may make a disclosure to an appropriate authority at any time, so importantly if in doubt speak up. You must cite the Protected Disclosures Act when you make your complaint so that the person receiving it is immediately alerted to the need to put appropriate protections in place.

10. If you believe there has been serious wrongdoing:

| Step | Responsibility | Action Required |
|------|---|--|
| 1 | Existing or ex staff member or contractor | Make the disclosure including detailed information about the: <ul style="list-style-type: none"> • nature of the serious wrongdoing • name or names of the people involved surrounding facts, including the time and place of the wrongdoing, if relevant and known. |

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| 2 | Existing or ex staff member or contractor | <p>Send the completed disclosure to the Chief Executive (CE), or Board Chair if you have reason to believe the CE:</p> <ul style="list-style-type: none"> • may be too closely associated with a person involved in the wrongdoing, or • the CE may be involved in the wrongdoing. |
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Within 20 working days of receiving the disclosure:

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| 3 | CE or Board Chair | <ul style="list-style-type: none"> • Acknowledge the date the disclosure was received, if the disclosure was made orally, and summarise the understanding of the disclosure • Consider whether the disclosure warrants investigation • Check with the discloser whether the disclosure has been made elsewhere • Respond to the matter by investigating it, acting, or recommending action, referring the disclosure elsewhere, and /or deciding that no action is required • Inform the discloser, with reasons, about what the receiver has done or is doing to deal with the matter. • Take care not to identify the person who made the disclosure. <p>When it is impracticable to complete these actions within 20 working days, then the first three steps should be undertaken, and the discloser kept updated about progress.</p> |
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If it is determined that a full investigation is needed, identify an appropriate person to conduct this.

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| 4 | Person nominated by the CE or Board Chair | Carry out investigations quickly and in accordance with the principles of natural justice. |
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Once the investigation is complete:

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| 5 | CE or Board Chair | <p>Prepare a report of the investigation, including recommendations for action if relevant. Send the report or relevant portions of it to:</p> <ul style="list-style-type: none"> • the disclosing employee • the Board of Education New Zealand (if appropriate), and • anyone else affected by the outcome of the investigation. |
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What are the other considerations?

Protection of your identity

11. If you receive, investigate, or otherwise learn of a protected disclosure, you must keep confidential any information that could identify the person who made the disclosure, unless:
- the person who made the disclosure consents in writing to the release of the identifying information, or
 - you reasonably believe that revealing the identifying information is essential for either:

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- the effective investigation of the allegations, or
- preventing serious risk to public health or public safety or the environment, or
- natural justice, or
- an investigation by a law enforcement agency for the purpose of law enforcement

12. The Act says Education New Zealand may refuse a request for information under the Official Information Act 1982, if it might identify the person who made a protected disclosure. This doesn't apply if the Official Information Act request was made by the police to investigate an offence.

Making a disclosure to an appropriate authority

13. You can make a protected disclosure directly to an appropriate authority at any time, if you have reasonable grounds to believe:
- the Board Chair may be involved in the wrongdoing
 - the urgency of the matter or other exceptional circumstance justifies immediately referring it to another authority, or
 - you have made a disclosure internally and no action has been taken or recommendations made within 20 working days.
14. An appropriate authority is a trusted external party and includes (but are not limited to):
- Head of any public sector organisation
 - Officer of Parliament (an Ombudsman, the Controller and Auditor-General, the Commissioner of Police or the Parliamentary Commissioner for the Environment)
 - Persons or bodies listed in [Schedule 2](#) of the Act
 - Membership body of a particular profession or calling which has the power to discipline its members

An appropriate authority does not include a Minister or Member of Parliament and disclosures to media are not protected under the Act. For a full list of appropriate authorities, along with the nature of concerns they deal with, consult the Act.

What can I do if I don't believe my disclosure is being addressed?

15. You can make a protected disclosure to an appropriate authority, including an Ombudsman or Minister if you:
- have already made the same disclosure in line with the rest of this policy, and
 - continue to believe on reasonable grounds that the disclosed information is true or is likely to be true, and
 - believe on reasonable grounds that the person or authority you made the disclosure to has:
 - decided not to investigate the matter
 - decided to investigate but not made progress with the investigation within a reasonable time, or
 - investigated but not taken or recommended any action.

Support

16. Your People, Culture and Capability team can help you with any aspect of this policy.

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