

Protected Disclosures (Protection of Whistleblowers) Procedure

What is the purpose of the Protected Disclosures Act?

1. The Protected Disclosures Act (Protection of Whistleblowers) 2022 (the Act), is designed to facilitate the disclosure and investigation of serious wrongdoing in the workplace (also known as whistleblowing), and to provide protection for employees and other workers who report concerns.
2. The Act aims to support employees and other workers to come forward if they see, hear or experience serious wrongdoing in the workplace. The Act provides a framework, under which disclosers within an organisation can be afforded protection.
3. Education New Zealand (ENZ) 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.
4. 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 'speak-up' culture where your courage in doing so is respected and protected. We recognise that employees who report wrongdoing are helping to promote integrity, accountability and good management within the organisation, and reporting is highly valued.
5. Protected Disclosures are one way of 'speaking up', ENZ's Speaking Up Policy outlines other ways that employees can raise concerns about wrongdoing, this includes concerns that don't meet the standard of a Protected Disclosure.

Who is covered by the Act and this procedure?

6. The Act only applies in New Zealand and covers New Zealand based ENZ employees and others who make disclosures of serious wrongdoing, including:
 - An employee of the organisation
 - A secondee to the organisation
 - Individuals contracted to do work for the organisation
 - Individuals involved in the management or governance of the organisation (including a Board member).

Despite the Act only applying in New Zealand, ENZ considers it important to have good processes in place to encourage all staff to speak up about possible wrongdoing to ensure the integrity of our organisation. To support that, we will apply this Protected Disclosure Procedure to all ENZ employees and other workers except where the location makes it impractical to do so or where legal requirements differ.

What is a protected disclosure?

7. A disclosure of information is a protected disclosure if the discloser:
 - believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation, and
 - discloses information about that in accordance with the Act,
 - and does not disclose it in bad faith.
8. To be entitled to protection under the Act, you must substantially comply with the Act's requirements and the steps outlined in this policy.

What is serious wrongdoing?

9. Serious wrongdoing has a particular meaning under the Act. It does not apply to all possible wrongdoing that a person might see and think about reporting.
10. Serious wrongdoing includes an act, omission or course of conduct, in (or by) ENZ that is:
 - An offence
 - A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
 - A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
 - An unlawful, corrupt or irregular use of public funds or public resources
 - Oppressive, unlawfully discriminatory, or grossly negligent acts, or gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government

How do I make a protected disclosure?

11. Firstly, you should make a judgement about whether the issue(s) you want to raise warrants making a 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 ENZ?
 - Do you believe the information to be true or is likely to be true?
 - Do you want the serious wrongdoing to be investigated?
 - Do you want your disclosure to be protected?

Most importantly: If in doubt, speak up.

12. If you believe there has been serious wrongdoing you can report it to the Director People & Culture, a Group General Manager, Chief Executive (CE), or the Board Chair.
13. It is up to you how you make contact. It can be a phone call, email or in person. You will need to state that you wish to provide a protected disclosure and provide the name of the person you suspect of serious wrongdoing and an overview of your concern. You may also provide any relevant supporting information or evidence of the allegations. If you wish to provide an anonymous disclosure, you can do so by phone or email. You can take advice from the Ombudsman about this. You should be aware that it could affect the

extent to which we can investigate the protected disclosure, if we cannot do so effectively without knowing your identity.

14. You may report serious wrongdoing to an appropriate authority at any time, whether or not you have also made the disclosure internally. An appropriate authority is a specific external party that can be approached if you are not confident about making the disclosure within ENZ. An appropriate authority includes: the head of any public sector organisation; any officer of Parliament (the Ombudsman, Controller and Auditor-General, Parliamentary Commissioner for the Environment); any of the examples listed in the [Act](#).
15. If you are unsure how to raise your concerns or wish to seek advice before making a protected disclosure, you can contact the Ombudsman for further guidance on protected disclosures. The Ombudsman has also produced guidance for employees: <https://www.ombudsman.parliament.nz/resources/making-protected-disclosure-guide-blowing-whistle>.

What protection will I have?

16. Provided you are making a disclosure in accordance with the Act, you are entitled to the following protections:

Confidentiality:

17. We will use our best endeavours to keep your identity confidential. However, the promise of anonymity is not absolute. There may be cases where it is essential to release identifying information about a discloser.
18. Identifying information will only be released if you consent to the release of that information, or if there are reasonable grounds to believe that the release of identifying information is essential:
 - for the effective investigation of the disclosure; or
 - to prevent a serious risk to public health, public safety, the health and safety of any individual, or the environment; or
 - to comply with the principles of natural justice, or
 - to an investigation by a law enforcement or regulatory agency for the purposes of law enforcement.
19. Before releasing any identifying information, ENZ must consult with you about the release, if it is essential for the effective investigation of the disclosure, or to comply with the principles of natural justice.
20. However, where the release of identifying information is essential to prevent a serious risk to public health, public safety, the health or safety of any individual or the environment, or to an investigation by a law enforcement or regulatory agency for the purposes of law enforcement, ENZ will only consult with you where practicable.
21. The Ombudsman can provide additional advice if you're considering making an anonymous disclosure.

22. The release of information that might identify a discloser in breach of these provisions means a complaint may be made under the Privacy Act 2020 for interference with privacy. And as a result, the Privacy Commissioner may undertake an investigation.

Obligations not to retaliate or treat less favourably:

23. The Act requires that the receiving organisation not retaliate or threaten to retaliate against the discloser or treat or threaten to treat a discloser less favourably than others. If you feel you are being retaliated against, you can raise the matter with Director People & Capability, CE, or report the matter to an appropriate authority.
24. If an employee believes that they have been subject to retaliation of any kind, they may lodge a personal grievance under the Employment Relations Act 2000. Forms of retaliation could include:
- dismissal,
 - being treated less favourably than other similar employees, or
 - being subject to detriment or disadvantage.
25. A discloser, or someone who supports the discloser, who is treated less favourably than others in the same or similar circumstances may be able access the anti-victimisation protections in the Human Rights Act 1993. This applies to all types of discloser, including persons not covered by the Employment Relations Act.

Immunity from civil, criminal and disciplinary proceedings:

26. A discloser who makes a protected disclosure, and a receiver who refers the disclosure, must do so in accordance with the Act (and in particular the discloser must not knowingly make a false allegation, disclose legally privileged information, or act in bad faith). When they comply with the Act, they will not be liable to any civil, criminal or disciplinary proceeding for making or referring the disclosure.
27. These protections only apply to making the disclosure. Action can still be taken against a discloser if they were involved in the wrongdoing.

How will I be supported if I make a disclosure?

28. We are acutely aware that it isn't easy to 'blow the whistle'. Along with the above protections, we will ensure you are safe and supported should you decide to come forward with information about serious wrongdoing. We will work with disclosers to identify the most appropriate form of support. For example:
- Ensuring the person raising the concern has a copy of the Speaking Up Policy so they are aware of their rights and the steps they can expect in the process
 - Making an early assessment of the risk of detrimental impact and how this can be managed
 - Considering whether immediate action is needed to keep the discloser safe
 - Monitoring the wellbeing of the discloser during and after the process, and remedying any disadvantage they have suffered as a result

- Advising how and where to access support, including accessing a support person (if required)
- You have access to our Employee Assistance Programme (EAP) which is an independent organisation that is contracted to provide personal and confidential support.

What happens once a protected disclosure is received?

29. Within 20 working days of receiving a protected disclosure, we will:
 - acknowledge to the discloser the receipt of the disclosure
 - consider the disclosure and whether it warrants investigation
 - check with the discloser whether the disclosure has been made elsewhere (and any outcome)
 - deal with the matter by doing one or more of the following:
 - a. investigating the disclosure (the CE or Board Chair will nominate someone to complete an assessment and investigation into the allegation of serious wrongdoing, in accordance with the principles of natural justice)
 - b. addressing any serious wrongdoing by acting or recommending action
 - c. referring the disclosure (see below)
 - d. deciding that no action is required, and
 - inform the discloser (with reasons) about what the receiver has done or is doing to deal with the matter.
30. When it is impracticable to deal with the matter and inform the discloser within 20 working days, we will inform the discloser how long we expect to take to deal with the matter. We will then keep the discloser updated about progress and inform the discloser (with reasons) about what we have done or are doing to deal with the matter.
31. The Director People & Capability is responsible for ensure all reports of potential wrongdoing are centrally recorded.
32. If you believe on reasonable grounds that ENZ has not done what it should have under either the Act, or this policy, you will have the option to make a further disclosure as outlined below.

How does ENZ respond to internal protected disclosures?

33. When you make a disclosure internally to one of the individuals identified at paragraph 12, ENZ will deal with the disclosure.
34. ENZ may do so by:
 - investigating the disclosure
 - addressing any serious wrongdoing (by acting or recommending action)
 - referring the disclosure to the appropriate authority or
 - deciding that no further action is required (for example because the requirements of the Act have not been met, or the matter is better addressed by other means).

What if we decide no action is required?

35. We will inform you, with reasons, if we believe no action is required on your disclosure.

Reasons may include:

- the requirements of the Act in relation to disclosers and disclosures are not met,
- that the length of time since the alleged wrongdoing makes an investigation impractical or undesirable, or;
- that the matter is better addressed by other means.

What if we need to refer the disclosure?

36. In some cases, we may need to refer the disclosure to an appropriate authority. If this happens, we will consult with you and the intended recipient of the referral beforehand.

37. Examples of such cases could include:

- the Protected Disclosure involves fraud or corruption or other criminal offence
- the Protected Disclosure involves serious risk to public health or safety
- the Protected Disclosure involves serious risk to the health or safety of any individual
- the Protected Disclosure involves serious risk to the environment

What if you are not satisfied with the outcome?

38. If you do not feel that your disclosure has been dealt with appropriately internally, you can make a protected disclosure to an appropriate authority regardless of whether you have already made a disclosure to an appropriate authority.

You may also make a further disclosure to a Minister if you believe on reasonable grounds either that:

- ENZ has not acted as it should under the Act; or
- ENZ has not dealt with the matter so as to address the serious wrongdoing.

The People and Capability team can support you with any aspect of this procedure.