

# Whistleblower Policy

## Section 1 - Purpose and Scope

(1) Southern Cross University is committed to protecting staff members who report wrongdoing in the workplace. The purpose of this Policy is to establish a framework for the disclosure and investigation of reports of wrongdoing.

(2) The Policy sets how the University complies with the requirements of:

- a. the [Public Interest Disclosures Act 2022](#) (NSW);
- b. the [Corporations Act 2001](#) (Cth); and
- c. the [Taxation Administration Act 1953](#) (Cth).

(3) This Policy does not apply to staff grievances. These should be raised in accordance with the University's [Complaint Policy - Staff](#) and [Complaint Procedure - Staff](#).

(4) The Policy applies to all reports of wrongdoing relating to the University made by staff, students and others. However, only some reports will qualify as a Whistleblower Report and entitle the reporter to protection against Reprisal Actions.

## Section 2 - Policy Statement

(5) The University is committed to undertaking its activities with the highest standards of honest and ethical behaviour. The University recognises the value and importance of reports of wrongdoing to enhance administrative and management practices.

(6) The University is committed to providing support to, and protecting the identity of, those who report wrongdoing. Staff are encouraged to report any wrongdoing or suspected wrongdoing to their supervisor. However, there are specific protections offered in relation to reports which meet the requirements of the [Public Interest Disclosures Act 2022](#), the [Corporations Act 2001](#) and the [Taxation Administration Act 1953](#). This Policy sets out those requirements and the protections offered:

- a. Section 3 of this Policy sets out the requirements for a report of wrongdoing to qualify for protection under the [Public Interest Disclosures Act 2022](#), and the protections available to the reporter (Public Interest Disclosure).
- b. Section 4 of this Policy sets out the requirements for a report of wrongdoing to qualify for protection under the [Corporations Act 2001](#) and the [Taxation Administration Act 1953](#), and the protections available to a reporter for these types of reports of wrongdoing.

(7) Where a report of wrongdoing does not meet the requirements of Sections 3 or 4, Section 7 of this Policy will apply.

(8) Whistleblower Report refers to a report meeting the requirements of Section 3 or Section 4 of this Policy. The procedures for making a Whistleblower Report and the way in which a University will deal with such a report are set out in Section 5 of the Policy.

(9) If a staff member wants advice on whether their report meets the requirements of Section 3 or Section 4 of this Policy, they should contact the Disclosures Coordinator who will provide them with advice on a confidential basis.

(10) The Disclosures Coordinator is the Director, Governance Services whose contact details are:

Name	Belinda Atkinson
Email	belinda.atkinson@scu.edu.au
Telephone	(02) 6620 3186
Mobile	0415 167 490

(11) The requirements for a report to qualify for protection under Section 3 or Section 4 of the Policy are summarised in the [Whistleblower Report Summary](#).

## Section 3 - Public Interest Disclosures

(12) To qualify for protection as a Public Interest Disclosure under the [Public Interest Disclosures Act 2022](#):

- a. the report must be made by someone who is a Public Official;
- b. the Public Official must honestly believe on reasonable grounds that the information reported shows or tends to show:
  - i. Corrupt Conduct
  - ii. Maladministration
  - iii. Serious and Substantial Waste of Public Money
  - iv. a breach of the [Government Information \(Public Access\) Act 2009](#) (GIPA Act);
- c. the report must be made to one of the following:
  - i. the Disclosures Coordinator
  - ii. the Chair, Academic Board
  - iii. the Vice Chancellor
  - iv. an external investigating authority as set out below:

Type of behaviour	Investigating authority
Corrupt conduct	NSW Independent Commission Against Corruption
Maladministration	NSW Ombudsman
Serious and substantial waste of public money	NSW Auditor-General
Breach of the GIPA Act	Information Commissioner

(13) A report will not be a Public Interest Disclosure unless it is about Corrupt Conduct, Maladministration, Serious and Substantial Waste of Public Money or a breach of the GIPA Act.

(14) A report will not be a Public Interest Disclosure if it is made with the sole or substantial motive of avoiding dismissal or other disciplinary action (other than Reprisal Action for making a Public Interest Disclosure).

## Protections for making a Public Interest Disclosures

(15) If the report qualifies for protection as a Public Interest Disclosure, the reporter is protected from any action causing, comprising or involving any of the following:

- a. injury, damage or loss
- b. intimidation or harassment
- c. discrimination, disadvantage or adverse treatment in relation to employment
- d. dismissal from, or prejudice in, employment
- e. disciplinary proceedings.

(16) It is an offence for a person to take any of the actions set out above. These penalties apply to cases where a person takes action against another because they believe or suspect the other person has made or may have made a Public Interest Disclosure, even if they did not.

(17) A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment or fines, and may be required to pay the victim damages for any loss suffered as a result of the Action.

## Section 4 - Other Whistleblower Reports

(18) To qualify for protection as a report under the [Corporations Act 2001](#) or the [Taxation Administration Act 1953](#):

- a. the report must be made by an Eligible Reporter;
- b. the person making the report must have reasonable grounds to suspect that the information being disclosed concerns Reportable Conduct; and
- c. the report must be made to one of the following:
  - i. the Disclosures Coordinator
  - ii. an officer or senior manager of the University
  - iii. the University's external auditor (or a member of that audit team)
  - iv. a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of the whistleblower provisions in the [Corporations Act 2001](#) or the [Taxation Administration Act 1953](#)
  - v. if the report is in relation to the tax affairs of the University:
    - a University employee or officer who has functions or duties relating to tax affairs of the University
    - the Commissioner of Taxation.

(19) A report does not qualify for protection if it is a personal work-related grievance that does not have significant implications for the University unrelated to the person making the report.

### Protections

(20) If the report does qualify for protection:

- a. the reporter is immune from any civil, criminal or administrative legal action (including disciplinary action) for making the report;
- b. no contractual or other remedies may be enforced, and no contractual or other right may be exercised, against the reporter for making the report;

- c. in some circumstances, the reported information is not admissible against the reporter in criminal proceedings or in proceedings for the imposition of a penalty;
- d. anyone who causes or threatens to cause detriment to a reporter or another person in the belief or suspicion that a report has been made, or may have been made, proposes to or could be made, may be guilty of an offence and may be liable for damages;
- e. a reporter's identity cannot be disclosed to a Court or tribunal except where considered necessary; and
- f. the person receiving the report commits an offence if they disclose the substance of the report, or the reporter's identity, without the reporter's consent to anyone except ASIC, the AFP or a lawyer for the purpose of obtaining legal advice or representation in relation to the report.

## **Section 5 - Procedures**

### **Part A - How to make a report**

(21) To qualify for protection, the Whistleblower Report must be made to one of the people as set out in Section 3 or Section 4 of the Whistleblower Policy. However, reporters are encouraged to make the Whistleblower Report to the the Disclosures Coordinator.

(22) A Whistleblower Report made to someone other than the Disclosures Coordinator, must be referred to the Disclosures Coordinator as soon as possible.

(23) A Whistleblower Report involving the Director, Governance Services should be made to the Vice Chancellor, who will appoint an alternative Disclosures Coordinator.

(24) A Whistleblower Report involving the Chancellor, Vice Chancellor or a Council member should be made to the Disclosures Coordinator who will refer the report to the appropriate external agency.

(25) A Whistleblower Report can be made verbally or in writing. Reporters are encouraged to report in writing as this can help avoid confusion or misinterpretation.

(26) If a reporter is concerned about being seen making a Whistleblower Report, the reporter can ask to make the report:

- a. in a discreet location away from the University; or
- b. by video conference.

(27) A Whistleblower Report can be made anonymously. However, it is best if a reporter identifies themselves as this will help the University to provide the reporter with any necessary protection, including from the risk of reprisal action by someone who suspects that the reporter made a Whistleblower Report.

### **Confidentiality**

(28) A person to whom a Whistleblower Report is made or referred must not disclose information that might identify, or tend to identify, the reporter unless:

- a. the reporter gives consent in writing;
- b. the reporter has voluntarily identified themselves as the person who made the report (other than by making the report itself); or
- c. to meet the requirements of procedural fairness, the identity of the reporter needs to be revealed to a person the report relates to; or

- d. it is necessary to investigate the matter effectively or it is otherwise in the public interest to do so; or
- e. the University is required to disclose it in order to comply with the law or an order of a court or tribunal.

(29) The reporter will be told if it becomes necessary to disclose their identity for one of these reasons.

(30) Any person in the University who breaches these confidentiality obligations may be subject to disciplinary action.

## **Part B - Assessment of a Report**

(31) Within ten working days of receipt of a report which may be a Whistleblower Report, the Disclosures Coordinator will write to the reporter:

- a. acknowledging receipt of the report;
- b. providing a link to the Whistleblower Policy and these Procedures;
- c. providing a timeframe within which the reporter will receive further updates;
- d. informing the reporter of the need to maintain confidentiality.

(32) The Disclosures Coordinator will assess the report and determine whether it qualifies for protection as a Whistleblower Report.

(33) If the Disclosures Coordinator determines that the report does not qualify for protection as a Whistleblower Report, the Disclosures Coordinator will consider whether the report should be dealt with under some other University policy or procedure.

(34) If the Disclosures Coordinator determines that the report is a Whistleblower Report, the Disclosures Coordinator, in consultation with the Vice Chancellor (or Chancellor, if the report relates to the Vice Chancellor), must determine:

- a. whether an investigation should be undertaken; and
- b. if so:
  - i. the scope of the investigation; and
  - ii. whether the investigation should be conducted internally or referred to an external agency.

(35) The Disclosures Coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report.

(36) The Disclosures Coordinator will notify the reporter of their assessment under this Part B. This will normally occur within 20 working days of receipt of the report.

## **Part C - Investigation**

(37) This Part C applies if the Disclosures Coordinator determines that an investigation should be undertaken.

(38) The investigator will provide a report to the Disclosures Coordinator setting out their assessment of whether the allegations contained in the Whistleblower Report can be substantiated. The report may also contain recommendations for further action.

(39) The investigation will be conducted and concluded in a timely manner having regard to the issues and the complexity of the matter. The investigators report should normally be provided to the Disclosures Coordinator within 3 months of the appointment of the investigator.

(40) The Disclosures Coordinator will provide the investigator's report to the Vice Chancellor (or if the Whistleblower Report relates to the Vice Chancellor, the Chancellor) who will review the report and recommendations and, where appropriate, refer the matter to HR Services or other areas of the University for action.

(41) The investigator's report is confidential to the University and will not be provided to the reporter, a person directly affected by the Whistleblower Report or any other person unless the University is required to do so by law.

### **Feedback to the reporter**

(42) During any investigation, the reporter will be given:

- a. information about the ongoing nature of the investigation
- b. information about progress in the investigation and reasons for any delay
- c. advice and an opportunity to talk about whether the reporter's identity needs to be disclosed for the purposes of investigating the matter.

(43) At the end of the investigation, and subject to the University's privacy obligations, the reporter will be given:

- a. enough information to show that adequate and appropriate action was taken, or is proposed to be taken, in response to the Whistleblower Report and any problem that was identified
- b. advice about whether the reporter may be needed as a witness in, for example, disciplinary or criminal proceedings.

### **Protection against Reprisal Action**

(44) The University will not tolerate any action taken against a reporter as reprisal for making a Whistleblower Report.

(45) If the reporter is a University employee, the Disclosures Coordinator may, in consultation with the reporter, appoint a University officer to assist the reporter and ensure that they have appropriate support and protection. This person must not be involved in conducting any investigation into the Whistleblower Report.

(46) University staff who suspect reprisal action has occurred, or have been told about suspected Reprisal Action, should immediately tell their supervisor, the Disclosures Coordinator or the Vice Chancellor.

(47) The University will take disciplinary action against any employee who takes reprisal action against a person for making a Whistleblower Report.

### **The rights of persons the subject of a Whistleblower Report**

(48) The University is committed to ensuring University employees and officers who are the subject of a Whistleblower Report are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

(49) The employee or officer the subject of a Whistleblower, will be advised of the allegations made against them at an appropriate time and before any adverse findings. At this time they will be:

- a. advised of the details of the allegation
- b. advised of their rights and obligations under the relevant related policies and procedures
- c. kept informed about the progress of any investigation
- d. given a reasonable opportunity to respond to any allegation made against them
- e. told the outcome of any investigation, including any decision made about whether or not further action will be taken against them.

(50) Where the reported allegations against the employee or officer are clearly wrong, or have been investigated and unsubstantiated, the employee or officer will be supported by the University. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the employee or officer.

## Section 6 - Reporting

(51) On an annual basis, the Disclosures Coordinator will provide a de-identified summary of the Whistleblower Reports made in the previous year to the Vice Chancellor's Group and the Audit and Risk Management Committee.

(52) On a biannual basis, the Disclosures Coordinator will provide a report to the NSW Ombudsman pursuant to the [Public Interest Disclosures Act 2022](#) (NSW).

## Section 7 - Other reports

(53) Reports of wrongdoing that are not Whistleblower Reports should still be reported to the University and will be addressed through the relevant University policies and procedures. The University will consider each matter and make every attempt to protect the employee or student making the report from any form of reprisal.

(54) Other relevant University policies and procedures include:

- a. [Code of Conduct](#);
- b. [Complaint Policy - Staff](#) and [Complaint Procedure - Staff](#);
- c. [Complaints Policy - Students and Members of the Public](#);
- d. [Harassment, Bullying and Discrimination Prevention Policy](#);
- e. [Fraud And Corruption Prevention Policy](#);
- f. [Work Health and Safety Policy](#).

## Section 8 - Definitions

(55) For the purpose of this Policy:

- a. Corrupt conduct is the dishonest or partial exercise of official functions by a public official including, for example:
  - i. the improper use of knowledge, power or position for personal gain or the advantage of others; or
  - ii. acting dishonestly or unfairly, or breaching public trust; or
  - iii. a member of the public influencing a public official to use their position in a way that is dishonest, biased or breaches public trust; or
  - iv. giving or accepting bribes or other incentives for a favourable decision or outcome.
- b. Disclosures Coordinator means the Director, Governance Services.
- c. Eligible Reporter includes:
  - i. a University employee or officer
  - ii. a supplier or their employee
  - iii. an associate of the University
  - iv. a relative, spouse or dependent of any of the above individuals.
- d. Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives including, for example:

- i. making a decision or taking action that is unlawful; or
  - ii. refusing to approve an application for reasons that are not related to the merits of the application.
- e. Public Interest Disclosure means a report which meets the requirements for protection under the [Public Interest Disclosures Act 2022](#) as set out in Section 4 of this Policy.
- f. Public Official includes:
  - i. current University employees and officers, including employees of its controlled entities;
  - ii. University contractors, suppliers and consultants, and their employees; and
  - iii. University Council members.
- g. Reportable conduct means misconduct or an improper state of affairs or circumstances in relation to the University or its related entities. This may include a breach of legislation including the Corporations Act, an offence against the Commonwealth punishable by imprisonment for 12 months or more, or conduct that represents a danger to the public or financial system.
- h. Serious and substantial waste of public money is the uneconomical, inefficient or ineffective use of resources that could result in loss or wastage of public resources, for example:
  - i. not following a competitive tendering process for a large scale contract; or
  - ii. having bad or no processes in place for a system involving large amounts of public funds.



## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	7th September 2021
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<b>Approval Authority</b>	Vice Chancellor
<b>Approval Date</b>	6th September 2021
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Tyrone Carlin Vice Chancellor +61 2 66269189
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