



**Waimate**  
District Council

## **Protected Disclosures Policy 326**

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# **PART ONE: PROTECTED DISCLOSURES POLICY**

## **1. PURPOSE**

Aligning with the Protected Disclosures Act 2000 (the Act), the purpose of the policy is:

- facilitating the disclosure and investigation of matters of serious wrongdoing in, or by, the Waimate District Council (Council); and
- protecting employees who, in accordance with the Act and this policy, make disclosures of information about serious wrongdoing in, or by, Council; and
- outlining the internal procedures for receiving and dealing with information about serious wrongdoing in, or by, Council to assist employees who believe they have discovered serious wrongdoing.

## **2. APPLICABILITY**

The policy applies to all Council staff (past and present), elected members, and all consultants, vendors, contractors, volunteers, and agencies with business relationships with Council.

## **3. RELATED LEGISLATION/DOCUMENTS**

This policy should be read in direct reference to the Act, and operates in conjunction with the related legislation and internal documents listed below:

- Protected Disclosures Act 2000
- Employment Relations Act 2000
- Human Rights Act 1993
- Waimate District Council Fraud Policy
- Waimate District Council Staff Manual;
- Waimate District Council Code of Conduct
- Waimate District Council Audit & Risk Committee Terms of Reference.

Where the suspected serious wrongdoing involves fraud of any kind, the employee should follow the Waimate District Council Fraud Policy.

## **4. DEFINITIONS**

a) 'Employee', without limiting the meaning of that term, includes:

- a former employee;
- a homemaker within the meaning of Section 5 of the Employment Relations Act 2000;
- a person seconded to the organisation;
- an individual who is engaged or contracted under a contract for services to do work for the organisation;

- a person concerned in the management of the organisation, including a person who is a member of the board or governing body of the organisation (e.g. the Mayor, the Councillors, etc.);
- a person who works for the organisation as a volunteer without reward, or without expectation of reward, for that work.

b) 'Serious Wrongdoing' includes any serious wrongdoing of any of the following types:

- an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or
- an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
- an act, omission or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
- an act, omission, or course of conduct that constitutes an offence; or
- an act, omission, or course of conduct by a public official that is oppressive, unlawfully discriminatory, or grossly negligent, or that constitutes gross mismanagement; but does not include:
  - something that is not unlawful or offensive but which one may not approve of.

c) 'Appropriate Authority', without limiting the meaning of that term, includes:

- the Commissioner of Police
- the Controller and Auditor-General
- the Director of the Serious Fraud Office
- the Inspector-General of Intelligence and Security
- an Ombudsman
- the Parliamentary Commissioner
- the Parliamentary Commissioner of the Environment
- the Solicitor-General
- the State Services Commissioner
- the Health and Disability Commissioner; and
- the head of every public sector organisation, whether or not mentioned above; and
- a private sector body which comprises members of a particular profession or calling and which has the power to discipline its members; but does not include :
  - a Minister of the Crown or a Member of Parliament.

d) in relations to 'protected disclosure', an employee (as defined above) of Council wishing to disclose information is protected under this policy and the Act if:

- the information is about serious wrongdoing in, or by, Council; and
- the employee believes on reasonable grounds that the information is true or likely to be true; and
- the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
- the employee wishes the disclosure to be protected.

In accordance with the Act, any disclosure made on these above terms is considered a protected disclosure.

A disclosure is not protected if the information disclosed is subject to legal professional privilege. This includes information prepared by, or for, lawyers for the purpose of giving or receiving legal advice and also includes documents prepared as to enable lawyers to conduct or advise on litigation.

To be afforded the protections of this policy and the Act, an employee must disclose information in the manner outlined in the 'Protected Disclosures Procedures' section of the present policy.

## 5. INTERNAL PROCEDURES

Council complies with the Act by ensuring it has in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing. In accordance with the Act, such procedures:

- comply with the principles of natural justice; and
- identify the persons in the organisation to whom a disclosure may be made; and
- provide details of additional persons whom a disclosure may be made to, and the circumstances necessary for such a disclosure; and
- are published widely within the organisation, and are republished at regular intervals.

## 6. PROTECTION UNDER THE ACT

The disclosing party has the right to be protected from any civil, criminal, or disciplinary proceedings by reason of having made, or referred, a protected disclosure of information. This includes being subjected to harassment, discrimination, or victimisation for exercising their rights under the Act.

Related to the ability to claim personal grievance, an employee who makes, or refers, a protected disclosure in accordance with the Act and this policy, and subsequently suffers dismissal or unfair disadvantage as the result, may have a personal grievance for the purposes of the Employment Relation Act 2000, Section 103.

Related to the immunity from civil and criminal proceedings, no person who makes, or refers, a protected disclosure in accordance with the Act and this policy is liable to any civil or criminal proceedings or to a disciplinary proceeding.

Related to confidentiality, every person to whom a protected disclosure is made, or referred, must keep the identity of the disclosing party confidential unless:

- those investigating the disclosure reasonably believe that disclosure of identifying information:
  - is essential to the effective investigation of allegations in the protected disclosure; or
  - is essential to prevent serious risk to public health or public safety or the environment; or
  - is essential having regard to the principles of natural justice.

The protections offered under the Act also apply to a person who volunteers supporting information as if the information were a protected disclosure of information.

A person volunteers supporting information if the person:

- provides information, in support of a protected disclosure of information made by another person, to:
  - a person investigating the disclosure; or
  - the person who made the disclosure; and
- is an employee of the organisation in respect of which the disclosure was made; and
- wishes to provide the supporting information so that the serious wrongdoing can be investigated.

However, a person does not volunteer supporting information if the person provides the supporting information only after being:

- required to do so under any enactment, rule of law, or contract for the purposes of the investigation; or
- approached during the course of the investigation by, or on behalf of, the person investigating the matter.

## **PART 2: PROTECTED DISCLOSURES PROCEDURES**

### **7. MAKING A DISCLOSURE**

#### **Protected Disclosures Act Co-ordinator**

If an employee believes, on reasonable grounds, that anyone at Council, such as a staff member, elected member, volunteer, or contractor is involved in any serious wrongdoing, the employee should notify a Protected Disclosures Act Co-ordinator.

Council Protected Disclosures Act Co-ordinators are:

- Asset Group Manager
- Community & Strategy Group Manager
- Regulatory & Compliance Group Manager

#### **Chief Executive**

Disclosures may be made to the Chief Executive if the employee making the disclosure believes on reasonable grounds:

- that the person to whom the wrongdoing should be reported (i.e. one of the Protected Disclosures Act Co-ordinators listed above) is, or may be, involved in the serious wrongdoing alleged in the disclosure; or
- that the person to whom the wrongdoing should be reported is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing, not a person to whom it is appropriate to make the disclosure.

#### **Appropriate Authority**

Disclosures may be made to an “appropriate authority”, as defined in this policy, if the employee making the disclosure believes on reasonable grounds that:

- the Chief Executive is, or may be involved, in the serious wrongdoing alleged in the disclosure;<sup>1</sup> or
- immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstance; or
- there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the date on which the disclosure was made.

#### **Minister of the Crown or an Ombudsman**

Disclosures may be made to a Minister of the Crown or an Ombudsman if the employee making the disclosure:

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<sup>1</sup> N.b.: specific to instances of suspected/alleged fraud involving the Chief Executive, the immediate appropriate authority is the Mayor. For further information see: Waimate District Council Fraud Policy.

- has already made substantially the same disclosure in accordance with the above requirements; and
- believes on reasonable grounds that the person, or appropriate authority to whom the disclosure was made had decided not to investigate the matter; or has decided to investigate the matter but has not made progress with the investigation within a reasonable timeframe; or has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect to the matter; and
- continues to believe on reasonable grounds that the information disclosed is true or likely to be true.

A disclosure may be made to an Ombudsman only if it is in respect of a public sector organisation and it has not already been made to an Ombudsman in any of the above instances.

### **Form of the Disclosure**

Disclosures may be made either verbally or in writing, including by email. Disclosures will be accepted from an employee's representative where they are communicating the disclosure on behalf of the employee. The disclosure must still meet the requirements of the Act and this policy.

### **Anonymous Disclosure**

Persons wishing to make an anonymous disclosure should note that the protections of the Act are only available to employees making protected disclosures within the definitions provided by the Act. Employees retain their right under the Act regardless of whether they identify themselves or not at the time of the disclosure. But if an employee who makes an anonymous disclosure wishes to obtain protection under the Act, the onus will be on them to prove that:

- it was they who made the disclosure; and
- they are, or were, employees when they made the disclosure; and
- the disclosure was made in accordance with the Act and this policy.

## **8. RESPONSIBILITY**

### **Protected Disclosures Act Co-ordinator**

Upon the receipt of a disclosure under this policy, a Protected Disclosures Act Co-ordinator will:

- acknowledge receipt of the complaint in writing; and
- record the date the notification was received; and
- interview the complainant (if applicable), recording pertinent notes; and
- advise the Chief Executive (or in his or her absence, the acting Chief Executive) of the disclosure and provide the interview notes and any other relevant information.

The Chief Executive is responsible for any ensuing investigation.



If the Chief Executive is involved, or believed to be involved, in any serious wrong doing, the Protected Disclosures Act Co-ordinator will inform the Mayor or an appropriate authority, as defined in this policy. The Mayor or appropriate authority will oversee any such investigation.

The Protected Disclosures Act Co-ordinator receiving a protected disclosure will provide information and guidance to the employee making the disclosure on:

- what constitutes a protected disclosure in accordance with the Act and this policy; and
- the protections and remedies available under the Act, the Employment Relations Act 2000, and the Human Rights Act 1993; and
- appropriate external authorities the employee may refer the disclosure to, should they see necessary in accordance with the Act and this policy; and
- a likely timeframe for the investigation and, when the time comes, the outcome.

Every person to whom a protected disclosure of information is made or referred must not disclose information that might identify the person who made the disclosure unless:

- person making the disclosure consents in writing to the disclosure of their identity; or
- those investigating the disclosure reasonably believe that disclosure of identifying information:
  - is essential to the effective investigation of allegations in the protected disclosure; or
  - is essential to prevent serious risk to public health or public safety, or to the environment; or
  - is essential having regard to the principles of natural justice.

### **Chief Executive**

The Chief Executive is responsible for commissioning whatever investigation, or restorative, or disciplinary actions necessary to deal with the alleged wrongdoing. The Chief Executive may appoint an Investigating Officer (IO) to oversee any ensuing investigation on their behalf.

If the Chief Executive is involved or implicated in serious wrongdoing, then the Mayor will fulfil these responsibilities.

The Chief Executive (or, on his behalf, the IO, or the Mayor) will:

- investigate the allegation; and
- keep a detailed file note recording the interview notes received from the Protected Disclosures Act Co-ordinator, the investigation, and the explanation given to the complainant about procedures to be followed; and
- have the file note signed by the complainant to verify the accuracy and completeness of the interview notes, and record the complainant's acceptance of the procedures to be followed;
- ensure that the Protected Disclosures Act Co-ordinator is advised how the matter is being dealt with or how it has been resolved, so that the complainant may be advised within 20 working days from the date that the disclosure was made; and

- where applicable, ensure that the investigation is conducted in accordance with the Waimate District Council Fraud Policy; and
- Inform Council's Audit & Risk Committee of the outcome of any investigation.

If these procedures are not followed, the complainant may refer the matter to some other appropriate authority as defined in this policy and the Act.

The Chief Executive (or the Mayor), with assistance from the Human Resources Manager (if applicable), is responsible for ensuring that any employee who makes a protected disclosure is immune from disciplinary proceedings, and is protected from retaliatory action and victimisation.

## **9. DISCIPLINE AND VICTIMISATION**

No person who makes, or refers, a protected disclosure of information in accordance with the Act and this policy is liable to any disciplinary proceeding by reason of having made or referred that protected disclosure of information.

The employer of an employee who makes a protected disclosure of information under this policy and the Act may not take any action against the employee in retaliation for a protected disclosure of information.

The employer of an employee, and any other employee, must not treat or threaten to treat any employee less favourably than he or she would treat other employees in the same or similar circumstances on the ground that the employee, or any relative or associate of the employee,:

- intends to make a protected disclosure of information; or
- has made a protected disclosure of information, or has encouraged the making of a protected disclosure of information by some other employee; or
- has given information or evidence in relation to any complaint, investigation, or proceeding arising out of a protected disclosure of information under the Act and this policy.

## **10. FURTHER INFORMATION**

If you require any further information or have any questions regarding the interpretation or application of this policy please contact the Human Resources Manager at the Waimate District Council.

## 11. DOCUMENT CONTROL

Queries:	Human Resources Manager
Effective:	8 October 2019
Previous Review Date(s):	13 September 2016
Next Review Date:	8 October 2022
Document Owner:	Human Resources Manager
To be only amended by:	Resolution of Council

Approved by:

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Stuart Duncan, Chief

Date: 8 October 2019