

## PURPOSE

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This Policy outlines the procedure through which disclosures can be made to Te Tāhū o te Ture / The Ministry of Justice (the Ministry) under the Protected Disclosures (Protection of Whistleblowers) Act 2022 (“the Act”), and the Ministry’s obligations under the Act when receiving a Protected Disclosure.

## SCOPE

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This policy applies to Ministry employees, ex-employees, people on secondment to the Ministry, and contractors.

## OUR POLICY

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Protected Disclosures (Protection of Whistleblowers) Act 2022

The purpose of the Protected Disclosures (Protection of Whistleblowers) Act 2022 is to encourage reporting serious wrongdoing in the workplace by providing protections for individuals without fear of retaliation.

The Act promotes public interest by facilitating the disclosure and investigation of serious wrongdoing in the workplace, and protections for individuals who make disclosures.

The new Act, which came into force from 1 July 2022, is an update of the previous Act and sets down new and improved whistleblowing procedures.

The Ministry is committed to complying with the Protected Disclosures (Protection of Whistleblowers) Act 2022.

Serious wrongdoing definition

For the purposes of this policy ‘serious wrongdoing’ means any act, omission, or course of conduct in (or by) any organisation that is one or more of the following:

- (a) an offence:
  - (b) a serious risk to:
    - (i) public health; or
    - (ii) public safety; or
    - (iii) the health or safety of any individual; or
    - (iv) the environment.
  - (c) a serious risk to the maintenance of law, including:
    - (i) the prevention, investigation, and detection of offences; or
    - (ii) the right to a fair trial.
  - (d) an unlawful, a corrupt, or an irregular use of public funds or public resources:
  - (e) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by:
    - (i) an employee (if the organisation is a public-sector organisation):
    - (ii) a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public-sector organisation or the Government.
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Direct disclosures to an appropriate authority at any time

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If a discloser is not confident about making the disclosure within the Ministry, they may report serious misconduct to an “appropriate authority” at any time, rather than having to go through their organisation first. An “appropriate authority” includes:

- (a) The head of any public-sector organisation;
- (b) Any officer of Parliament;
- (c) The persons or bodies listed [here](#);
- (d) A membership body of a particular profession, trade or calling with the power to discipline members.

An appropriate authority does not include a Minister or Member of Parliament. However, there are rare circumstances in which a disclosure may be made to a Minister (refer to the ‘Disclosures to a Minister of the Crown’ section for further details).

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Protected disclosures

A protected disclosure will only be made where the individual:

- (a) believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the Ministry; and
- (b) discloses information about that in accordance with this policy or the Act;
- (c) does not disclose the information in bad faith.

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Procedure for making a protected disclosure

An individual considering making a protected disclosure can seek advice and support from:

- (a) [The Ministry's Risk and Assurance team](#)
- (b) An Ombudsman

An individual wishing to make a protected disclosure should provide information in accordance with the Ministry process set out in this policy. They may provide their disclosure to:

- (a) [The Ministry's Risk and Assurance team](#)
- (b) Any General Manager or their equivalent
- (c) A Deputy Secretary
- (d) The Chief Executive

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Receiving a Protected Disclosure

Within 20 working days of receiving the disclosure, the Ministry should:

- (a) acknowledge the date the disclosure was received and, if the disclosure was made orally, summarise its understanding of the disclosure;
  - (b) notify Risk and Assurance that a Protected Disclosure has been received and any action taken unless it is not reasonable to do so;
  - (c) assess the risk to the disclosing individual for making a disclosure of serious wrongdoing and take any steps necessary to mitigate this risk;
  - (d) consider whether the disclosure warrants investigation;
  - (e) check with the disclosing individual whether the disclosure has been made elsewhere (and any outcome);
  - (f) deal with the disclosure by:
    - (i) investigating the disclosure;
    - (ii) addressing any serious wrongdoing by acting or recommending action;
    - (iii) referring the disclosure to an appropriate authority;
    - (iv) deciding that no action is required;
  - (g) inform the disclosing individual, with reasons, about what the Ministry has done, or is doing to deal with the disclosure.
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If the Ministry is unable to complete these actions within 20 working days, they should begin the process and inform the discloser how long it may take.

Before referring a protected disclosure to an “appropriate authority”, the Ministry will consult with the disclosing individual and the appropriate authority to which the disclosure may be referred. If relating to fraud or corruption, Risk and Assurance are required to report this to Audit New Zealand as per the [Fraud and Corruption Policy](#).

The receiver should provide updates to the individual and Risk and Assurance at regular intervals throughout the process.

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How people are protected

The Ministry will comply with the spirit and intent of the Act and the requirements of this policy.

An individual who makes a protected disclosure has the following protections:

(a) The Ministry will use its best endeavours to keep confidential information that might identify the discloser. However, the Ministry need not keep a disclosing individual’s identity confidential if:

- the individual consents to the release of the identifying information; or
- there are reasonable grounds to believe that the release of the identifying information is essential:
  - (i) for the effective investigation of the disclosure; or
  - (ii) to prevent a serious risk to public health, public safety, the health or safety of any individual, or the environment; or
  - (iii) to comply with the principles of natural justice; or
  - (iv) to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

Before releasing identifying information for one of the reasons described in paragraphs (i) or (iii) above, the Ministry will consult with the discloser about the release.

Before releasing identifying information for one of the reasons described in paragraphs (ii) or (iv) above, the Ministry will, if practicable, consult with the discloser about the release.

Anyone may seek information and guidance from an Ombudsman about the duty of confidentiality in the Act.

(b) The Ministry will not retaliate or threaten to retaliate against an individual who is an employee (within the meaning of the Employment Relations Act 2000) who has made, or intends to make, a protected disclosure. This means that the Ministry will not:

- (i) Dismiss the individual for making the disclosure;
- (ii) Refuse or omit to offer or afford to the individual the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances;
- (iii) Subject the individual to any detriment or disadvantage (including any detrimental or disadvantageous effect on their employment, job performance, or job satisfaction) in circumstances in which other employees employed by the Ministry in work of that description are not or would not be subjected to such detriment or disadvantage;
- (iv) Retire the individual or require or cause them to retire or resign for making the disclosure.

If the Ministry retaliates or threatens to retaliate against an individual who has made or intends to make a protected disclosure, the individual has a personal grievance against the Ministry under the Employment Relations Act 2000.

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- (c) The Ministry will not treat or threaten to treat any person (“P”) less favourably than it would treat other persons in the same or substantially similar circumstances because:
    - (i) P, or a relative or associate of P:
      - 1) intends to make or has made a protected disclosure; or
      - 2) has encouraged another person to make a protected disclosure; or
      - 3) has given information in support of, or relating to, a protected disclosure; or
    - (ii) The Ministry believes or suspects that P (or a relative or associate of P) intends to do, or has done, anything described in paragraph (i) above.
  - (d) The Ministry will assess any risk of reprisal, repercussion, or adverse impacts to anyone from the first report or disclosure. The Ministry will take steps to address any potential for negative impacts to those involved in the disclosure.
  - (e) The Ministry will take action to keep the individual safe and work with them to provide appropriate support.
  - (f) An individual who makes a protected disclosure under this policy or in accordance with the Act is immune from civil, criminal, or disciplinary proceedings because of making the disclosure.
  - (g) The Ministry will provide practical assistance and advice to a discloser about how to make a disclosure under this policy. Advice can be obtained by either discussing this with your manager, or by contacting [Risk and Assurance](#).
  - (h) The Ministry will monitor the experience of individuals raising concerns throughout and after the process.

An individual who makes a disclosure knowing it is false, or who otherwise acts in bad faith will not be protected under this policy or the Act.

An individual is not protected under this policy or the Act if they disclose legally privileged information or material.

Disclosures to a Minister of the Crown

Where an individual makes a disclosure to the Ministry under this policy or the Act, and they believe on reasonable grounds that the Ministry:

- (a) has not acted as it should under the “Receiving a Protected Disclosure” section of this policy or under section 13 of the Act (as the case may be); or
- (b) has not dealt with the matter so as to address the serious wrongdoing

the individual is entitled to the protections set out in this policy and the Act for a protected disclosure made to a Minister.

Supporting information

The protections referred to in this policy (as defined in the section “How people are protected” above) apply with all necessary modifications to individuals who disclose information in support of a disclosure made by another person provided the individual who is disclosing the supporting information:

- (a) does not act in bad faith; and
- (b) discloses the supporting information to the Ministry in accordance with the “Procedure for making a protected disclosure” section of this policy or discloses the supporting information to an appropriate authority.

## RESPONSIBILITIES

Manager

A manager that receives a protected disclosure must:

- (a) acknowledge in writing disclosures made under this policy within 2 working days;
  - (b) advise Risk and Assurance;
  - (c) seek appropriate advice as needed to consider if the disclosure should be investigated;
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- (d) assess whether a disclosure meets the criteria for being a protected disclosure and whether the disclosure may be true within 20 working days; and
- (e) inform the individual in writing whether an investigation will or will not proceed;

Employees

Employees that become aware of a serious wrongdoing defined under this Policy may:

- (a) make a protected disclosure as defined in the 'Procedure for making a protected disclosure' section above.
- (b) act honestly and in good faith when making a Protected Disclosure.

Risk and Assurance

Risk and Assurance must:

- (a) provide guidance and advice to any individual that has made, or is thinking of making a protected disclosure;
- (b) provide guidance and advice to managers that have received a protected disclosure;
- (c) follow the same procedure as outlined above for managers, if a protected disclosure is made directly to Risk and Assurance; and
- (d) record details of protected disclosures made within the Ministry and report as necessary while observing confidentiality requirements outlined in this Policy.

**RELEVANT POLICIES, PROCEDURES AND LEGISLATION**

Internal policies and procedures:

- (a) Protected Disclosures Reporting Form
- (b) Code of Conduct
- (c) Disciplinary Process policy
- (d) Fraud and Corruption policy
- (e) Bullying and Harassment policy

Legislation:

- (a) Privacy Act 2020
- (b) Protected Disclosures (Protection of Whistleblowers) Act 2022
- (c) Health and Safety at Work Act 2015
- (d) Te Tiriti o Waitangi
- (e) Employment Relations Act 2000
- (f) Human Rights Act 1993
- (g) Harmful Digital Communications Act 2015

CONTACT	Manager Risk and Assurance	OWNER(S)	Manager Risk and Assurance
LAST REVIEWED	April 2023	NEXT REVIEW	April 2025
LAST UPDATED	April 2023	CONSULTATION	Legal, People Experience