

Public Interest Disclosure (Whistleblowing) Policy and Procedure

Version	Approved by	Approval date	Effective date	Next full review
1.0	President and Vice-Chancellor	3 October 2023	1 October 2023	1 October 2026
Policy Statement				
Purpose	<ul style="list-style-type: none"> • supporting and facilitating reports of Serious Wrongdoing at or affecting UNSW, • protecting the identity of those making a public interest disclosure and from the risk of detrimental acts that might arise against them as a result of a public interest disclosure, and • respond effectively to public interest disclosure reports including undertaking investigations and reporting to external agencies, where appropriate. 			
Scope				
Policy Provisions				

Public Interest Disclosure (Whistleblowing) Policy

1. Introduction and purpose

The University is committed to creating and maintaining an environment and culture that reflect its values of integrity, transparency and ethical decision-making, inspiring openness, courage and trust. The University recognises the valuable contribution made by those who report Serious Wrongdoing at the University and the importance of ensuring that these reporters, witnesses and other persons are protected from detriment or liability that might arise from their public interest disclosure reports.

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(PID Act).

Public Interest Disclosures Act 2022 (NSW)

All Staff, Affiliates, Contractors and Volunteers of the University, including Controlled Entities and members of the University Council and their committees must speak up and report Serious Wrongdoing if it is reasonably suspected that is occurring or has occurred.

When a public official reports suspected or possible Serious Wrongdoing at UNSW, their report will be a Public Interest Disclosure (PID) if it has certain features which are set out in the PID Act.

2. Serious Wrongdoing

Reports must be of one or more categories of *serious wrongdoing* to be a Voluntary PID (in addition to having the other features set out in this Policy).

2.1. Meaning of Serious Wrongdoing

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f) a serious and substantial waste of public money.

2.1.2. Other reports of wrongdoing will be handled in accordance with the Complaints Management Policy and Procedure.

3. Types of Public Interest Disclosures

Witness PID.

3.1. Voluntary Public Interest Disclosures

3.1.1. A report of Serious Wrongdoing will constitute a Voluntary PID if:

- a) the report is made by a public official including a Staff member, Affiliate, Contractor or Volunteer,
- b) the Staff member, Affiliate, Contractor or Volunteer honestly and reasonably believes that the information they are providing shows (or tends to show) Serious Wrongdoing,
- c) the report is made orally or in writing,
- d) it is made to:
 - o the Vice-Chancellor,
 - o a Disclosure Officer, or
 - o a Manager, and
- e) The report is voluntary (not a Mandatory or Witness PID).

3.1.2. A report of Serious Wrongdoing will not constitute a Voluntary PID if:

- a) the reporter wilfully makes a false statement to or misleads or attempts to mislead the University or the person to whom the disclosure is made,
- b) the report is only about a disagreement with a University policy,
- c) concerns only a grievance about a matter relating to the employment or former employment of an individual, and either
 - o does not have significant implications beyond matters personally affecting or tending to personally affect the individual, or
 - o relates to a disagreement with the taking or proposed taking of reasonable management action.

3.1.3. Clause 3.1.2. does not apply if the grievance arises from a decision made by the University in

- e) Has protection under the Defamation Act 2005.

5.4. Reasonable Management Action

5.4.1. Nothing in this Policy or Procedure prevents Reasonable Management Action from occurring. A person who is protected under the PID Act can still be subject to Reasonable Management Action, even though they receive special protections under the PID Act. Reasonable Management Action includes (but is not limited to):

- a) appraisals for work performance,
- b) misconduct investigations,
- c) disciplinary action,
- d) suspension from the workplace,
- e) termination of employment, and
- f) redundancy, retrenchment, deployment or redeployment.

6. Production of information

6.1. The Disclosure Coordinator or Disclosures Manager can access and arrange for access to any University record or University system (in accordance with the Acceptable Use of IT Policy and Procedure) or any University asset in relation to the reasonable management of the PID.

7. Roles and responsibilities of the University

7.1. The President and Vice-Chancellor

7.1.1. The President and Vice-Chancellor is responsible for:

- a) fostering a workplace culture where reporting is encouraged,
- b) receiving reports of Serious Wrongdoing from Staff, Affiliates, Contractors and Volunteers,
- c) ensuring there is a system in place for assessing disclosures,
- d) ensuring the University complies with this Policy, Procedure and the PID Act, and
- e) ensuring that the University has appropriate systems for:
 - o overseeing internal compliance with the PID Act,
 - o supporting Staff, Affiliates, Contractors and Volunteers who make a PID, including by minimising the risk of Detrimental Action,
 - o overseeing Corrective Action if Serious Wrongdoing is found to have occurred,
 - o complying with reporting obligations regarding allegations or findings of Detrimental Action, and
 - o complying with yearly reporting obligations to the NSW Ombudsman.

7.2. Internal Review Officer

7.2.1. The Deputy Vice-Chancellor (Transformation, Planning and Assurance), or their delegate, as the Internal Review Officer is responsible for:

- a) fostering a workplace culture where reporting is encouraged,
- b) overseeing internal compliance requirements, including:
 - o overseeing the implementation of corrective action,
 - o approving reports for University governance and management committees,
 - o overseeing internal compliance requirements, and
- c) receiving, assessing, and determining internal review requests.

7.3. Disclosure Coordinator

7.3.1. The Director, Conduct and Integrity, or their delegate, as the Disclosures Coordinator is responsible for:

- a) fostering a workplace culture where reporting is encouraged,
- b) receiving, assessing, and determining if a report of Serious Wrongdoing constitutes a PID,
- c) acting as the central point of contact within the University for all PID related matters,
- d) contacting any agency or Integrity Agency for all PID related matters, and
- e) exercising any function conferred on or delegated by the President and Vice-Chancellor under the PID Act.

7.4. Disclosure Manager

7.4.1. The Manager, Disclosures and Complex Investigations, or their delegate, as the Disclosure Manager is responsible for:

- a) fostering a workplace culture where reporting of Serious Wrongdoing is encouraged,
- b) providing advice to the President and Vice-Chancellor, the Disclosures Coordinator, Disclosure Officers, Staff, Affiliates, Contractors and

- a) fostering a workplace culture where reporting Serious Wrongdoing is encouraged,
- b) reporting suspected Serious Wrongdoing,
- c) completing the Public Interest Disclosure and Whistleblowing Training Module,
- d) fully co-operating and assisting in a PID investigation, and
- e) treating any person dealing with or investigating reports of Serious Wrongdoing with respect.

7.7.2. Staff, Affiliates, Contractors or Volunteers must not:

- a) hinder or obstruct the investigation. Hindering or obstructing the exercise of a function under this Policy or Procedure will be treated seriously. For Staff and Affiliates it will be handled as a breach of the Code of Conduct,
- b) wilfully make a false statement to or mislead or attempt to mislead the Disclosures Coordinator or the Disclosures Manager or any investigator appointed to investigate the PID. Doing so is a breach of the Code of Conduct, for Contractors a contractual breach, and potentially a criminal offence,
- c) provide or offer to provide beneficial treatment to another person for the purposes of influencing the other person to refrain from making a PID or to withdraw a PID. Doing so is likely to result in disciplinary action, or for Contractors, contractual action, or
- d) prevent or attempt to prevent a person, or a group or class of persons, from making a PID. Doing so likely to result in disciplinary or contractual action.

8. Recordkeeping, reporting and compliance

8.1. Record keeping

8.1.1. The University must maintain full and accurate records of Recordkeeping Policy and the *State Records Act 1998* (NSW).

8.1.2. The University stores PID information and data in a secure database which the Disclosure Coordinator and Disclosure Manager are responsible for maintaining.

8.2. Reporting

8.2.1. The University must provide the NSW Ombudsman with an annual return which includes:

- a) information about Voluntary PIDs received by the University during each return period (yearly with the start date being 1 July),
- b) action taken by the University to deal with Voluntary PIDs during the return period, and
- c) how the University promotes a culture in the workplace where PIDs are encouraged.

8.2.2. The University will report de-identified Serious Wrongdoing data Committee.

8.2.3. The University will continue to observe its reporting obligations to the NSW Independent Commission Against Corruption.

8.2.4. The University must report evidence of Detrimental Action offences to the NSW Commissioner of Police and to the NSW Independent Commission Against Corruption. The University must also report this information, including an allegation of, to the NSW Ombudsman.

8.2.5. The Disclosures Coordinator will report all recommendations for Corrective Action to the Audit Committee and/or University Leadership Team. The Conduct and Integrity Office will be responsible for the completion of accepted recommendations.

8.3. Compliance

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with this Policy, Procedure and the PID Act.

8.3.2. The Conduct and Integrity Office, with assistance from the Internal Audit Office, conduct regular audits to be reported to either the University Leadership Team and/or Audit Committee.

8.3.3. Immediate Corrective Action may be taken to ensure the safety of people, animals, resources or the environment and to correct non-compliance with this Policy and Procedure and the PID Act. These matters will be reported to the University Leadership Team and/or Audit Committee.

8.3.4. Where there is an inconsistency with any other University code of conduct, policy, standard, procedure, or guideline, this Policy and Procedure prevails.

Public Interest Disclosure (Whistleblowing) Procedure

1. Support for reporting suspected Serious Wrongdoing

1.1. Support

1.1.1. The University will support any Staff member, Affiliate, Contractor or Volunteer who suspects Serious Wrongdoing has occurred or is occurring to make a report. This includes:

- a) ensuring free access to the Employee Assistance Program,
- b) actively minimising the risk of Detriment from occurring,
- c) being open and transparent as far as possible with reporters,
- d) maintaining confidentiality, and
- e) allowing Staff, Affiliates, Contractors or Volunteers to discuss suspected Serious Wrongdoing with either the Disclosures Manager or Disclosures Coordinator before a formal 0 0 1 41.92 reAU

- a) if the report is to be investigated under this Policy and Procedure, or
 - b) referred to another agency or Integrity Agency for investigation.
- 3.1.9. If the report is to be referred to another agency or Integrity Agency for investigation, the Disclosure Manager will advise the reporter of this decision, the reasons for it, the contact details of the agency and the protections available to the reporter.

- 4.1.11. Once the investigation is complete, the Disclosure Coordinator will provide the reporter with the following information:
- a) the steps taken in the investigation,
 - b) the findings or results of the investigation, and
 - c) information about any Corrective Action as a result of the investigation.
- 4.1.12. There may be some details about the investigation outcome and the Corrective Action that cannot be revealed for legal or other reasons. The University will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations that the University has.
- 4.1.13. The University may at any time cease dealing with or investigating a PID if it is determined that it does not meet the definition of a PID. In this event, the Disclosure Coordinator will facilitate advice to the reporter of this decision and the reasons for it. The Disclosures Coordinator will determine if the report should be managed via another process.

5. Detrimental Action, Reasonable Management Action, risk, production, and obstruction

5.1. Causing Detriment

- 5.1.1. Any Detrimental Action taken against any person who has made, may in the future make, or is suspected of having made, a PID will not be tolerated. Engaging in Detrimental Action is a breach of the *Code of Conduct* and will constitute serious misconduct in accordance with the Enterprise Agreement.
- 5.1.2. Any person who suspects that Detrimental Action is being taken against them must immediately report this to the Disclosure Coordinator, the Disclosure Manager or an Integrity Agency.
- 5.1.3. Staff or Affiliates who engage in or are suspected of engaging in Detrimental Action will be directed to be absent from the workplace pending the resolution of the matter in accordance with the Enterprise Agreement.
- 5.1.4. Contractors or Volunteers who engage in or are suspected of engaging in Detrimental Action will be temporarily restricted from engaging in any University activity pending the resolution of the matter.

5.2. Minimising the risk of Detrimental Action

5.2.1. The Conduct and Integrity Office will take steps to minimise the risk of Detrimental Action by:

- conducting a risk assessment,
- creating a risk management plan (including reassessing the risk throughout the entirety of the matter),
- actively communicating with the reporter on potential [GDPR](#) 0.000008871 0 595.32 841.92 reW*nBT/F1 9.96 Tf

- e) undertaking an assessment to determine if anyone is aware of those persons have a motive to cause Detrimental Action to be taken against the reporter or impede the progress of the investigation, and
 - f) providing information to the reporter of the PID about the importance of maintaining confidentiality and advising them on how best to protect their identity, for example, by telling them not to discuss their report with other staff.
- 6.1.2. If a reporter discloses their identity when making a Voluntary PID, the Disclosures Coordinator and Disclosures Manager will not disclose the reporter's identity or identifying information unless:
- a) the reporter consents in writing to the disclosure of the identifying information,
 - b) it is generally known the reporter has made a Voluntary PID as a result of the reporter's voluntary self-identification as the reporter,
 - c) after consulting the reporter, the University reasonably considers it necessary to disclose the identifying information to protect the reporter from Detriment,
 - d) it is necessary for the identifying information to be disclosed to a person whose interests are affected by the PID,
 - e) the identifying information has previously been lawfully published,
 - f) the identifying information is disclosed to a medical practitioner or psychologist for the purposes of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the individual disclosing the information,
 - g) the identifying information is disclosed for the purposes of proceedings before a court or tribunal,
 - h) the disclosure of the identifying information is necessary to deal with the disclosure effectively, or
 - i) it is otherwise in the public interest to disclose the identifying information.
- 6.1.3. In the event that confidentiality cannot be maintained or is unlikely to be maintained, the University will:
- a) advise the person whose identity may become known,
 - b)
 - c) implement strategies to minimise the risk of Detrimental Action,
 - d) provide additional support to the person who has made the PID, and
 - e) remind people who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in Detrimental Action is a criminal offence and will also be a disciplinary matter.

7. Internal review and dispute resolution

7.1. Internal review

- 7.1.1. Staff, Affiliates, Contractors and Volunteers who report Suspected Wrongdoing can seek internal review of the following decisions made by the University:
- that the University is not required to deal with the report as a voluntary PID,
 - to stop dealing with the report because the University determines it is not a Voluntary PID,
 - to not investigate Serious Wrongdoing under this Policy and Procedure or not refer the report to another agency, and
 - to cease investigating the Serious Wrongdoing without either completing the investigation or referring the report to another agency for investigation.
- 7.1.2. Applications for internal reviews must be made in writing within 28 days of being informed of the decision. The application should state the reasons why the reporter considers the decision should not have been made. The reporter may also submit any other relevant material with your application.
- 7.1.3. Applications should be addressed to the Internal Review Officer and be sent to SpeakUp@unsw.edu.au.

7.2. Dispute resolution

- 7.2.1. If a dispute arises between the University and a person who has made a report which is, or may be, a Voluntary PID, the University may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where the University and the reporter are willing to resolve the dispute.

8. Savings and transitional provisions

- 8.1.1. This Policy and Procedure commences on 1 October 2023.
- 8.1.2. Reports of suspected Serious Wrongdoing received on or after 1 October 2023 will be managed under this Policy and Procedure in accordance with the PID Act.
- 8.1.3. Reports of suspected Serious Wrongdoing received on or before 30 September 2023 will be managed under the *Report Wrongdoing Policy* and *Report Wrongdoing Procedure* in accordance with the *Corporations Act 2003* (Cth) and the *Public Interest Disclosures Act 1994* (NSW).
- 8.1.4. Nothing in this Policy or Procedure prevents or restricts protections being conferred on a person in accordance with the *Report Wrongdoing Policy*, *Report Wrongdoing Procedure*, *Corporations Act 2003* (Cth) or the *Public Interest Disclosures Act 1994* (NSW) for reports of suspected Serious Wrongdoing received on or before 30 September 2023.
- 8.1.5. If a person has submitted a report of suspected Serious Wrongdoing on or before 30 September 2023 and then re-

Integrity Agency	has the same meaning as in section 19 of the <i>Public Interest Disclosures Act 2022</i> (NSW).
Manager	means a person who directly or indirectly supervises a Staff member, Affiliate, or Volunteer. It can also include a person who a Staff member, Affiliate, or Volunteer directly or indirectly reports to.
Mandatory PID	means a report that has been made by a Staff member, Affiliate, or Volunteer because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function.
Reasonable Management Action	has the same meaning as in section 31 of the <i>Public Interest Disclosures Act 2022</i> (NSW).
Serious Maladministration	has the same meaning as in section 26 of the <i>Ombudsman Act 1974</i> (NSW).
Serious Wrongdoing	means one or more of the following: (1) Corrupt Conduct, (2) a government information contravention, (3) a local government pecuniary interest contravention, (4) Serious Maladministration, (5) a privacy contravention, and (6) a serious and substantial waste of public money.
Staff	means all employees of the University, including casual employees.
University or UNSW	means the University of New South Wales.
University Asset	means any item purchased with University finance.
University System	means any software accessible by any Staff member, Affiliate, or Volunteer.
Volunteers	means any person that engages in a university activity freely without being paid to do so.
Voluntary PID	means a report that has been made by a Staff member, Affiliate, or Volunteer because they decided, of their own accord, to come forward and disclose what they know.

Witness PID means a report that has been made by a Staff member, Affiliate, or Volunteer during a 505.