Whistleblowing (Public Interest Disclosures) Policy

Section 1 - Purpose

(1) The purpose of this Policy is to establish a framework for reporting and managing all reports of serious wrongdoing, including reports that are public interest disclosures under the Public Interest Disclosures Act 2022 (NSW) (PID Act).

(2) This Policy and the Whistleblowing (Public Interest Disclosures) Procedures are the University's public interest disclosures policy for the purpose of section 42 and 43 of the PID Act.

Section 2 - Scope

(3) The Policy applies to all Public Officials of the University and the University's controlled entities. This includes all persons who:

a. are employed by the University or are otherwise in service of the University; or
b. provide services, or exercise functions, on behalf of the University, including any contractors, subcontractors or volunteers that provide services, or exercise functions, on behalf of the University; or
c. are employees, partners or officers of an entity that provides services, under contract, subcontract or other arrangement, on behalf of the University or exercises functions of the University, and are involved in providing those services or exercising those functions.

(4) 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.

Section 3 - Policy Principles

(5) The University takes all reports of serious wrongdoing seriously. It is committed to building a 'speak up' culture where everyone is encouraged to report any conduct that they reasonably believe involves serious wrongdoing.

(6) The integrity of the University relies on our staff, volunteers, contractors and subcontractors speaking up when they become aware of serious wrongdoing.

(7) This Policy documents the University's commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates reporting of serious wrongdoing by:

a. protecting those who speak up from detrimental action; and
b. imposing duties on those who receive reports of serious wrongdoing to take appropriate action to investigate or otherwise deal with them.

Section 4 - Definitions

(8) For the purpose of this Policy:

a. Disclosures Coordinator means the Director, Governance Services, or such other person as may be nominated by the Vice-Chancellor from time to time.
b. Disclosure Officer means a person authorised by the University to receive public interest disclosures as listed in Schedule A – Disclosure Officers.
c. Integrity Agency means an agency identified as an integrity agency for the purposes of the PID Act as listed in Schedule B -Integrity Agencies.
d. PID Act means the Public Interest Disclosures Act 2022 (NSW).
e. Procedures means the Whistleblowing (Public Interest Disclosures) Procedures.
f. Public Interest Disclosure means a report of known or suspected serious wrongdoing which satisfies the criteria set out in Part A of Section 5 - Public Interest Disclosures of this Policy.
g. Public Official means:
    i. a person employed by the University or otherwise in the service of the University;
    ii. a person employed by the University's controlled entities, such as Southern Cross Campus Services;
    iii. a person providing services or exercising functions on behalf of the University, including a contractor, subcontractor or volunteer (for example, a student association providing support services to University students pursuant to an agreement with the University);
    iv. an employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of the University or exercises functions of the University, and are involved in providing those services or exercising those functions;
    v. Council members.
h. The following are not Public Officials:
    i. consultants engaged by the University to assist it with its work;
    ii. people who have received services from the University and want to make a complaint about these services;
    iii. people, such as contractors, who provide services to the University (for example, an organisation engaged by the University to provide it with advice in relation to upgrading a technology system).
i. Recipient Manager means the manager of the person making the report. This is the person who directly, or indirectly, supervises the reporter. For a contractor, subcontractor or volunteer or a person employed by one of them, their manager is the University employee who oversees the relevant services or functions, or who manages the relevant contract or volunteering arrangements.
j. Reporter means a person who makes a report of known or suspected serious wrongdoing.
k. Serious wrongdoing has the meaning set out in clause (9) of this Policy.

Serious Wrongdoing

(9) Serious wrongdoing means any one or more of the following:

Category	Meaning
Corrupt conduct	Means: (a) any conduct of any person (whether or not a Public Official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any Public Official, any group or body of Public Officials or any public authority, or (b) any conduct of a Public Official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or (c) any conduct of a Public Official or former Public Official that constitutes or involves a breach of public trust, or (d) any conduct of a Public Official or former Public Official that involves the misuse of information or material that they have acquired in the course of their official functions, whether or not for their benefit or for the benefit of any other person. Example: A University employee accepting a bribe to admit an applicant to a course.
Government information contravention	Means a failure, other than a trivial failure, by the University or Public Official to exercise functions in accordance with: (a) the Government Information (Information Commissioner) Act 2009 (NSW), or (b) the Government Information (Public Access) Act 2009 (NSW), or (c) the State Records Act 1998(NSW). Example: A University employee destroying, concealing or altering records to prevent them being released under a Government Information Public Access application.
Serious maladministration	Means conduct, other than conduct of a trivial nature, of the University or a Public Official relating to a matter of administration that is: (a) unlawful, or (b) unreasonable, unjust, oppressive or improperly discriminatory, or (c) based wholly or partly on improper motives. Example: The University systematically failing to comply with proper recruitment processes when hiring staff.
Privacy contravention	Means a failure, other than a trivial failure, by the University or a Public Official to exercise functions in accordance with: (a) the Privacy and Personal Information Protection Act 1998 (NSW), or (b) the Health Records and Information Privacy Act 2002 (NSW). Example: A University employee accessing a student's personal information on the University's database for a purpose unrelated to their employment.
Serious or substantial waste of public money.	Includes any uneconomical, inefficient or ineffective use of resources, whether authorised or unauthorised, and which results in a loss of public funds or resources. Example: Failing to undertake a competitive tendering process resulting in the University incurring a significantly higher cost in procuring goods or services.

Section 5 - Reports of Serious Wrongdoing

(10) Anyone (including students and members of the public) can report suspected serious wrongdoing, although not all such reports will qualify as public interest disclosures under the PID Act.

(11) The University will accept and act on anonymous reports to the extent possible. However, it is preferable if the reporter identifies themselves, as this allows the University to ensure they are supported and risks of detrimental action are identified.

Part A - Public Interest Disclosures

(12) There are three types of reports of public interest disclosures under the PID Act:

a. Voluntary public interest disclosures: where a report about serious wrongdoing has been made by the Public Official because they decided, of their own accord, to come forward and disclose what they know.
b. Mandatory public interest disclosures: where the Public Official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect

of their role.

c. Witness public interest disclosures: where the Public Official discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

(13) To qualify as a voluntary public interest disclosure and attract protection under the PID Act, a report must have the following five features:

a. the report must be made by a Public Official;
b. the report must be made to a person authorised to receive voluntary public interest disclosures as set out in the Whistleblowing (Public Interest Disclosures) Procedures;
c. the Public Official must honestly believe on reasonable grounds that the information they are providing shows or tends to show serious wrongdoing;
d. the report was made orally or in writing;
e. the report is voluntary; that is, it is not a mandatory or witness public interest disclosure.

(14) A person making a voluntary public interest disclosure is not expected to prove that what is reported actually happened or that it is serious wrongdoing. However, they must honestly believe, on reasonable grounds, that the information being reported shows, or tends to show, serious wrongdoing. A mere allegation with no supporting information will not be sufficient.

(15) A report will not be a voluntary public interest disclosure if the information reported:

a. concerns only a grievance about a matter relating to the employment of the Reporter; and
b. does not have significant implications beyond matters personally affecting or tending to personally affect the Reporter.

(16) The Procedures do not apply to mandatory public interest disclosures or witness public interest disclosures.

Protections

(17) A person making a voluntary public interest disclosure is protected under the PID Act in the following ways:

a. Protection from detrimental action:
    i. A person cannot take detrimental action against another person because they have made a voluntary public interest disclosure or are considering making a voluntary public interest disclosure. Detrimental action includes bullying, harassment, intimidation or dismissal.
    ii. Once the University becomes aware that a voluntary public interest disclosure has been made by a person employed or otherwise associated with the University, the University will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the report.
    iii. It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary public interest disclosure. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
    iv. A person may seek compensation where unlawful detrimental action has been taken against them.
    v. A person can apply for a court order (injunction) where detrimental action is threatened or has occurred.
    vi. A person who makes a voluntary public interest disclosure can still be subject to reasonable management action (such as ordinary performance reviews and performance management). So long as the action is not taken because of the report, it is not detrimental action under the PID Act.
b. Immunity from civil and criminal liability - Some Public Officials are subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order

to make a report of serious wrongdoing, Public Officials will need to breach or disregard such confidentiality duties. If that happens, the Public Official cannot be disciplined, sued or criminally charged for breaching confidentiality.

c. Confidentiality - Public Officials and the University must not disclose information tending to identify a person as the maker of a voluntary public interest disclosure unless doing so is permitted by the PID Act.
d. Protection from liability for own past conduct - In certain circumstances, the NSW Attorney General may give to a person who makes or proposes to make, a disclosure of the persons part conduct while making a voluntary public interest disclosure, an undertaking that the disclosure of the fact of the disclosure will not be used in evidence against them.

(18) A person making a mandatory public interest disclosure or witness public interest disclosure is protected under the PID Act in the following ways:

a. Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a public interest disclosure.
b. Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them.
c. Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement.
d. Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for:
    i. breaching a duty of secrecy or confidentiality, or
    ii. breaching another restriction on disclosure.

Corrective Action

(19) If an investigation of a report finds that serious wrongdoing has occurred, the University will take appropriate corrective action in response as set out in the Procedures.

Part B - Other Reports of Serious Wrongdoing

(20) Not all reports of suspected serious wrongdoing qualify as public interest disclosures for the purposes of the PID Act. For instance, reports by students or members of the public do not qualify as voluntary public interest disclosures because they are not "Public Officials". However, the University will, to the extent that it can reasonably do so:

a. undertake a risk assessment and put in place appropriate management strategies to protect and support students against detrimental action; and
b. follow the same procedures for investigating reports of serious wrongdoing in accordance with the Procedures.

(21) The University cannot provide any protection or support to members of the public against detrimental action because of its limited jurisdiction. However, it will cooperate with inquiries made by the police or an Integrity Agency.

Section 6 - Roles and responsibilities

(22) The University will:

a. undertake activities to promote awareness about serious wrongdoing;

b. implement and maintain appropriate internal systems of control and reporting to minimise risks of serious wrongdoing and improve detection methods;
c. through the Disclosure Coordinator, decide whether individual reports of serious wrongdoing will be accepted under this Policy, or referred to another process for investigation, including an external Integrity Agency such as the Independent Commission Against Corruption;
d. comply with any statutory obligations it has to report alleged serious wrongdoing;
e. undertake a risk analysis to identify risks that may impact on the reporter, any other staff members, or the operations of the University and put appropriate controls in place;
f. take prompt action to address any reports of detrimental action in relation to a report made or accepted under this Policy, including referring evidence of detrimental action to the Commissioner of Police and Independent Commission Against Corruption;
g. arrange for training for the Vice-Chancellor, Disclosure Officers and Recipient Managers in relation to their responsibilities under the Act, this Policy and Procedures, including refresher training.

Vice-Chancellor

(23) The Vice-Chancellor is responsible for:

a. making determinations about deemed voluntary public interest disclosures, as required, or nominate another University employee to do so.
b. complying with reporting obligations under the PID Act.
c. implementing corrective action if serious wrongdoing is found to have occurred.
d. supporting Public Officials who make disclosures including minimising the risk of detrimental action.
e. ensuring there is a system in place for assessing reports.
f. receiving reports from Public Officials.
g. fostering a workplace culture where reporting of serious wrongdoing is encouraged.

Disclosure Coordinator

(24) The Disclosure Coordinator is responsible for:

a. supporting the Vice-Chancellor to fulfill their responsibilities under this Policy, the Procedures and the PID Act.
b. ensuring that such reports are dealt with appropriately, including in accordance with this Policy, the Procedures and the PID Act.
c. receiving reports from Disclosure Officers and Recipient Managers.

Disclosure Officers

(25) Disclosure Officers are responsible for:

a. making a written record of any oral reports they receive.
b. referring them to the Disclosure Coordinator.
c. receiving reports passed on by a Recipient Manager.
d. receiving reports from Public Officials.

All University officers and staff

(26) All University officers and staff are responsible for:

a. protecting the identity of the Reporter and providing support as practical and appropriate.

b. maintaining strict confidentiality in relation to any report.
c. using their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a report on behalf of the University.
d. reporting known or suspected serious wrongdoing within the University or a controlled entity.

(27) University staff must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a report of serious wrongdoing.

Recipient Managers

(28) Recipient Managers are responsible for:

a. attending training in relation to their responsibilities under the PID Act, this Policy and the Procedures, including refresher training.
b. notifying the Disclosure Coordinator or the relevant Disclosure Officer if they know or suspect a staff member is the subject of any detrimental action or other detriment following a report.
c. supporting and assisting staff members who are Reporters.
d. communicating any report of known or suspected serious misconduct in accordance with the Procedures. If the report is oral or otherwise, communicating in writing to the Disclosure Coordinator (or another Disclosure Officer) as soon as reasonably practicable in accordance with the Procedures.
e. ensuring staff under their supervision are familiar with this Policy and implementing local strategies, in consultation with the Disclosure Coordinator, to encourage reporting and minimise detrimental action or workplace conflict when a report is made.
f. cultivating a workplace culture that does not tolerate serious wrongdoing, encourages reports of serious wrongdoing, and takes these reports seriously.

Section 7 - Procedures

(29) The procedures for making a report of serious wrongdoing under this Policy are set out in the Whistleblowing (Public Interest Disclosures) Procedures.

Section 8 - Associated Information

a. Information about reporting serious wrongdoing (including downloadable fact sheets) is also available from the following agencies:
    i. Independent Commission Against Corruption
    ii. NSW Ombudsman
    iii. Audit Office of NSW
    iv. NSW Information and Privacy Commissioner.
b. Other relevant University policies and procedures include:
    i. Code of Conduct
    ii. Complaint Policy - Staff and Complaint Procedure - Staff
    iii. Complaints Policy - Students and Members of the Public
    iv. Research Quality Standards and Integrity Policy and supporting Procedures
    v. Harassment, Bullying and Discrimination Prevention Policy
    vi. Fraud And Corruption Prevention Policy

Status and Details

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