

## Protected Disclosures

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Review Cycle:	4 yearly		
Applies From:	Immediately		

# 1 Introduction

## 1.1 Purpose

Ara Institute of Canterbury<sup>1</sup> employees are covered by the Protected Disclosures Act 2000 and its amendments. This means that they may disclose information (“blow the whistle”) about serious wrongdoing in or by Ara to the Disclosures Officer, the Chief Executive, the Chair of Council, an Ombudsman, a Minister of the Crown, or another appropriate authority in confidence and safely. The Act and this policy protects them from retaliatory action, victimisation, harassment, and civil or criminal proceedings providing the information disclosed is true or believed to be true and is made in good faith and in accordance with the procedures set out in policy.

## 1.2 Scope and Application

- a This policy applies to any employee or past employee, or a person seconded to Ara or contracted by Ara, or a volunteer who discloses information about serious wrongdoing as defined. It does not apply where a person makes a disclosure of information knowing it to be false or otherwise acting in bad faith.
- b This policy relates primarily to The Protected Disclosure Act 2000 and its amendments.

## 1.3 Formal Delegations

The responsibilities of the Disclosures Officer have been delegated by the Chief Executive to the Complaints Co-ordinator.

## 1.4 Definitions

- a **Protected Disclosure:** Information about serious wrongdoing in or by Ara which is believed on reasonable grounds to be true and which the employee wishes to disclose under protection so that serious wrongdoing can be investigated.
- b **Serious Wrongdoing:** Any unlawful, corrupt, or irregular use of public funds or public resources; any act or omission or course of conduct that:
  - i constitutes an offence
  - ii constitutes a serious risk to public health or public safety or the environment or to the maintenance of law including the prevention, investigation, and detection of offences and the right to a fair trial
  - iii is oppressive, improperly discriminatory, grossly negligent, or constitutes gross mismanagement.

<sup>1</sup> From herein referred to as Ara  
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- c **Employee:** A person employed in any capacity by the Ara Council or by the Ara Chief Executive including a former employee, a homemaker, a person seconded to Ara, a person engaged or contracted under a contract of service, and a person concerned in the management of Ara; and a person who works as a volunteer
- d **Disclosures Officer:** The person appointed by the Chief Executive to receive and deal with information about serious wrongdoing under this policy.
- e **Chief Executive:** The Chief Executive of Ara.
- f **Chair of Council:** The Chair of the Ara Council.
- g **Appropriate Authority:** As defined in s3 of the Protected Disclosures Act 2000; includes the Commissioner of Police, the Controller and Auditor-General, the Director of the Serious Fraud Office, the State Services Commissioner, and others.
- h **Confidentiality:** Notwithstanding the provisions of the Official Information Act 1982, the Privacy Act 1993, and the general principles of natural justice/procedural fairness, the Disclosures Officer, the Chief Executive, the Chair of Council, and every person to whom a protected disclosure is referred or with whom it is discussed in the course of an investigation must use her or his best endeavour not to disclose the identity of the person who made the protected disclosure unless that person consents in writing or disclosure is essential to the effective investigation of the allegations or for other clearly specified statutory reason.
- i **Disclosure Date:** The date on which the protected disclosure is received by the Disclosures Officer, the Chief Executive, or the Chair of Council, as the case may be.

<b>Related Ara Procedures</b> (indicate if attached to policy or where they can be found)	<b>Related Ara Policies</b> <ul style="list-style-type: none"> <li>• CPP102 Disclosure and Management of Conflict of Interest</li> <li>• CPP109 Disclosing Personal Information about Students and Staff</li> <li>• CPP110 Legislative Compliance</li> <li>• CPP117 Raising Problems or Complaints</li> </ul>
<b>Related Legislation or Other Documentation</b> <ul style="list-style-type: none"> <li>• Protected Disclosure Amended Act 2009</li> <li>• Employment Relations Act 2000</li> <li>• Human Rights Act 1993</li> <li>• Official Information Act 1983</li> <li>• Privacy Act 1993</li> </ul>	<b>Good Practice Guidelines</b> (indicate if attached to policy or where they can be found)
<b>References</b> <ul style="list-style-type: none"> <li>• Whistle Blowing Protected Disclosures: Guidelines for employees</li> </ul>	
<b>Notes</b> The intention of the Protected Disclosures Act 2000 is to: <ul style="list-style-type: none"> <li>• Reduce the impediments to employees disclosing serious wrongdoing</li> <li>• Enhance public confidence in public institutions</li> <li>• Underpin and reinforce the existing statutory and ethical obligations of probity and integrity within the public sector.</li> </ul>	

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## 2 Principles

- 2.1 Ara is committed to facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation.
- 2.2 Protecting employees who, in accordance with this Act make disclosures of information about serious wrongdoing in or by an organisation as described in the Protected Disclosures Act 2000 and its amendments.
- 2.3 Ensuring effective processes that support the Protected Disclosure Act.

## 3 Associated procedures for Ara Corporate Policy on: Protected Disclosures

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### 3.1 Natural Justice / Procedural Fairness

- a Every person affected by this policy has the right to a copy of the policy and to such further information as is needed to clarify any point or process.
- b Every person affected by this policy has the right to seek information and guidance from an Ombudsman.
- c Every person has the right to representation, advice, advocacy, and support at all stages of any of the processes under this policy. This includes the right to be accompanied by a person or persons of their choice at any meetings.
- d Every person has the right to know what is alleged of him or her and the consequences of any allegation being proved.
- e Every person has the right to respond to any allegation about him or her before any decision is reached under any of the processes in this policy.
- f Every person has the right to access all personal information held about him or her unless good reason exists under the Official Information Act 1982 or the Privacy Act 1993 or the Protected Disclosures Act 2000 for not disclosing such information. This right does not include the right to know the identity of the person who made the protected disclosure concerned unless that person consents in writing to the disclosure of their identity.

### 3.2 Making a Protected Disclosure – Protection

- a If the person making a protected disclosure reveals their identity but requests anonymity, the person who receives the disclosure and every person to whom it is referred or with whom it is discussed must make every effort not to disclose the identity of the person making the disclosure.

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- b If any person who has made a protected disclosure believes that they have suffered retaliatory action, they may bring a personal grievance under s103 of the Employment Relations Act 2000.
- c Discrimination against anyone making a protected disclosure is prohibited under s66 of the Human Rights Act 1993.
- d Under s18 of the Protected Disclosures Act 2000, any person making a genuine protected disclosure is immune from civil or criminal proceedings arising out of making the disclosure.

### **3.3 Making a Protected Disclosure – to Whom?**

- a Any employee who believes on reasonable grounds that she or he has information about serious wrongdoing may make a protected disclosure under this policy.
- b A protected disclosure must be made to the Disclosures Officer unless the employee making the disclosure believes on reasonable grounds that:
  - i the Disclosures Officer is or may be involved in the serious wrongdoing alleged; or that
  - ii the Disclosures Officer is not the appropriate person because the Disclosures Officer has a close relationship or association with the person believed to be involved in the wrongdoing.
- c If for the reasons set out in 3.3b it is not appropriate for the disclosure to be made to the Disclosures Officer, a disclosure may be made to the Chief Executive.
- d If the employee making the disclosure believes on reasonable grounds that the Chief Executive is or may be involved in the serious wrongdoing alleged, she or he may make a disclosure to the Chair of Council or to an appropriate authority.
- e An employee may make a disclosure to another appropriate authority if she or he believes on reasonable grounds that immediate reference is justified because of urgency or some other exceptional circumstances or because there has been no action or recommended action within 20 working days of the disclosure date.
- f An employee may make a disclosure to a Minister of the Crown or an Ombudsman if she or he has already made a disclosure under this policy and believes on reasonable grounds that the person to whom it was made has decided not to investigate or has not made progress within a reasonable time or has not taken any action in respect of the matter – providing that the employee continues to believe that the information is true or likely to be true.

### **3.4 Making a Protected Disclosure – How?**

- a Information about this policy, the internal procedures, and adequate information about how to use them must be published widely at regular intervals.
- b A protected disclosure may be made in person, in writing, by phone, voicemail, fax, or email. The contact details of the Disclosures Officer, the Chief Executive, and the Chair of Council must be set out in the published information.
- c The employee making the disclosure need not identify herself or himself. If the employee does identify herself/himself, the employee should state clearly whether or not she or he wishes confidentiality to apply. If the employee does not identify

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herself/himself, it is not possible for the disclosure to be acknowledged or for subsequent clarification to be sought, or for reports of the outcome of any investigation, action or recommended action to be communicated.

- d Protected disclosures must be made in good faith, on reasonable grounds, and in the belief that the allegations made are or are likely to be true. Allegations must be reasonably specific as to the nature of the alleged wrongdoing and, if known or suspected, the name of the person or persons or body involved.

### **3.5 Making a Protected Disclosure – What Happens Next?**

- a The Disclosures Officer, the Chief Executive, or the Chair of Council, as the case may be, will acknowledge the disclosure (unless it was anonymous), and will, within 20 working days of the disclosure date, investigate the matter and determine whether to take or recommend action (including further investigation and/or referring the matter to another authority).
- b If for good reason it is not possible for an investigation to be completed within 20 working days of receipt, the person undertaking the investigation will notify the employee who made the disclosure briefly giving a progress report and explaining the delay (unless it was anonymous).
- c The Disclosures Officer, the Chief Executive, or the Chair of Council, as the case may be, will briefly report back to the employee giving the outcome of any investigation and any actions taken or recommendations made (unless the disclosure was anonymous).
- d The actions taken or recommendations made may include the initiation of proceedings under another Ara policy or referral of the matter to an appropriate authority.