

PROTECTED DISCLOSURES POLICY

Section	Problem Resolution		
Approval Date	15.03.10	Approved by	Directorate
Next Review	As required	Responsibility	Chief Executive
Key Evaluation Question	6	ITPNZ Quality Standard	6

1. PURPOSE OF POLICY

1.1 To promote the public interest by:

- Facilitating the disclosure and investigation of matters of **serious wrongdoing** in or by Nelson Marlborough Institute of Technology (NMIT);
- Protecting **employees** who, in accordance with the Act, make disclosures of information about **serious wrongdoing**.

2. PROTECTED DISCLOSURES ACT 2000 (THE ACT)

2.1 Under section 17 of the Act NMIT is required to have appropriate internal procedures for receiving and dealing with information about **serious wrongdoing** in or by that organisation. The following are relevant definitions under the Act (which are used in bold type in this policy).

2.2 **Serious wrongdoing** includes:

- An unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or
- An act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
- 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
- An act, omission, or course of conduct that constitutes an offence; or
- An act, omission; or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement, -

whether the wrongdoing occurs before or after the commencement of the Protected Disclosures Act 2000s.

2.3 **Employee** includes:

- A former employee of NMIT
- A home worker within the meaning of section 2 of the Employment Contracts Act 1991
- A person seconded to NMIT
- A person engaged under a contract for services to NMIT
- A person concerned in the management of NMIT.

- 2.4 An employee of NMIT may disclose information in the manner described in *Protected Disclosures*, if -
- the information is about **serious wrongdoing** in or by NMIT; and
 - the employee believes on reasonable grounds that the information is true or likely to be true; and
 - the employee wishes to disclose the information so that the **serious wrongdoing** can be investigated; and
 - the employee wishes the disclosure to be protected.
- 2.5 **Appropriate authority** includes:
- the Commissioner of Police
 - the Controller and Auditor General
 - the Director of the Serious Fraud Office
 - the Inspector General of Intelligence and Security
 - an Ombudsman
 - the Parliamentary Commissioner for the Environment
 - the Independent Police Conduct Authority
 - the Solicitor General
 - the State Services Commissioner
 - the Health and Disability Commissioner
 - the head of every public sector organisation

3. PRINCIPLES OF THE ACT

NATURAL JUSTICE

- 3.1 The principles of natural justice shall apply.

GOOD FAITH

- 3.2 All parties shall act in good faith. The Act and these procedures do not apply where a person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.

CONFIDENTIALITY

- 3.3 An **employee** who makes a disclosure of information shall be entitled to anonymity, unless the person consents in writing to be identified or the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of the information is essential to the effective investigation of the allegations in the protected disclosure or is essential having regard to the principles of natural justice.

- 3.4 A request for information under the Official Information Act 1982 (other than a request by the police) may be refused if it might identify a person who has made a protected disclosure.

PERSONAL GRIEVANCE

- 3.5 Where an employee who makes a protected disclosure of information claims to have suffered retaliatory action by NMIT, that employee may have a personal grievance under the Employment Relations Act 2000.

IMMUNITY

- 3.6 No **employee** who –
- (a) makes a protected disclosure of information; or
 - (b) refers a protected disclosure of information to an **appropriate authority** for investigation –
- is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information.

4. INTERNAL PROCEDURES

- 4.1 Employees may disclose concerns within the scope of serious wrongdoing, to the Chief Executive.
- 4.2 Information may be disclosed orally or in writing and should provide sufficient information to allow an investigation to proceed.
- 4.3 The Chief Executive has the authority to investigate, or arrange an appropriate person to investigate, the information.
- 4.4 An investigation shall be initiated with 20 working days of the information being disclosed.
- 4.5 Where serious wrongdoing is found to have occurred, a written report is to be made to the Chief Executive for action.
- 4.6 Where an investigation concludes that serious wrongdoing has not occurred then the person disclosing the information (if known) is to be advised of the result of the investigation.
- 4.7 Where misconduct is identified, investigation and action shall be according to the Staff Misconduct Procedure.
- 4.8 A disclosure of information may be made to a senior manager or Council member , if –
- a) the employee making the disclosure believes on reasonable grounds that the Chief Executive is or may be involved in the serious wrongdoing alleged in the disclosure; or
 - b) the employee making the disclosure believes on reasonable grounds that the 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; or
 - c) the Chief Executive is reasonably unavailable to receive the disclosure.
- 4.9 A disclosure of information may be made to an **appropriate authority** if the **employee** making the disclosure believes on reasonable grounds –

- a) that there is no senior manager or council member reasonable available to receive the disclosure; or
- b) that 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; or
- c) that there has been no action or recommended action on the matter to which the disclosure related within 20 working days after the date on which the disclosure was made.

4.10 A disclosure of information may be made to a Minister of the Crown or an Ombudsman if the **employee** making the disclosure –

- a) has already made substantially the same disclosure in accordance with paragraphs 4.1, 4.8 and or 4.9 ; and
- b) believes on reasonable grounds that the person or appropriate authority to whom the disclosure was made -
 - i has decided not to investigate the matter; or
 - ii 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
 - iii 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
- c) continues to believe on reasonable grounds that the information disclosed is true or likely to be true.

4.11 A disclosure under paragraph 4.10 may be made to an Ombudsman only if it has not already been made to an Ombudsman under paragraph 4.9.

5. REFERENCES

INTERNAL

Staff Misconduct Procedure
Fraud

EXTERNAL

Protected Disclosures Act 2000
Official Information Act 1982
Human Rights Act 1993
Employment Relations Act 2000

LEGAL

Legal Opinion:	provided by Pitt & Moore Lawyers, Nelson	February, 2010
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