



# Policy for making a complaint or reporting incidents of criminal, corrupt conduct or maladministration or Protected Disclosure at UNSW

<b>Responsible Officer</b>	Deputy Vice-Chancellor (Academic)		
<b>Contact Officer</b>	Protected Disclosures Officer: DVC (Academic)		
<b>Superseded Documents</b>	This policy replaced the Guidelines for the Reporting of Known (or suspected) Criminal or Corrupt Conduct, Maladministration, or Waste rescinded in June 2002		
<b>Review Commencement Date</b>	2007		
<b>File Number</b>	2002/3491		
<b>Associated Documents</b>	<ul style="list-style-type: none"> <li>▪ Code of Conduct</li> <li>▪ Grievance Resolution Policy for Staff</li> <li>▪ Conflict of Interest Policy</li> </ul>		
<b>Version</b>	<b>Authorisation</b>	<b>Approval Date</b>	<b>Effective Date</b>
1.2	Amendment approved by the DVC (Academic)	16 November 2006	16 November 2006

## 1. Preamble

UNSW expects staff to act in an ethical, honest and professional manner in the performance of their workplace duties, in accordance with UNSW's Code of Conduct. The Code of Conduct (adopted by Council in December 1994) <http://www.hr.unsw.edu.au/employee/codecond.html> recognises that all staff have "an obligation to the University in terms of responsible stewardship of its resources and protection of its reputation in the wider community". The Code of Conduct notes that all members of staff should "report any suspected fraud, corrupt, criminal and unethical conduct to an appropriate officer of the University". This Policy serves to clarify the internal procedures for the reporting, investigation and management of a complaint or incidents of criminal, corrupt or maladministration at UNSW.

The University will take appropriate disciplinary action against any staff member who is found guilty of corrupt conduct, maladministration or serious and substantial waste of public money. The University will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of that disclosure.

The University's Code of Conduct makes it clear that every member of staff has the following primary obligations:

- to exercise a duty of care to observe standards of equity and justice when dealing with every member of the community;
- to ensure responsible stewardship of the University's resources and protection of its reputation in the wider community;
- to act appropriately when a conflict of interest arises between a staff member's own self interest and duty to the University. Where such conflict does or may arise the issues should be disclosed to an appropriate officer of the University and wherever feasible the staff member should play no role in decision making associated with that issue.

Staff are required to act in accordance with the Code of Conduct and UNSW polices, and have a responsibility to report any suspected fraud, corrupt, criminal or unethical conduct, maladministration or serious and substantial waste of public money to an appropriate officer, in line with the relevant procedures.

The Vice-Chancellor is required, pursuant to the Independent Commission Against Corruption Act 1988 (NSW), to refer to the ICAC any matter that he suspects on reasonable grounds concerns or may concern corrupt activity. In order that he can effectively meet this obligation, it is essential that he is supported by effective internal reporting of suspect activity.

The University is committed to the aims and objectives of the Protected Disclosures Act 1994(NSW)[ <http://www.nswombudsman.nsw.gov.au/> ] and will take all reasonable steps to provide protection to staff, who make such disclosures, from any detrimental action in reprisal for the making of that disclosure.

### **1.1 Complaints which are NOT covered by this policy**

It is important to note that this policy DOES NOT cover complaints by staff associated with a personal grievance or redress (such as unsatisfactory probation reports, refusal of leave, or discriminatory work assignments), nor with personal complaints associated with workplace safety, workplace discrimination or equal employment opportunity. These should be taken up with appropriate line managers/supervisors in the first instance. Information can also be sought from relevant sections of the University such as the Human Resources Department (including the Occupational Health and Safety & Workers Compensation Unit) and the Equity and Diversity Unit . Please also see: <http://www.hr.unsw.edu.au/employee/grievance.html>

### **1.2 Purpose of this policy**

The following policy establishes an internal system for staff to report concerns regarding suspected fraud, corrupt, criminal or unethical conduct, maladministration or serious and substantial waste of public money, that fall under the Protected Disclosures Act. It outlines what is meant by a protected disclosure, who to contact and the procedures for taking action in regard to such a complaint.

Matters that for one reason or another fall outside the operation of the Protected Disclosures Act should be taken up with appropriate line managers / supervisors in the first instance.

It is anticipated that this policy will be complementary to existing policies and procedures and that staff, where they feel able, will raise concerns at an early stage with their line managers/supervisors either directly or through the normal grievance procedures. In cases where staff feel that the matter could fall under the definition of a 'protected disclosure', or are unsure of the gravity of the issue, and/or fear repercussions, they should consult with one of the nominated Protected Disclosures Officers immediately.

## **2. Scope**

This policy applies to all staff of the University.

## **3. Definitions**

Refer to Appendix 2 for definitions of terms used in this policy.

## 4. Policy Statement

### 4.1 What is the Protected Disclosures Act?

The Protected Disclosures Act (the Act) commenced on 1 March 1995. The purpose of the Act is to ensure that people who wish to make disclosures under the legislation receive appropriate protection from reprisals, and that the matters raised in the disclosures are properly investigated. Further information can be obtained from <http://www.nswombudsman.nsw.gov.au/>

The Act is a NSW State Government Act that gives legal protection to persons who make disclosures of corrupt conduct, maladministration or serious and substantial waste of public monies.

The implementation of the Act involves three primary aspects:

- the making of disclosures
- dealing with disclosures (internal reporting and investigating)
- protection of persons who make 'protected disclosures'.

### 4.2 What is a Protected Disclosure?

A protected disclosure is a disclosure that satisfies the requirements of the Act. It must be a disclosure made:

- by a public official (UNSW staff);
- voluntarily;
- to a person nominated to accept disclosures in the officer's public authority (i.e. the University) or to an investigating authority such as the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Auditor-General;
- to show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money.

One of the main purposes of the Act is to protect persons making legitimate disclosures from retaliation or retribution such as, but not limited to, intimidation or harassment, discrimination or adverse treatment, dismissal or disciplinary proceedings. For staff to have protection under the Act, their complaint must be made direct to a nominated Disclosures Officer, or to the University's Protected Disclosures Coordinator.

Not all disclosures may be protected disclosures.

### 4.3 What disclosures are not protected?

Protection is not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

The Vice-Chancellor as Principal Officer, may on behalf of the University decline to investigate a disclosure, or may discontinue an investigation if the disclosure otherwise fails to meet the requirements of the Act as set out above.

**It is an offence to wilfully make a false or misleading statement when making a disclosure.**

#### **4.4 Making a disclosure**

There are a number of ways that staff or external parties can report such matters at the UNSW. If possible, staff should try to resolve matters in this way as a first option.

If you decide not to proceed with your complaint and request confidentiality, the University will treat the complaint as confidential. However, the Disclosures Officer or supervisor to whom you have made the complaint may form a view that the issue is of a serious nature and proceed with the investigation.

#### **4.5 Roles and responsibilities**

UNSW encourages staff to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with the UNSW Code of Conduct and this policy.

Staff must not engage in any behaviour which may be perceived as victimisation, bullying or harassment of another staff member who raises a protected disclosures matter.

The complainant or 'whistleblower' has an obligation to behave in a manner that does not influence, obstruct or corrupt the process of the UNSW investigation of his/her allegations, and to not make a disclosure vexatiously or frivolously.

#### **4.6 Protected Disclosures Co-ordinator**

The UNSW Protected Disclosures Co-ordinator is the Deputy Vice-Chancellor (Academic).

The Disclosures Co-ordinator will manage the investigation of a protected disclosure and provide written directions about who is to have primary responsibility for the handling and coordination of any action taken by the University as a result of receiving the protected disclosure.

The [Protected Disclosures Co-ordinator](#) will ensure that the investigation is conducted with assistance from UNSW staff and externals taking into consideration any potential conflict of interest.

#### **4.7 Protected Disclosures Officers**

Each Faculty/Division has a Protected Disclosures Officer who is the Dean/Rector or Executive Member. Advice can be sought from the Disclosures Officers and complaints can be lodged directly with them.

If you have a complaint within your Faculty or Division you can lodge your complaint with any of the Disclosures Officers or directly with the [Protected Disclosures Co-ordinator](#).

#### **4.8 Confidentiality**

##### **4.8.1 The whistleblower or complainant**

The complainant will be informed by confidential letter when an investigation is to be initiated. When it is completed they will also be told of actions taken or proposed to be taken in respect of the disclosure. However, the University will not necessarily provide complainants with all details of the investigation.

The complainant should maintain confidentiality during the period allowed to the University under the Act to investigate the complaint. In particular they should ensure that they do not discuss the issues with other members or parties involved in the investigation since that may prejudice the University's investigation. Where a complainant has informed a third party or body of the complaint, the University encourages them to advise the [Protected Disclosures Co-ordinator](#) that they have done so. Breaches of confidentiality by the complainant may also make it difficult for the University to protect the complainant.

#### **4.8.2 The University**

The University will not disclose any information that might identify or tend to identify the person who makes the disclosure. Exceptions are made where the complainant states in writing that the information can be disclosed, or it is essential, having regard to natural justice, or the investigating authority is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively. Complainants should be aware that as a general rule the person who is the subject of a complaint must be informed of the complaint and given an opportunity to answer it.

Occasionally it may be necessary to interview other people/staff as part of an investigation into the complaint. All care will be taken by UNSW not to make known the identity of the complainant.

If a complainant has reason to believe that there has been a breach of confidentiality he/she should advise the [Protected Disclosures Co-ordinator](#) of that suspected breach of confidentiality and the reasons for believing that it has occurred. The [Protected Disclosures Co-ordinator](#) will investigate the report and will take any action required in respect of any breach of confidentiality.

#### **4.8.3 The person(s) who is/are the subject of the disclosure**

All disclosures will be investigated impartially and the identity of the person(s) who is/are the subject of the disclosure will be treated in the strictest of confidence in line with the treatment of the complainant. The subject of the disclosure will also be given an opportunity to respond to the allegations and be informed of the outcome at the completion of the investigation.

### **4.9 The issue of victimisation**

The University will not tolerate any victimisation of a complainant or the subject of the protected disclosure. If a person believes that he or she is the subject of victimisation they should inform the [Protected Disclosures Co-ordinator](#) with sufficient information to enable an investigation of the complaint. The Protected Disclosures Co-ordinator will investigate and take any action required in respect of the complaint.

### **4.10 How will the investigation proceed?**

All disclosures made to Disclosures Officers will be referred as soon as practicable to the [Protected Disclosures Co-ordinator](#).

All disclosures will be subject to a preliminary assessment to determine if the disclosure appears to fall within the Protected Disclosures Act and if an investigation is required. This assessment may involve speaking with the complainant or collecting additional background material. If there is sufficient information and evidence to support the complaint an investigation will commence. It is preferable for disclosures to be in writing and include the

grounds for any allegations, together with any evidence for the allegations. The Protected Disclosures Co-ordinator shall document the decision in respect of the preliminary assessment together with the matters to be investigated. In documenting the decision, the Protected Disclosures Co-ordinator will consider any real or perceived conflicts of interest in relation to the disclosure and its investigation. The Protected Disclosures Co-ordinator will inform the person who has made the disclosure of the University's intentions with respect to any investigation of the disclosure including confirmation of any matters to be investigated.

The Protected Disclosures Co-ordinator, while maintaining confidentiality, may enlist the assistance of either the Internal Audit Office or other appropriate Divisions or Faculties he/she deems appropriate (including external experts).

The investigation may include interviews and gathering of information. The Act allows the University six months within which to notify the person who made the disclosure of the actions it has taken or proposes to take. The University will make all reasonable efforts to complete its investigation of the disclosure before that time.

On the basis of the report or investigation, the Protected Disclosures Co-ordinator will refer the matter to the Vice-Chancellor. If the allegations or issue have been substantiated, the University will assess what action will be taken to improve policies or procedures which may have allowed the issue to occur and where necessary initiate disciplinary action through the appropriate processes within the relevant UNSW Enterprise Agreement.

## 5. Legal & Policy Framework

This policy has been developed in accordance with the [Protected Disclosures Act 1994](#) (NSW). The following UNSW policy documents are related to this policy:

Code of Conduct

Grievance Resolution Policy for Staff

Conflict of Interest Policy

## 6. Implementation

### 6.1 Support and Advice

#### **Not sure who to speak to?**

Please go to <http://www.infonet.unsw.edu.au/poldoc/contact.pdf>

#### **Protected Disclosures contacts:**

[Appendix 1 - Who you should report your Protected Disclosure or complaint to.](#)

#### **Protected Disclosures brochure**

A brochure explaining Protected Disclosures can be downloaded from the NSW Ombudsman site at <http://www.nswombudsman.nsw.gov.au/>

#### **Employee Assistance Program (EAP)**

Counselling and support in this process can also be obtained from the EAP. They can be contacted on 1300 360 364 or via <http://www.hr.unsw.edu.au/employee/eap.html> for a confidential appointment.

The EAP is a professional and confidential counselling service for the staff at UNSW and their immediate family members, paid for by UNSW.

### **Equity and Diversity Unit**

UNSW is committed to the goals of equal opportunity and affirmative action in education and employment. The University strives to provide a work and study environment for staff and students that fosters fairness, equity and respect for social and cultural diversity and that is free from unlawful discrimination, harassment and vilification.

Up-to-date information on equity policies, programs and the services is available from website <http://www.equity.unsw.edu.au/>

### **Human Resources**

Human Resources assists UNSW to achieve its goals by providing sound human resource management guidance and expertise, through effective policy development, constructive advice and high quality administrative services within the constraints of relevant legislation, awards, certified agreements and other UNSW policies. More information relating to UNSW grievance procedures and Protected Disclosure are located at <http://www.hr.unsw.edu.au/poldoc.htm#grievance>

### **Postgraduate student support**

Postgraduate students seeking advice should contact the Dean of the Graduate Research School in the first instance.

### **NSW Ombudsman**

More information relating to the Protected Disclosures Act can also be obtained from the delegated Disclosures Co-ordinator on campus or via <http://www.nswombudsman.nsw.gov.au/>

### **Alternative Avenues for disclosure**

[See Appendix 3](#)

## **7. Evaluation**

The Deputy Vice-Chancellor (Academic) is responsible for the monitoring and review of this policy.

## APPENDIX 1

### Who you should report your Protected Disclosure or complaint to.

Protected Disclosures Co-ordinator		
Deputy Vice-Chancellor (Academic)	Professor Richard Henry	R.Henry@unsw.edu.au Phone: 9385 2800 Fax: 9385 1385
Disclosures Officers		
Deputy Vice-Chancellor (Research)	Professor Les Field	I.Field@unsw.edu.au Phone: 9395 2700 Fax: 9385 8008
Chief Operating Officer	Mr Peter Graham	coo@unsw.edu.au Phone: 9385 3608 Fax: 9385 1037
Human Resources(Director)	Mr Neil Morris	N.Morris@unsw.edu.au Phone: 9385 2714 Fax: 9385 1080
Chief Financial Officer	Mr Garry McLennan	G.Mclennan@unsw.edu.au Phone: 9385 1066 Fax: 9385 1044
UNSW@ADFA	Professor John Baird	J.Baird@adfa.edu.au Phone: 02 6268 8700 Fax: 02 6268 8724
Arts and Social Sciences	Professor Annette Hamilton	A.Hamilton@unsw.edu.au Phone: 9385 2339 Fax: 9385 1016
Built Environment	Professor Peter Murphy	P.Murphy@unsw.edu.au Phone: 9385 4786 Fax: 9385 5613
College of Fine Arts	Professor Ian Howard	Ian.Howard@unsw.edu.au Phone: 9385 0850 Fax: 9385 0852
Commerce and Economics	Professor John Piggot	J.Piggot@unsw.edu.au Phone: 9385 5899 Fax: 9385 6363
Engineering	Professor Brendon Parker	Brendon.Parker@unsw.edu.au Phone: 9385 5000 Fax: 9385 6439



## APPENDIX 1 (continued)

Disclosures Officers		
Law	Professor Leon Trakman	L.Trakman@unsw.edu.au Phone: 9385 2242 Fax: 9385 1245
Medicine	Professor Peter Smith	Peter.Smith@unsw.edu.au Phone: 9385 2451 Fax: 9385 1289
Science	Professor Michael Archer	M.Archer@unsw.edu.au Phone: 9385 7916 Fax: 9385 7920
Head, Risk Assurance & Internal Audit	Mr Edward Ho	edwardho@unsw.edu.au Phone:9385 2902 Fax: 9385 3728
AGSM	Professor Eddie Anderson	EddieA@agsm.edu.au Phone:9931 9355 Fax: 9313 7268

## APPENDIX 2

### DEFINITIONS

#### What is a Whistleblower?

A whistleblower is an informal term used for the person making the allegations or protected disclosure.

#### Definitions of Corrupt Conduct

**Corrupt Conduct** is defined in the Independent Commission Against Corruption Act 1988, as the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition. It is important to note that even when a public official has not acted dishonestly or partially, if another person adversely affects or tries to adversely affect the exercise of the official's official functions, that other person may have acted corruptly. A fraud perpetrated on a University official is a common example of this type of corrupt conduct.

Corrupt conduct can take many forms including conflicts of interest, taking or offering bribes, dishonestly using influence, blackmail, fraud, theft, embezzlement, tax evasion, forgery, violence.

**Maladministration** is defined in the Protected Disclosures Act as conduct that involves action or inaction of a serious nature, that is:

- contrary to law;
- unreasonable;
- unjust;
- oppressive;
- improperly discriminatory;
- based wholly or partly on improper motives.

**Waste** can take many forms, for example:

- misappropriation or misuse of public property;
- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment; and
- purchasing and practices failing to prevent the theft or misuse of public property;

Please note it is possible that in assessing the seriousness of waste or administrative misconduct for the purposes of whether either is covered by the Act, differences in the size, budgets, and responsibilities of agencies may be taken into account.

### APPENDIX 3

#### Alternative avenues for disclosure

Alternate avenues are available for staff wishing to make a disclosure. Staff can make a disclosure to one of the other investigating authorities under the Act:

- The NSW Ombudsman
- Independent Commission Against Corruption (ICAC)
- Auditor-General of NSW
- Police Integrity Commission (PIC)
- To a journalist or a member of Parliament.

Disclosures made to a journalist or a member of Parliament will **only** be protected if **certain conditions are met**.

- The person making the disclosure must have already made substantially the same disclosure through the internal UNSW reporting system.
- There must be reasonable grounds to suggest that the disclosure is substantially true.
- UNSW have decided not to investigate the matter, or decided to investigate the matter and have not completed the investigation within six months of the original disclosure, or investigated the matter but not recommended any action in respect of the matter, or failed to notify the person making the disclosure, within six months of the disclosure, of whether the matter is to be investigated.

## 8. History

Version	Authorised by	Approval Date	Effective Date	Sections modified
1.0	VCAC	26 June 2002	26 June 2002	New Policy
1.1	DVC (Academic) & Registrar	30 March 2005	30 March 2005	Appendix 1
1.2	DVC (Academic)	16 November 2006	16 November 2006	Appendix 1; and template update (sections re- numbered)