Report Wrongdoing Policy

Version	Approved by	Approval date	Effective date	Next review
1.0	President and Vice Chancellor	25 June 2020	1 July 2020	July 2023
Policy Statement				
Purpose	To express the University's commitment to: • support and facilitate reports of suspected wrongdoing at UNSW • protect those making protected disclosures from unauthorised disclosure of their identity and from the risk of detrimental acts against them because they made a protected disclosure; and • respond effectively to protected disclosures including undertaking investigations and reporting to external agencies, where appropriate.			
Scope	This Policy applies to all Officers and employees of the University. Students wishing to report wrongdoing may do so according to the *Student Complaint Procedure*. University Controlled Entities are not covered by this Policy.			
Policy Provisions				

1. Introduction and purpose

The University is committed to creating and maintaining an environment and culture which 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 wrongdoing at the University and the importance of ensuring that these reporters are protected from harm arising from their reports. The University wishes to encourage those who are aware of, or suspect, wrongdoing to speak up.

This Policy gives effect to the University's obligations under the *Public Interest Disclosures Act 1994* (NSW) (PID Act) and Part 9.4AAA (Protection of Whistleblowers) of the *Corporations Act 2001* (Cth) (Corporations Act), including the University's duty to ensure that those making, or believed to have made, a protected disclosure are not subject to actual or threatened detrimental action.

This Policy should be read in conjunction with the UNSW *Report Wrongdoing Procedure*, which explains the process for reporting wrongdoing and how the University will support those who make protected disclosures.

2. Wrongdoing and protected disclosures

2.1. Types of wrongdoing covered by this Policy

2.2.1 Wrongdoing covered by this Policy includes any or all of the following conduct engaged in by the University, an Officer or employee of the University:

- Fraud
- Corrupt conduct
- Maladministration
- Serious and substantial waste of public money
- Non-compliance with the provisions of the Government Information *(Public Access) Act 2009* (NSW) (Government Information contravention)
- Conduct that constitutes a contravention of, or an offence under, the Corporations Act or other Commonwealth legislation set out in s1317AA of the Corporations Act
- Conduct that constitutes an offence under a law of the Commonwealth punishable by a term of imprisonment of 12 months of more
- Conduct that represents a danger to the public or the financial system.

Wrongdoing covered by this Policy also includes any or all of the following:

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- Misconduct (including fraud, negligence, breach of trust and breach of duty) related to the affairs of UNSW
- An improper state of affairs or circumstances related to UNSW; or
- An improper state of affairs in relation to the tax affairs of UNSW.

2.2.2 Generally a current or former employee's personal work-related grievance will not qualify for protection as a protected disclosure under this Policy unless it:

a) also has broader, significant implications for the University as determined by the Deputy Vice Chancellor Academic;

b) includes information about wrongdoing (as described in section 2.1.1); or

c) involves actual or threatened detrimental action against the discloser because the discloser has made (or is thought to have made), a protected disclosure.

Examples of a personal work-related grievance include a decision to terminate a person's employment, a decision to discipline a person, or a decision about a promotion or transfer. These matters are handled under the UNSW *Staff Complaint Procedure* (unless the matter falls into one of the categories described in (a) to (c) of this sub-section.

Some of the terms used above (such as *misconduct* and *corrupt conduct*) are used in the PID Act and Part 9.4AAA of the Corporations Act. The meaning of these terms is explained in the Definitions section of this Policy.

2.2. When a report of wrongdoing qualifies as a protected disclosure

A report of wrongdoing must satisfy each of the following statutory requirements to qualify as a protected disclosure and to receive the protections afforded by the legislation and this Policy:

a) the report concerns one or more of the types of wrongdoing described in section 2.1

b) the report is made by an Eligible Discloser (section 3.1)

c) the Eligible Discloser has reasonable grounds to suspect that the report concerns wrongdoing; and

d) the report is made to an Eligible Recipient (section 3.2).

3. Who can make and receive a protected disclosure

3.1. Eligible Discloser

3.1.1. A protected disclosure may only be made by:

a) A current or former Officer of the University

b) A current or former Employee of the University

c) A supplier of goods or services to the University, whether paid or unpaid (or an employee of any such supplier)

d) An Associate of the University

e) A Relative of any person referred to in a) to d) above; and/or

f) A dependant of any person referred to in a) to d) above (or a dependant of the person's spouse or de facto partner).

3.2. Eligible Recipients

3.2.1. A protected disclosure may only be made to:

- The Chancellor and any member of the Council of the University
- The President and Vice Chancellor of the University
- Any member of the University's Management Board and/or Pro-Vice Chancellors
- The University's Director, Internal Audit or a member of an internal audit team conducting an audit on behalf of the Director, Internal Audit
- The University's General Counsel or Deputy General Counsel
- The Rector of UNSW Canberra
- A Dean at the University

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- *Your Call Whistleblowing Solutions*, the independent external service provider contracted by the University to receive reports of wrongdoing.

3.2.2. A protected disclosure can also be made to any of the following external parties:

- The NSW Audit Office
- NSW Ombudsman
- Independent Commission Against Corruption (ICAC)
- NSW Auditor-General
- Australian Securities and Investments Commission (ASIC)
- Australian Prudential Regulation Authority (APRA)
- Australian Tax Office (ATO) (where the disclosure relates to the tax affairs of the University)
- Any legal practitioner, for the purpose of obtaining legal advice or representation in relation to the making of a disclosure under this Policy; or
- A journalist or a member of Parliament of the Commonwealth or of a State or Territory under certain circumstances (see section 4.6).

4. Specific responsibilities of the University

4.1. Response to reports of wrongdoing

4.1.1. The University will follow the UNSW *Report Wrongdoing Procedure* when it receives a report of wrongdoing, or suspected wrongdoing.

4.1.2. The University will:

- assess whether the report of wrongdoing qualifies as a protected disclosure and the legislation that applies to the report (PID Act or Corporations Act)
- initiate an investigation if required in accordance with the *Report Wrongdoing Procedure*
- consider if it has an obligation to refer the report to a law enforcement or external investigative agency; and
- treat both the discloser and individual the subject of a report fairly and in accordance with the law.

4.1.3. Concerns and complaints raised under other UNSW procedures, such as the *Staff Complaint Procedure*, *Student Complaint Procedure*, *Complaints Management Procedure (External)*, *Student Misconduct Procedure* and *Research Misconduct Procedure* may also qualify as a protected disclosure. When this occurs, it will be managed according to the procedure under which the concern or complaint was raised, and this Policy and the *Report Wrongdoing Procedure*. In the event of any conflict between the applicable policies and procedures, this Policy will prevail.

4.2. Confidentiality

4.2.1. Where a protected disclosure has been received by an Eligible Recipient, the University has a legal obligation to protect the identity of an Eligible Discloser, unless an exception of the kind outlined at section 4.2.4 applies.

4.2.2. Any Officer or employee who causes the University to breach its legal obligation of confidentiality may be subject to disciplinary action (up to and including termination of employment in an appropriate case).

4.2.3. The University's obligation of confidentiality extends both to disclosure of information that actually identifies an Eligible Discloser, and to disclosure of information that 'tends to identify' or is likely to identify the Eligible Discloser (**Identifying Information**).

4.2.4. The University is legally permitted to disclose Identifying Information or the identity of an Eligible Discloser in the following limited circumstances:

a) the Eligible Discloser consents to the disclosure in writing
b) the Eligible Discloser identifies themself
c) the Eligible Discloser's identity is generally known

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d) the disclosure is made to the Australian Federal Police, ASIC, APRA, the ATO or any other regulatory body or public authority to which disclosures can be made under legislation
e) the disclosure is made to a legal practitioner for the purposes of obtaining legal advice or representation about the protected disclosure provisions in the Corporations Act
f) the information does not include the discloser's identity, or
g) the University has taken all reasonable steps to reduce the risk that the discloser will be identified from the information and the disclosure of the information; or
h) it is reasonably necessary for investigating the issues raised in the disclosure.

4.2.5. An Eligible Discloser who has made a protected disclosure and believes that a breach of confidentiality has occurred is entitled to lodge a complaint with ASIC or the NSW Ombudsman.

4.3. Legal protections for Eligible Disclosers

4.3.1. It is an offence under the PID Act and the Corporations Act to take, or threaten to take, detrimental action against an Eligible Discloser where a reason for the detrimental action is a belief or suspicion that a protected disclosure has been made, or may have been or could be made.

4.3.2. An Eligible Discloser who has made a protected disclosure under this Policy is entitled to the following protections:

a) identity protection (confidentiality and anonymity) (sections 4.2 and 4.4)
b) protection from any detrimental action threatened or taken because a person believes or suspects that the disclosure has been or will be made (section 4.3.1)
c) compensation and other remedies ordered by a Court for loss, damage or injury due to detrimental action.

4.3.3. An Eligible Discloser making a protected disclosure is immune from legal liability for making the disclosure and is entitled to qualified privilege in any defamation proceedings.

4.3.4. If the University becomes aware that any detrimental action has been taken (or threatened), by an Officer or employee, based upon a belief or suspicion that a protected disclosure has been or will be made, the University will commence disciplinary action against the Officer or employee, up to and including termination of employment where appropriate.

4.4. Anonymous disclosures may still be protected

An Eligible Discloser may choose to make a protected disclosure anonymously. An Eligible Discloser can refuse to answer questions they consider may reveal their identity. Further details on how the University handles anonymous disclosures can be found in the *Report Wrongdoing Procedure*.

4.5. Additional responsibilities of the University

4.5.1. The University will:

a) promote an ethical culture that protects and assists the making of protected disclosures
b) promote awareness of this Policy and the *Report Wrongdoing Procedure* via:
   i) staff induction and training
   ii) regular staff communication
   iii) posters in staff common areas
   iv) the UNSW Governance Office Policy Index; and
   v) the UNSW Complaints website
c) notify a person seeking to make a report of wrongdoing whether their report has been accepted as a protected disclosure and (if accepted), advise as to any proposed action arising from the report within 45 days of the date on which their disclosure was made together with a copy of this Policy and the *Report Wrongdoing Procedure*
d) subject to applicable legal limitations, such as obligations of confidentiality under the University's Enterprise Agreements or obligations under the Independent Commission Against Corruption Act, notify Eligible Disclosers of the outcome of their disclosure within six months of the date on which the protected disclosure was made

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e) establish a process to periodically review and update this Policy and the *Report Wrongdoing Procedure*

f) refer any evidence of detrimental action on the part of an Officer or employee against an Eligible Discloser to the Australian Federal Police, or to the ICAC, where appropriate.

g) undertake all required reporting under the PID Act, and

h) assess and implement recommendations arising from any investigation of a protected disclosure

4.6. Public Interest Disclosure and Emergency Disclosure

4.6.1. An Eligible Discloser who has made a protected disclosure (original disclosure) to ASIC, APRA or a Commonwealth authority may make a further disclosure (Public Interest Disclosure). The Public Interest Disclosure will qualify as a protected disclosure when it is made to a journalist or member of Federal, State or Territory Parliament and:

a) at least 90 days have passed since the original disclosure was made

b) the Eligible Discloser has no reasonable grounds to believe that action is being, or has been, taken in response to the original disclosure

c) the Eligible Discloser has reasonable grounds to believe that making the Public Interest Disclosure would be in the public interest; and

d) the Eligible Discloser has given written notice to the organisation to which they made the original disclosure that they intend to make Public Interest Disclosure. The notice must include sufficient information to identify the original disclosure.

4.6.2. An Eligible Discloser who has made a protected disclosure (original disclosure) to ASIC, APRA or a Commonwealth authority may make a further disclosure (Emergency Disclosure). This will qualify as a protected disclosure where the Subsequent Disclosure is made to a journalist or member of Federal, State or Territory Parliament and the Eligible Discloser has:

a) reasonable grounds to believe that the original disclosure concerned a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and

b) given written notice to the organisation to which they made the original disclosure that they intend to make the Emergency Disclosure. The notice must include sufficient information to identify the original disclosure.

5. Responsibilities of Officers and employees of the University

5.1.1. The University expects its Officers and employees to:

a) make themselves aware of, and comply with, their obligations under this Policy particularly with regard to confidentiality and detrimental action

b) fully co-operate with investigations initiated in response to a protected disclosure; and

c) support and encourage an ethical culture where wrongdoing is addressed promptly, and protected disclosures can be made without fear of any detrimental action.

5.1.2. While the University encourages employees to report conduct where they have reasonable grounds to suspect wrongdoing (whether or not the report will qualify for protection as a protected disclosure), making a false or misleading disclosure may constitute misconduct and may also be punishable under the law as an offence.

5.1.3. The University will take disciplinary action against employees who knowingly make a false or misleading disclosure.

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Accountabilities	
Responsible Officer	Vice-Chancellor and President (Principal Officer under the PID Act)
Contact Officer	Deputy Vice-Chancellor Academic (Protected Disclosure Coordinator)
Supporting Information	
Legislative Compliance	This Policy supports the University's compliance with the following legislation: *Corporations Act 2001* (Cth) – Part 9.4AAA – Protection of Whistleblowers *Public Interest Disclosures Act 1994* (NSW) (PID Act) *Independent Commission Against Corruption Act 1988* (NSW) *Crimes Act 1900* (NSW)
Supporting Documents	Report Wrongdoing Procedure
Related Documents	Staff Code of Conduct Research Code of Conduct Complaint Management Policy Sexual Misconduct Prevention and Response Policy Staff Complaint Procedure Student Complaint Procedure Complaint Management Procedure (External) Conflict of Interest Policy
Superseded Documents	Public Interest Disclosure Procedure, v2.4
File Number	2020/007983
Definitions and Acronyms	
ASIC	Australian Securities and Investments Commission
APRA	Australian Prudential Regulation Authority
Associate	is a person or entity connected to the University within the meaning of the term Associate as defined in the Corporations Act
ATO	Australian Taxation Office
Corporations Act	Part 9.4AAA (Protection of Whistleblowers) of the *Corporations Act 2001* (Cth)

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Corrupt conduct	As defined in sections 7, 8 and 9 of the *Independent Commission Against Corruption Act 1988.* It includes but is not limited to: (a) any conduct of any person that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by an officer or employee or UNSW, 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 an officer or employee or former an officer or employee that constitutes or involves a breach of public trust, or (d) any conduct of an officer or employee or former an officer or employee that involves the misuse of information or material that they acquired in the course of their employment, whether or not for his or her benefit or for the benefit of any other person. (e) any conduct of any person that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any officer or employee, and which could involve any of the following matters: (i) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition), (ii) bribery, (iii) blackmail, (iv) obtaining or offering secret commissions, (v) fraud, (vi) theft, (vii) perverting the course of justice, (viii) embezzlement, (ix) election bribery, (x) election funding offences,7 (xi) election fraud, (xii) treating, (xiii) tax evasion, (xiv) revenue evasion, (xv) currency violations, (xvii) illegal drug dealings, (xviii) illegal gambling, (xix) obtaining financial benefit by vice engaged in by others, (xx) bankruptcy and company violations, (xxi) harbouring criminals, (xxii) forgery, (xxiii) treason or other offences against the Sovereign, (xxiv) homicide or violence, (xxv) matters of the same or a similar nature to any listed above, (xxvi) any conspiracy or attempt in relation to any of the above. (f) Corrupt conduct is also any conduct of any person that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters: (i) collusive tendering, (ii) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources, (iii) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage, (iv) defrauding the public revenue, (v) fraudulently obtaining or retaining employment or appointment as an officer or employee of UNSW.

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Detrimental action	includes actual or threatened: a) dismissal of an employee b) injury of an employee in his or her employment c) alteration of an employee's position or duties to his or her disadvantage d) discrimination between an employee and other employees of the same employer e) harassment or intimidation of a person f) harm or injury to a person, including psychological harm g) damage to a person's property h) damage to a person's reputation i) damage to a person's business or financial position j) any other damage to a person.
Eligible Discloser/Discloser	means a person who makes a protected disclosure.
Employee	Includes permanent, fixed term and casual employees, and part-time and full-time employees
ICAC	NSW Independent Commission Against Corruption
Improper affairs or circumstances	includes conduct which: • is contrary to general law • is in breach of a University Code, policy or procedure • amounts to employment misconduct under an applicable enterprise agreement; or • is in breach of the obligations of the University under contracts, funding rules, grant terms and the like.
Journalist	means a person working in a professional capacity as a journalist for: a) a newspaper or magazine b) a radio or television broadcasting service c) an electronic service (including a service provided through the internet) that: (i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and (ii) is similar to a newspaper, magazine or radio or television broadcast.
Maladministration	is defined in the *Protected Disclosures Act* 1994, as '…an action or inaction of a serious nature that is: (a) contrary to law, or (b) unreasonable, unjust, oppressive or improperly discriminatory, or (c) based wholly or partly on improper motives.'
Misconduct	'misconduct' is defined section 9 of the Corporations Act to include fraud, negligence, default, breach of trust or breach of duty.
Officer	is a person who (a) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the University; or (b) who has the capacity to affect significantly the University's financial standing.
PID Act	*Public Interest Disclosures Act 1994* (NSW)

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Protected disclosure	Means a report about any of the type/s of wrongdoing listed in section 2.2 of this Policy which is made by an individual who is eligible to make such a report (Eligible Discloser) to a person who is eligible to receive such a report (Eligible Recipient).
Relative	means a spouse, parent or grandparent, child or grandchild or sibling.

Revision History

Version	Approved by	Approval date	Effective date	Sections modified
1.0	President and Vice-Chancellor	25 June 2020	1 July 2020	New Policy

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