

PROCEDURE FOR MAKING AND HANDLING PUBLIC INTEREST DISCLOSURES

Policy Hierarchy link	<i>Public Interest Disclosures Act 1994</i> <i>Fraud and Corruption Prevention Policy</i>		
Responsible Officer	Vice-President and Deputy Vice-Chancellor (Academic)		
Contact Officer	Public Interest Disclosures Coordinator – Vice-President and Deputy Vice-Chancellor (Academic)		
Superseded Documents	<ul style="list-style-type: none"> • <i>Policy for making a complaint or reporting incidents of criminal, corrupt conduct or maladministration or Protected Disclosure at UNSW</i> • <i>Guidelines for the Reporting of Known (or suspected) Criminal or Corrupt Conduct, Maladministration, or Waste (rescinded in June 2002)</i> 		
File Number	2010/02697		
Associated Documents	<i>Public Interest Disclosures Act 1994</i> <i>UNSW Fraud and Corruption Prevention Policy</i> <i>UNSW Code of Conduct</i> <i>Procedure For Handling Allegations Of Research Misconduct</i>		
Version	Authorised by	Approval Date	Effective Date
2.1	Vice-President and Deputy Vice-Chancellor (Academic)	3 June 2013	3 June 2013

1. Preamble

The University is committed to the aims and objectives of the *Public Interest Disclosures Act 1994* and will take all reasonable steps to properly investigate Public Interest Disclosures made in accordance with this Procedure and provide protection to Staff who make a Public Interest Disclosure from any detrimental action in reprisal for the making of the disclosure.

This Procedure also supports and gives effect to the aims and objectives of UNSW's *Fraud and Corruption Prevention Policy* and should be read in conjunction with that Policy.

2. Purpose

The purpose of this Procedure is to:

- Establish a procedure under which Staff can report behaviour or conduct which involves corrupt conduct, maladministration, serious and substantial waste of public money and/or government information contraventions in accordance with the *Public Interest Disclosures Act*;
- Explain how reports made under this Procedure will be handled by UNSW;
- Ensure that Staff are aware that such reports are recognised by law as Public Interest Disclosures and of the legal protections afforded to them if they make a Public Interest Disclosure in accordance with this Procedure;
- Support the purpose and principles of the Fraud and Corruption Prevention Policy;
- Ensure compliance with the University's obligations under the Public Interest Disclosures Act 1994.

3. Definitions

Corrupt Conduct – means conduct as defined by the *Independent Commission Against Corruption Act 1988* and includes any conduct of a public official that constitutes or involves the dishonest or partial exercise of official functions or constitutes or involves a breach of public trust.

Government Information Contravention – is a failure to properly fulfill functions under the *Government Information (Public Access) Act 2009*

Maladministration is defined in the PID Act and is conduct that involves action or inaction of a serious nature that is: (a) contrary to law; (b) unreasonable, unjust, oppressive or unreasonably discriminatory; or (c) based wholly or partly on improper motives.

PID Act – refers to the *Public Interest Disclosures Act 1994* as amended from time to time.

Public Interest Disclosure – means a report of wrongdoing covered by this Procedure or the PID Act which is made in accordance with this Procedure and the PID Act and which is protected by the PID Act.

Serious and Substantial Waste of Public Money – this term has its ordinary meaning in this Procedure and involves the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised which results in a serious and substantial loss/wastage of public funds or resources.

Staff means all employees of UNSW, including continuing, fixed-term and casual employees and persons who are engaged to perform work as contractors of UNSW. This includes persons engaged as individuals by the University, or employees of a corporation that is engaged by the University, or who otherwise fall within the scope of the definition of 'Public Official' (in relation to UNSW) under the PID Act.

4. Scope

4.1 Who can make a Public Interest Disclosure under this Procedure?

This Procedure applies to all Staff of the University who make reports of wrongdoing covered by this Procedure, in accordance with this Procedure and the PID Act.

If a Staff member wishes to make a complaint or report conduct that is not covered by this Procedure, they should refer to the Staff Complaint Procedure.

4.2 When will a report be a Public Interest Disclosure under this Procedure?

For a report to be considered a Public Interest Disclosure and to receive the legal protections afforded by the PID Act, it must be made in accordance with, and satisfy the requirements of the PID Act and this Procedure. The requirements include that:

- The report is about corrupt conduct, maladministration, serious and substantial waste of public money and/or Government Information Contravention;
- The person making the disclosure honestly believes, on reasonable grounds, that the information shows or tends to show the alleged wrongdoing;
- The report has to be made to a person who is authorised to receive the report.

A report will not be considered a Public Interest Disclosure if it is made solely or substantially with the motive of avoiding dismissal or other disciplinary action (not being disciplinary action taken in reprisal for the making of a public interest disclosure).

4.3 What conduct does this Procedure cover?

This Procedure applies to reports of corrupt conduct, maladministration, serious and substantial waste of public money and Government information contraventions made in accordance with this Procedure. Reports of improper or unacceptable behaviour not covered by this Procedure should be reported and dealt with in accordance with the *Staff Complaints Procedure*.

In particular, it is important to note that this Procedure DOES NOT cover complaints by staff associated with a personal grievance or performance management, nor with personal complaints involving alleged safety issues, discrimination or equal employment opportunity. Complaints of this kind may be made through the *Staff Complaint Procedure*.

In cases where a Staff member reasonably believes that the matter could fall under the definition of a Public Interest Disclosure, or is unsure of the gravity of the issue and/or fear repercussions, they should consult with one of the nominated Disclosures Officers immediately.

4.4 What does this Procedure do?

This Procedure sets out in detail:

- How to make a Public Interest Disclosure;
- Who is authorised to receive a Public Interest Disclosure (i.e. to whom a report can be made), both within and outside the University;
- How a Public Interest Disclosure will be dealt with;
- Legal protection for persons making a Public Interest Disclosure;
- Persons with responsibilities in relation to handling Public Interest Disclosures.

5. Making a Report under this Procedure

5.1 Who can receive a report within the University

The PID Act requires that, for a report to be a Public Interest Disclosure, it must be made to a public official in accordance with this Procedure. Set out in Appendix 1 is a list of persons within the University who can receive (and to whom a report can be made of) a Public Interest Disclosure.

5.2 How to make a report under this Procedure

A report can be made in writing or verbally, however it is preferable that reports are made in writing as this can ensure that there is clarity in relation to the details of the report and assist with the investigation.

If a report is made verbally, the person receiving the report will normally ask for the disclosure to be put in writing. Where this is not possible or practicable, the person receiving the report may record the details of the report and request the person making the report to sign the record to confirm that it is an accurate record of the report

5.3 Anonymous reports

While a staff member may wish to make a report anonymously, this often makes it very difficult for UNSW to deal with the report, for example, because often it is necessary to obtain more information or details in order to commence or progress the Procedure. Although such reports will where possible still be dealt with, it is strongly recommended that persons making reports under this Procedure identify themselves. This will allow UNSW to ensure that the necessary protection and support is provided.

6. Persons with responsibilities for handling reports under this Procedure

The following people have specific responsibilities in relation to receiving and handling reports under this Procedure:

6.1 Principal Officer – President and Vice-Chancellor

The President and Vice-Chancellor has specific responsibilities under the PID Act, including to ensure that UNSW complies with its obligations under this Procedure and under the PID Act. A report under this Procedure can be made directly to the President and Vice-Chancellor.

6.2 Disclosures Coordinator – Vice-President and Deputy Vice-Chancellor (Academic).

The Vice-President and Deputy Vice-Chancellor (Academic) is the Disclosures Coordinator. The Disclosures Co-ordinator has a central role in dealing with reports under this Procedure, in particular, the Disclosures Co-ordinator receives reports, assesses reports and determines what steps need to be taken in response to a report. A report under this Procedure can be made directly to the Disclosures Co-ordinator.

6.3 Disclosures Officers

A report under this Procedure may be made to a Disclosures Officer. The Disclosures Officers are listed in Appendix 1. Disclosures officers are responsible for receiving, forwarding and/or dealing with reports (as delegated) made under this Procedure.

A Disclosures Officer who receives a report under this Procedure must ensure that the report is handled in accordance with this Procedure.

6.4 Reports relating to the President and Vice-Chancellor or Vice-President and Deputy Vice-Chancellor (Academic)

As the President and Vice-Chancellor and the Vice-President and Deputy Vice-Chancellor (Academic) have specific responsibilities under the PID Act and this Procedure, a report relating to the President and Vice-Chancellor should be directed to the Chair of the Audit Committee of Council. A report relating to the Vice-President and Deputy Vice-Chancellor (Academic) should be directed to the President and Vice Chancellor.

7. How reports will be handled under this Procedure

UNSW will take all reasonable steps to ensure that reports made under this Procedure are dealt with promptly, impartially and in accordance with this Procedure.

When a public interest disclosure is made in accordance with this Procedure, the PID Act provides the staff member making the report with certain rights and creates certain obligations on UNSW in dealing with the report.

7.1 Confidentiality

Where a staff member makes a report under this Procedure, UNSW is committed to keeping their identity, and the fact that they have made a report, confidential where possible.

In accordance with the PID Act, a person who receives or is involved in handling a report under this Procedure is not to disclose information that might identify or tend to identify a person who has made a public interest disclosure unless:

- The person consents in writing to the disclosure of that information, or it is generally known that the person has made the public interest disclosure as a result of the person having voluntarily identified themselves (otherwise than by making the public interest disclosure) as the person who made the public interest disclosure; or
- It is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- UNSW is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

It is recognised that, in the course of properly and effectively investigating a report, the Disclosures Co-ordinator may enlist the discrete assistance of key divisions and personnel within UNSW, for example, the Internal Audit Office or the Legal Office.

7.2 Record keeping

All persons handling the report should keep records of the process. The report must be recorded on the register kept by the Disclosure Coordinator with records kept and stored on a secure and confidential UNSW central record. It is the responsibility of the Disclosures Coordinator to ensure that the file is created and contains all records relating to the report, including the document recording the report; any file notes of the report handler; the written record of any response received from the respondent; records of any witness statements obtained; copies of correspondence with the parties to the report and a copy of any formal findings or report. All records should be kept confidential and in accordance with the University's Record Keeping Policy.

7.3 Communication with staff who make a report

When a Staff member makes a report under this Procedure, the Disclosures Co-ordinator will ensure that they are:

- provided with written acknowledgment that the report has been received and will be dealt with in accordance with this Procedure and a copy of this Procedure. This must occur no later than 45 days after the disclosure has been reported. Acknowledgement is not required where a Public Interest Disclosure is made as part of a staff member performing his or her day to day functions or if it is made under a statutory or other legal obligation.
- kept updated as appropriate in relation to what is happening in response to their report, including anticipated timeframes and any delays to anticipated timeframes, but may not necessarily be provided with the details of the investigation; notified within 6 months of the Public Interest Disclosure being made, of the action taken or proposed to be taken by UNSW in respect of the disclosure.

7.4 How the University deals with Reports

The person responsible for implementing this Procedure following receipt of a Public Interest Disclosure is the Disclosures Co-ordinator. All reports made under this Procedure to the Disclosures Officers must, as soon as practicable, be referred to the Disclosures Co-ordinator.

(a) Preliminary Assessment

As a first step, the Disclosures Coordinator will normally appoint an investigating officer to undertake a preliminary assessment of the report. The investigating officer will:

- Obtain full details of the report;
- Confirm that the report will be treated as a Public Interest Disclosure under this Procedure and the PID Act; and
- Assess whether there is sufficient evidence to proceed to a formal procedure.

The preliminary assessment may involve speaking with the person who has made the report or collecting additional background material (with due regard to Confidentiality constraints, see above at 7.1).

If the Disclosures Co-ordinator forms the view that the report does constitute a Public Interest Disclosure and there is sufficient evidence to proceed to a formal procedure, the Disclosures Coordinator will determine the appropriate approach and provide directions as to how the report will be handled. This may involve deciding to follow the procedure for managing disciplinary matters as detailed in the applicable Enterprise Agreement, the *UNSW Staff Complaints Procedure*, or the *Procedure for Handling Allegations of Research Misconduct*.

If the Disclosures Co-ordinator forms the view that the report does not constitute a Public Interest Disclosure, consideration should be given as to whether it is appropriate for the report to be dealt with under the procedure for managing disciplinary matters as detailed in the applicable Enterprise Agreement; the *Staff Complaints Procedure*, or the *Procedure for Handling Allegations of Research Misconduct*.

The Disclosures Co-ordinator may form the view that the report does constitute a Public Interest Disclosure but may be unable to proceed to a formal procedure if the preliminary investigation has found that there is insufficient evidence.

The Disclosures Co-ordinator shall document the outcome of the preliminary assessment and, if the matter is to proceed to a formal procedure, detail the scope of the formal procedure and the matters to be investigated. The Disclosures Co-ordinator will inform the person who made the report of the outcome of the Preliminary Assessment and whether the matter will be progressed to a formal procedure.

(b) Formal Procedures

Once a report has been identified as a Public Interest Disclosure the Disclosures Co-ordinator shall set out for the investigating officer, or the manager responsible, the procedure to be used and the matters to be investigated.

Regardless of the procedure to be followed, any formal investigation into the PID should be conducted by someone external to the School/unit to which the PID relates and by a competent and experienced investigator.

The Disclosures Co-ordinator will consider whether any of the persons involved, including in particular, the persons involved in managing or investigating the report, have any real or perceived conflicts of interest in relation to the Public Interest Disclosure and its investigation and take appropriate steps to manage the situation.

7.5 Persons involved in handling or investigating reports under this Procedure

In addition to the matters outlined elsewhere in this Procedure, the following rights and responsibilities apply to all persons involved in handling or investigating reports under this Procedure:

- Maintain Confidentiality – see section 7.1 of this Procedure;
- Procedural fairness – persons involved in handling or investigating reports under this Procedure should consider the extent to which the rules of Procedural fairness have application in relation to the conduct of the investigation/handling of the report. If unsure, the person should seek advice from the Legal Office;
- Impartiality - persons involved in making decisions about a report made under this Procedure or in investigating a report should be impartial and free from any conflict of interest or bias;
- Record keeping – it is important that accurate and detailed records are kept in relation to each step in the handling or investigation of a report made under this Procedure;

- Reasons for decisions – a person handling a report should give reasons for their decisions, particularly where a decision has a significant impact on a person.

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8. Protection for Staff making reports under this Procedure

8.1 Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the Public Interest Disclosure. The criminal penalties that can be imposed for reprisal or detrimental action include imprisonment or fines. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- Injury, damage or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to employment;
- Dismissal from, or prejudice in, employment;
- Disciplinary proceedings.

UNSW will not tolerate any reprisal action against staff who report wrongdoing and will take all reasonable steps to ensure that a person who makes a Public Interest Disclosure is not subjected to detrimental or reprisal action as a result of making the disclosure. Any such action may constitute misconduct or serious misconduct justifying serious disciplinary action including termination of employment.

When a Public Interest Disclosure is received by UNSW in accordance with this Procedure, steps should be taken to assess the risk of possible reprisal action being taken against the person making the complaint and, where necessary, to provide protection against reprisal action. The Disclosures Co-ordinator will ensure that the staff member making the report is advised of the name and contact details of a nominated support person within UNSW who the person making the report can speak with if they require support throughout the process.

Any report of alleged reprisal action will be taken seriously by UNSW and will be handled in accordance with appropriate UNSW Policies and Procedures.

8.2 Protection against legal action

If a Public Interest Disclosure is made in accordance with this Procedure and the PID Act, the person making the report cannot, under the PID Act, be subject to any liability and no action, claim or demand can be taken against the person for making the disclosure. A person cannot be found to have breached any confidentiality or secrecy obligations by virtue of making a Public Interest Disclosure and the PID Act provides a defence of absolute privilege in respect of defamation.

9. Making a report outside the University

Staff are encouraged to report wrong-doing within UNSW in accordance with this Procedure, however internal reporting is not the only option available to Staff. Under the PID Act, a Public Interest Disclosure may be made in a number of ways external to UNSW and still be protected under the PID Act, including to a number of investigating authorities in NSW and to members of Parliament. For more information about external options for making a Public Interest Disclosure, you can contact the Public Interest Disclosures Co-Coordinator, the Vice-President and Deputy Vice-Chancellor (Academic) or go to the NSW Ombudsman's website: <http://www.ombo.nsw.gov.au>.

10. Sanctions for making false or misleading disclosures

It is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

11. Support and Advice

A Staff member who has made a Public Interest Disclosure or a Staff member against whom a Public Interest Disclosure has been made may wish to seek support from one or more of the following:

- The Disclosures Co-ordinator or a Disclosures Officer (see list in Appendix 1);
- Representatives and support persons – at any stage during the process, an individual can obtain advice or support from a representative (such as the union or legal advisor) or from a support person (including the nominated support person identified in section 8.1). The role of a representative or support person is to provide advice and support to the individual. However, the University maintains its right to directly communicate with and obtain information from an individual. Representatives and support persons must not be obstructive in the process;
- The Employee Assistance Program. Staff members can access the program by contacting 1300 360 364 or at www.davcorp.com.au;
- Human Resources – if staff members feel comfortable, they can speak with HR;
- NSW Ombudsman – has responsibilities in relation to administering the PID Act. More information can be obtained at <http://www.ombo.nsw.gov.au>.

12. Legal and Policy framework

This Procedure has been developed in accordance with the PID Act and with regard to the NSW Ombudsman's Guidelines and Model Policy.

This Procedure should be read in conjunction with the UNSW *Fraud and Corruption Prevention Policy*. The following UNSW Policy documents are also related to this Procedure:

- UNSW Code of Conduct
- Staff Complaint Procedure
- Procedure For Handling Allegations Of Research Misconduct
- Conflict of Interest Policy

13. Reporting

From 1 January 2012, UNSW will have obligations under the PID Act to collect and report anonymous statistical data about the public interest disclosures that UNSW receives.

14. Review & History

This document will be reviewed every 3 years, or sooner if there is a change in legislation.

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) & Registrar	16 November 2006	16 November 2006	Appendix 1
1.3	DVC (Academic) & Registrar	17 January 2007	17 January 2007	New policy format, and Appendix 1 update.
1.4	Administrative update Head, PMU	6 August 2009	6 August 2009	Section 1, 1.1, 6.1 and Appendix 1 updated.
2.0	Vice-President & Deputy Vice-Chancellor(Academic)	25 October 2012	25 October 2012	Revised policy
2.1	Vice-President & Deputy Vice-Chancellor(Academic)	3 June 2013	3 June 2013	Sections 3, 4,2, 5.2, 7.3 7.4(b), 8.1, 9.0,

Appendix 1

Disclosures Officers

UNSW Disclosures Officers are responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy.

Disclosures Officers
President and Vice-Chancellor
Vice-President and Deputy Vice-Chancellor (Academic) (also Disclosures Coordinator)
Vice-President and Deputy Vice-Chancellor (Research)
Vice-President, Advancement
Vice-President, University Services
Vice-President, Finance and Operations
Director Human Resources
Dean UNSW Canberra
Dean Faculty of Arts and Social Sciences
Dean Faculty of Built Environment
Dean Australian School of Business
Dean College of Fine Arts
Dean Faculty of Engineering
Dean Faculty of Law
Dean Faculty of Medicine
Dean Faculty of Science
Director Internal Audit

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