

# Kaupapa-here | Protected Disclosures (Whistleblowing) Policy

## Mō wai me te whānuitanga | Audience and scope

This Policy applies to all current and former employees of Te Pūkenga, including contracted staff, consultants and secondees providing services for Te Pūkenga; Ohu Kaitiaki, which extends to all those operating at governance level. Including Council members, and members of Council’s advisory committees, and those on fixed-term contracts (collectively referred to as **Kaimahi** in this Policy).

## Mokamoka whakaaetanga | Approval details

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<b>Approval authority</b>	Te Pūkenga Council	<b>Date of approval</b>	28 June 2022
<b>Policy sponsor (has authority to make minor amendments)</b>	Director People, Culture and Wellbeing	<b>Policy owner</b>	DCE Operations
<b>Contact person</b>	Keri-Anne Tane	<b>Date of next review</b>	1 July 2024

## Ngā whakatikatika | Amendment history

Version	Effective date	Created/reviewed by	Reason for review/comment
1	1 April 2020		Initial version.
2	1 April 2022	Sinead Hart	Applied new policy template. No material amends.
3	Jan 2022	Sam Shannon	Reviewing to reflect Protected Disclosures (Protection of Whistle-blowers) Bill 2022
4	1 July 2022	Joy Whiteman	Significant updates to reflect the Protected Disclosures (Protection of Whistle-blowers) Act 2022.

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## Kaupapa-here | Protected Disclosures (Whistleblowing) Policy

### 1. Pūtake | Purpose

- 1.1. The purpose of this policy is to facilitate and encourage the reporting and investigation of matters of serious wrongdoing in and by Te Pūkenga.
- 1.2. To comply with the laws and practices that protect the rights of people who raise concerns about serious wrongdoing, including the Protected Disclosures (Protection of Whistleblowers) Act 2022 (**'the Act'**).

### 2. Te Pae Tawhiti | Te Tiriti o Waitangi Excellence Framework

The Council of Te Pūkenga acknowledges that this Policy has been adopted while there is ongoing work being carried out to consider how Te Pae Tawhiti - Te Tiriti o Waitangi Excellence Framework should be fully embedded in the Policy. The Council notes that Te Pūkenga is still on its transition journey and, as it matures, this Policy and others will be reviewed to ensure they align with the new Operating Model and reflect Te Pae Tawhiti best practice.

### 3. Ngā Mātāpono | Principles

- 3.1. Te Pūkenga aims to maintain an engaging, safe, and ethical working environment. Kaimahi are encouraged to report serious wrongdoing; and Te Pūkenga is committed to the protection of those who make protected disclosures.
- 3.2. Te Pūkenga will:
  - a) Protect the identity of kaimahi who make a protected disclosure in accordance with the Act, this Policy and its related procedures.
  - b) Take no disciplinary proceedings or retaliatory action (whether actual or threatened) against the person for making a protected disclosure, or for referring one to an appropriate authority, provided that the disclosure was made in good faith and was not frivolous, vexatious or trivial.
  - c) Treat kamahi making a protected disclosure and their relatives and associates no less favourably than others in the same or similar circumstances, provided that the disclosure is made in good faith and is not frivolous, or vexatious.
- 3.3. Neither a discloser who makes a protected disclosure nor a receiver who refers a protected disclosure to an appropriate authority is liable to any civil, criminal, or disciplinary proceeding because of making or referring the disclosure.
- 3.4. Kaimahi who disclose their own wrongdoing are not protected under the Act and will be subject to normal disciplinary proceedings and liabilities as if another individual had disclosed the wrongdoing. In determining any action that Te Pūkenga may take, consideration will be given to them coming forward on their own volition.
- 3.5. A disclosure will be protected if all the following are true:

- a) the information is about serious wrongdoing in or by Te Pūkenga
- b) you reasonably believe the information is true or likely to be true
- c) you make the disclosure to an appropriate person as outlined in the Protected Disclosures Procedures
- d) you want the disclosure to be protected and for the matter to be addressed under this policy and related procedure
- e) in making the disclosure internally to Te Pūkenga, you:
  - i) comply with this Policy, Te Pūkenga Protected Disclosure procedure and any other aspects of the Act that may be relevant; or
  - ii) make the disclosure to the Chief Executive Officer or relevant Deputy Chief Executive Officer.
- f) in making the disclosure externally to an appropriate authority, you comply with the Act.

3.6. Providing a disclosure is made in accordance with 3.5 above, you will be entitled to protection even if:

- a) You are mistaken and there is no serious wrongdoing,
- b) you do not refer to the name of the Act when making the disclosure, or
- c) you technically fail to comply with some of the Act's requirements (as long as you have substantially complied with the Act),
- d) you also make the disclosure to another person (as long as you do so on a confidential basis, to seek advice about whether or how to make a protected disclosure).

3.7. Your disclosure will not be protected if:

- a) you know the allegations are false,
- b) you do not act in good faith,
- c) the information you're disclosing is subject to legal privilege,
- d) you disclose the information to the media, on social media, or to any third parties other than for the purpose/s of clause 3.6 d).

3.8. A person who discloses information in support of, or relating to, someone else's protected disclosure is also entitled to protection under the Act if that person:

- a) does not disclose in bad faith; and
- b) discloses the information in accordance with this Policy, the related procedure and the Act.

The same protections will apply to that discloser as if the information were a protected disclosure.

3.9. Te Pūkenga is committed to addressing protected disclosures thoroughly, in a timely manner, and in accordance with the Act. The processes which Te Pūkenga will undertake to do this are outlined in the Protected Disclosures (Whistleblowing) Procedure which should be read in conjunction with this Policy.

3.10. Serious wrongdoing is defined in this Policy (section 5, Definitions) and by the Act. Concerns such as dissatisfaction with leadership, more minor misconduct matters, or employment issues which are more properly covered by the Employment Relations Act 2000, may not amount to serious wrongdoing and therefore would not be covered by this Policy, its related procedure, or the Act.

3.11. Further information and guidance on making a protected disclosure can be found here <https://www.ombudsman.parliament.nz/what-we-can-help/serious-wrongdoing-work-whistleblowing>.

#### 4. Ngā Haepapa | Responsibilities

Role	Responsibilities
<b>All kaimahi</b>	<ul style="list-style-type: none"> <li>Be aware of and take all reasonable steps to ensure compliance with this policy</li> </ul>
<b>Managers</b>	<ul style="list-style-type: none"> <li>Responsible for the day-to-day management and implementation of this policy</li> </ul>
<b>Discloser / Whistle-blower</b>	<ul style="list-style-type: none"> <li>Follow this policy and the related procedures in making a protected disclosure</li> </ul>
<b>Receiver</b>	<ul style="list-style-type: none"> <li>Follow this policy and the related procedures in receiving and addressing a protected disclosure</li> </ul>
<b>Investigator</b>	<ul style="list-style-type: none"> <li>May be another Te Pūkenga employee or an external investigator</li> <li>Investigates the complaint according to the terms of reference</li> <li>Must be neutral and consider all information in a balanced way</li> <li>Establishes the facts but does not make or influence the decision regarding any action to be taken</li> </ul>

#### 5. Ngā Tikanga | Definitions

Term	Definition
<b>Appropriate Authority</b>	<p>An appropriate authority is a trusted external party who can be approached if a discloser is not confident about making the disclosure within Te Pūkenga.</p> <p>A discloser may report serious wrongdoing to an appropriate authority at any time - they do not have to go through Te Pūkenga first.</p> <p>An appropriate authority includes:</p> <ol style="list-style-type: none"> <li>The head or deputy head of any public sector organisation</li> <li>Any officer of Parliament as listed in Schedule 2 of the Act (e.g., the Ombudsman, Controller and Auditor-General);</li> <li>and the membership body of a particular profession, trade, or calling with the power to discipline its members.</li> </ol> <p>Appropriate authorities, as receivers of protected disclosures, should handle a protected disclosure in accordance with the requirements in the Act.</p> <p>Special provisions of the Act limit who the appropriate authorities are for disclosures relating to intelligence and security or international relations information:</p> <ol style="list-style-type: none"> <li>disclosures that include international relations information must only be disclosed to an Ombudsman</li> <li>disclosures that include intelligence and security information must only be disclosed to the Inspector of Intelligence and Security, or if the information relates to serious wrongdoing in or by the office of the Inspector-General of Intelligence and Security, the Prime Minister.</li> </ol> <p>Note: Ministers and members of Parliament are not appropriate authorities.</p>

Term	Definition
<b>Discloser / Whistle-blower</b>	A discloser or whistle-blower is a person who has an employment type relationship with the organisation they are disclosing about. This includes current and former employees, homeworkers, secondees, contractors, volunteers and board members.
<b>Frivolous Complaint</b>	A complaint without serious purpose or value. It may have little merit and be trivial, or where investigating it would be out of proportion with the seriousness of the issues complained about.
<b>Good Faith</b>	To deal with each other in a way that does not, or will not, mislead or deceive each other. A mutual obligation shared by both the employer and kaimahi to actively work constructively together and with open communication.
<b>Legal Privilege</b>	Legal privilege protects communications between a client (e.g. Te Pūkenga) and their legal adviser if the communication was: <ul style="list-style-type: none"> <li>a) intended to be confidential; and</li> <li>b) made for the purposes of requesting or obtaining legal advice.</li> </ul>
<b>Natural Justice</b>	Natural justice means that a process must be conducted without bias. It includes three key rules to enable this: <ul style="list-style-type: none"> <li>a) In an investigation, kaimahi must be advised of the allegations in as much detail as possible, given time to prepare and present their side of the story including evidence and must be given the opportunity to reply to the allegations.</li> <li>b) Investigators and decision makers must be impartial and act without bias in procedures related to decision making. Decisions must be based on a balanced and considered assessment of the information and evidence.</li> <li>c) Decisions must be based on logical proof or evidence. Investigators or decision makers should be able to clearly point to the evidence on which the decision is based. Evidence presented by one party must be disclosed to the other party, who may then have the opportunity to respond.</li> </ul>
<b>Protected Disclosure</b>	A protected disclosure is when the discloser believes on reasonable grounds that there is, or has been, serious wrongdoing in or by their organisation. For a disclosure to be protected, it must generally be disclosed in accordance with the Act and not disclosed in bad faith.
<b>Receiver</b>	The person who received the disclosure from the discloser (Te Pūkenga or an appropriate authority)
<b>Retaliate</b>	Retaliate means doing any of the following: <ul style="list-style-type: none"> <li>a) dismissing the employee</li> <li>b) refusing or omitting to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances</li> <li>c) subjecting the employee to any detriment or disadvantage (including any detrimental or disadvantageous effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment or disadvantage</li> </ul>

Term	Definition
	<ul style="list-style-type: none"> <li>d) retiring the employee, or requiring or causing the employee to retire or resign</li> <li>e) organising to do any of the above.</li> </ul>
<b>Serious Wrongdoing</b>	<p>Serious wrongdoing is an act, omission, or course of conduct, which constitutes one or more of the following:</p> <ul style="list-style-type: none"> <li>a) An offence</li> <li>b) A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment</li> <li>c) A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial</li> <li>d) An unlawful, corrupt, or irregular use of public funds or public resources</li> <li>e) Oppressive, unlawfully discriminatory, or grossly negligent or that is 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</li> </ul>
<b>Vexatious Complaint</b>	<p>A complaint without merit that is intended to cause inconvenience or expense to Te Pūkenga or any member of staff. Includes obsessive, persistent, insistent, prolific, harassing or repetitious complaints. Where the complainant is insistent on pursuing unmeritorious complaints and/or unrealistic outcomes beyond all reason, or complaints with merit in an unreasonable manner.</p>

## 6. Ngā Hononga ki Tuhinga kē | Links to other documents

<p><b>Ngā Kaupapa-Here e Hāngai ana   Related policies</b></p> <ul style="list-style-type: none"> <li>• Bullying, Discrimination and Harassment Policy</li> <li>• Code of Conduct</li> <li>• Conflicts of Interest Policy</li> <li>• Fraud and Corruption Policy</li> </ul>
<p><b>Ngā Tukanga me ngā Hātepe   Processes, Procedures</b></p> <ul style="list-style-type: none"> <li>• Protected Disclosures (Whistleblowing) Procedure</li> <li>• Problem Resolution Procedures – in development</li> </ul>