

# Ngā Hātepe | Protected Disclosures (Whistleblowing) Procedure

## Mō wai me te whānuitanga | Audience and scope

This Procedure applies to all current and former employees of Te Pūkenga, including contracted staff, consultants and secondees providing services for Te Pūkenga; Ohu Kaitiaki, which extends to all those operating at governance level. Including Council members, and members of Council’s advisory committees, and those on fixed-term contracts (collectively referred to as **Kaimahi** in this Procedure).

This Procedure only applies to protected disclosures of serious wrongdoing as defined by the Protected Disclosures (Protection of Whistleblowers) Act 2022 (**‘the Act’**). For other employment-related complaints, kaimahi should refer to the Problem Resolution Procedure.

## Mokamoka whakaaetanga | Approval details

<b>Version number</b>	1	<b>Issue date</b>	1 July 2022
<b>Version history</b>	N/A	<i>Reason for amendment/s – N/A</i>	
<b>Approval authority</b>	Te Pūkenga ELT	<b>Date of approval</b>	28 June 2022
<b>Procedure sponsor (has authority to make minor amendments)</b>	Director People, Culture and Wellbeing	<b>Procedure owner</b>	DCE Operations
<b>Contact person</b>	Keri-Anne Tane	<b>Date of next review</b>	1 July 2024

## Ngā whakatikatika | Amendment history

Version	Effective date	Created/reviewed by	Reason for review/comment
1.0	1 July 2022	Joy Whiteman	Creation of procedure document to support update policy.

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## Ngā Hātepe | Protected Disclosures (Whistleblowing) Procedure

### 1. Pūtake | Purpose

The purpose of this Procedure is to set out the process by which actual, suspected, or anticipated serious wrongdoing within Te Pūkenga may be reported and how Te Pūkenga will address such wrongdoings. This Procedure does not set out the process for protected disclosures made by kaimahi to another appropriate authority – these authorities will follow their own procedures.

Alongside Te Pūkenga Protect Disclosures (Whistleblowing) Policy, this Procedure provides information and guidance to kaimahi on the protections available under the Act.

This Procedure and its related policy are separate from, and additional to, any rights and obligations that a person may have under the Act.

### 2. Te Pae Tawhiti | Te Tiriti o Waitangi Excellence Framework

The Council of Te Pūkenga acknowledges that this Procedure has been adopted while there is ongoing work being carried out to consider how Te Pae Tawhiti - Te Tiriti o Waitangi Excellence Framework should be fully embedded in the Procedure. The Council notes that Te Pūkenga is still on its transition journey and, as it matures, this Procedure and others will be reviewed to ensure they align with the new Operating Model and reflect Te Pae Tawhiti best practice.

### 3. Tirohanga Whānui | Overview

- 3.1. Te Pūkenga is committed to the highest possible standards of openness, honesty, and accountability, and recognises it is likely that kaimahi will be the first to realise that there may be something seriously wrong within Te Pūkenga. In line with this commitment, Te Pūkenga encourages kaimahi with genuine and serious concerns about any aspect of Te Pūkenga to come forward and voice those concerns as a 'protected disclosure', in line with our Protected Disclosures (Whistleblowing) Policy and this related Procedure.
- 3.2. All kaimahi must use good judgement to maintain the trust, respect and reputation of Te Pūkenga, including taking action to prevent the occurrence of wrongdoing. If you become aware of any serious wrongdoing, you should follow the process set out in this Procedure.
- 3.3. If you are unsure whether your concerns are best addressed through this Procedure or through another avenue, you can arrange for a confidential conversation with your People, Culture and Wellbeing advisor. For specialist external advice on making a protected disclosure you can contact the Ombudsmen on 0800 802 602.

## 4. Ngā Hātepe | Procedure

### Understanding protected disclosures

- 4.1. When kaimahi have reasonable grounds to believe that there is, or has been, serious wrongdoing in or by Te Pūkenga, they can disclose that wrongdoing and be protected under the Act so long as the disclosure is made in accordance with this Procedure, the related policy and the Act.
- 4.2. Serious wrongdoing is an act, omission, or course of conduct as defined in the Act and section 6 of this Procedure.
- 4.3. Only current and former Te Pūkenga kaimahi can make a protected disclosure about Te Pūkenga. For the purposes of this Procedure, this means anyone who is, or was formerly:
  - a) an employee (Permanent, Fixed Term or Casual)
  - b) a homemaker
  - c) a contractor
  - d) a secondee
  - e) a member of Te Pūkenga Council
  - f) a member of one of the Council's advisory committees or the academic board, or
  - g) a volunteer.

### Making a protected disclosure

- 4.4. If you are aware of serious wrongdoing in or by Te Pūkenga and would like to make a protected disclosure you can speak to any of the following people at Te Pūkenga:
  - a) Your manager
  - b) Your Deputy Chief Executive
  - c) Deputy Chief Executive Operations
  - d) A senior member of the People, Culture and Wellbeing team
  - e) Chief Executive Officer
  - f) Council Chair.
- 4.5. When making a protected disclosure you should inform the receiver that you want the disclosure to be protected and for the matter to be addressed under this Procedure and related policy.
- 4.6. Allegations of serious wrongdoing should be made in good faith and not be frivolous, vexatious or without good reason.
- 4.7. Disclosures of serious wrongdoing within Te Pūkenga can also be made to an appropriate external authority as outlined in the definition section of this Procedure.
- 4.8. A disclosure to an appropriate authority can be made at any time, you do not need to disclose the serious wrongdoing internally first.

### Information to provide

- 4.9. A disclosure can be made orally or in writing. When reporting wrongdoing, it will be helpful if you are able to provide some, or all of the following information to assist with an investigation:
- a) The nature of the wrongdoing
  - b) Any background information including dates and history of the issue
  - c) Why you believe the allegation of wrongdoing is true
  - d) Any other supporting information you may have including:
    - The names of the people involved, if this is known to you
    - Any supporting documents/emails/messages relating to the wrongdoing
    - the name(s) of others that may be able to verify or provide further relevant information

### Making a disclosure in support of someone else's protected disclosure

- 4.10. A person who discloses information in support of, or relating to, someone else's protected disclosure is also entitled to protection under the Act if that person:
- a) does not disclose in bad faith; and
  - b) discloses the information in accordance with this Procedure, the related policy and the Act.
- The same protections will apply to that discloser as if the information were a protected disclosure.

### Reporting other concerns

- 4.11. If you do not consider the wrongdoing serious enough to be a serious wrongdoing, or appropriate to disclose through this Procedure, you can raise such matters under alternative processes, e.g., as a breach of the Te Pūkenga Code of Conduct. Alternatively, you can arrange for a confidential meeting with your People, Culture and Wellbeing advisor to explore alternative avenues and select an appropriate way to have your concerns addressed. In this case, the protections of the Act will not apply.

### What happens once you have made your disclosure?

- 4.12. Within 20 working days of receiving a protected disclosure, the receiver (Te Pūkenga or an appropriate authority) will acknowledge to the discloser their receipt of the disclosure, consider whether it warrants investigation, and deal with the matter by doing one or more of the following:
- a) investigating the disclosure
  - b) addressing any serious wrongdoing by acting or recommending action
  - c) referring the disclosure to an (or another) appropriate authority
  - d) deciding that no action is required.
- 4.13. The receiver will ask you to confirm whether you have made the disclosure to anyone else, and the outcome of that disclosure.
- 4.14. The receiver will inform you about what they have done or are doing to address the matter, including reasons for that decision.

- 4.15. If the receiver is unable to complete these actions within 20 working days, they should begin the process and inform you how long it may take.

#### Referrals

- 4.16. A protected disclosure may be referred by the receiver where there is a more appropriate person or authority to manage the disclosure. Referrals of a protected disclosure can be made:
- a) by someone who receives a disclosure within Te Pūkenga, to an appropriate authority
  - b) by someone who receives a disclosure within Te Pūkenga, to another Te Pūkenga kaimahi as listed in 4.4
  - c) by an appropriate authority to Te Pūkenga, or to another appropriate authority.
- 4.17. The kaimahi to whom you made the disclosure must consult you before making a referral. The person to whom the disclosure is referred then becomes the receiver and the same protections will apply.

#### Further disclosure

- 4.18. You are entitled to disclose your protected disclosure further to a Minister of Parliament or the Speaker of the House if you reasonably believe that Te Pūkenga or the appropriate authority:
- a) has not acted as it should as set out in the “what happens once you have made your disclosure” section; or
  - b) in dealing with the matter has not addressed the serious wrongdoing.

#### Anonymity and confidentiality

- 4.19. If you make a protected disclosure, information which identifies you will be kept confidential, unless you consent to its disclosure, or its disclosure is essential to:
- a) the effective investigation of the allegations; or
  - b) prevent serious risk to public health, public safety, the health or safety of an individual, or the environment; or
  - c) comply with the principles of natural justice; or
  - d) an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.
- 4.20. The receiver will consult with the discloser before releasing identifying information in accordance with 4.19 a) or c) above. If practical, the receiver will also consult with the discloser before releasing identifying information in accordance with 4.19 b) or d). In any event, where information is released in accordance with 4.19, the receiver will inform the discloser of its release.
- 4.21. If you make a disclosure of wrongdoing, you must keep the disclosed information confidential between yourself and the receiver in accordance with this Procedure and related policy (with the exception of a support person as specified below).

- 4.22. If you need to talk to a support person, like a friend or colleague about your disclosure, you can do this and still be entitled to protection. However, you will only be entitled to protection if you have this conversation:
- a) on a confidential basis; and
  - b) for the purpose of seeking advice about whether or how to make a protected disclosure in accordance with this Procedure and related policy.

#### Breaches of confidentiality

- 4.23. If you believe information which identifies you has been released for reasons beyond those listed in 4.19 and that this release has caused or may cause you loss or detriment, you may be able to make a complaint under Part 5 of the Privacy Act 2020.
- 4.24. Information relating to complaints under the Privacy Act can be found here:  
<https://www.govt.nz/browse/consumer-rights-and-complaints/how-to-complain/privacy-complaints/>

#### Investigation process

- 4.25. The investigation process will vary depending on the nature of the wrongdoing reported. All investigations will be conducted in a manner that is timely, fair, objective and affords natural justice to all involved.
- 4.26. The allegations will be considered by the receiver to determine whether an investigation is warranted. The receiver may need to seek advice. In doing so they must ensure the confidentiality of the discloser is maintained.
- 4.27. In accordance with 4.12 and 4.14 you will be notified of this decision as soon as possible and no later than 20 working days after making your disclosure. You will be provided with reasons if it is decided that no action is required.
- 4.28. If an investigation is to be undertaken, this will occur as soon as possible. An investigation will generally be warranted unless the allegation is considered to be frivolous or vexatious. Where appropriate, an independent formal investigation will be undertaken.
- 4.29. Those accused of the wrongdoing will have the right to be heard on the allegation(s). If you made the disclosure and did not do so anonymously, you will also have a right to be heard during the investigation and to be kept informed of progress as appropriate.
- 4.30. If you make a disclosure in good faith that is found to be incorrect or is not upheld by the investigation, no action will be taken against you, and you will be entitled to the protections in accordance with Te Pūkenga Protected Disclosure Policy and under the Act.
- 4.31. If you have concerns with the way an investigation is progressing or the outcome of an investigation, there are avenues for you to raise your concerns. For more information on this, please refer to the Office of the Ombudsman website: <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/serious-wrongdoing-work-whistleblowing>

### No retaliation or unfavourable treatment

- 4.32. It is in the interest of Te Pūkenga for wrongdoing to be reported. Te Pūkenga will not tolerate or engage in any actual or threatened behaviour which:
- discourages someone from reporting serious wrongdoing
  - is seen as a retaliation to a reported serious wrongdoing
  - is seen as treating someone, their relatives or associates, less favourably than others in the same or similar circumstances because they reported a serious wrongdoing (such treatment amounts to a breach of the Human Rights Act 1993).
- 4.33. When making a protected disclosure and reporting serious wrongdoing in good faith, no civil, criminal, or disciplinary proceedings can be taken against you for making a protected disclosure or referring it to an appropriate authority.
- 4.34. If you suffer retaliatory action from Te Pūkenga, or a representative of Te Pūkenga, for making a protected disclosure, you can raise a personal grievance under the section 103(1)(j) Employment Relations Act 2000.
- 4.35. If there are reports of any potential discrimination, retaliation, threats, or harassment arising from the reporting or investigation of any serious wrongdoing, Te Pūkenga will investigate and you must cooperate, as required, in the investigation.
- 4.36. If you are unsure about anything relating to protected disclosures, you can seek information and guidance from the Office of the Ombudsman: <https://www.ombudsman.parliament.nz/what-ombudsman-can-help/serious-wrongdoing-work-whistleblowing>

## 5. Ngā Haepapa | Responsibilities

Role	Responsibilities
<b>All kaimahi</b>	<ul style="list-style-type: none"> <li>Be aware of and take all reasonable steps to ensure compliance with this Procedure</li> </ul>
<b>Managers</b>	<ul style="list-style-type: none"> <li>Responsible for the day-to-day management and implementation of this Procedure</li> </ul>
<b>Discloser / Whistle-blower</b>	<ul style="list-style-type: none"> <li>Follow this Procedure and related policy in making a protected disclosure</li> </ul>
<b>Receiver</b>	<ul style="list-style-type: none"> <li>Follow this Procedure and related policy in receiving and addressing a protected disclosure</li> </ul>
<b>Investigator</b>	<ul style="list-style-type: none"> <li>May be another Te Pūkenga employee or an external investigator</li> <li>Investigates the disclosure according to the terms of reference</li> <li>Must be neutral and consider all information in a balanced way</li> <li>Establishes the facts but does not make or influence the decision regarding any action to be taken</li> </ul>



## 6. Ngā Tikanga | Definitions

Term	Definition
<b>Appropriate Authority</b>	<p>An appropriate authority is a trusted external party who can be approached if a discloser is not confident about making the disclosure within Te Pūkenga.</p> <p>A discloser may report serious misconduct to an appropriate authority at any time, they do not have to go through Te Pūkenga first.</p> <p>An appropriate authority includes:</p> <ol style="list-style-type: none"> <li>The head or deputy head of any public sector organisation.</li> <li>Any officer of Parliament as listed in Schedule 2 of the Act (e.g., the Ombudsman, Controller and Auditor-General);</li> <li>and the membership body of a particular profession, trade, or calling with the power to discipline its members.</li> </ol> <p>Appropriate authorities, as receivers of protected disclosures, should handle a protected disclosure in accordance with the requirements in the Act. Special provisions limit who the appropriate authorities are for disclosures relating to intelligence and security or international relations information.</p> <ol style="list-style-type: none"> <li>disclosures that include international relations information must only be disclosed to an Ombudsman</li> <li>disclosures that include intelligence and security information must only be disclosed to the Inspector of Intelligence and Security, or if the information relates to serious wrongdoing in or by the office of the Inspector-General of Intelligence and Security, the Prime Minister.</li> </ol> <p>Note: Ministers and members of Parliament are not appropriate authorities.</p>
<b>Discloser / Whistleblower</b>	<p>A discloser or whistleblower is a person who has an employment type relationship with the organisation they are disclosing about. This includes current and former employees, homeworkers, secondees, contractors, volunteers and board members.</p>
<b>Frivolous Complaint</b>	<p>A complaint without serious purpose or value. It may have little merit and be trivial, or where investigating it would be out of proportion with the seriousness of the issues complained about.</p>
<b>Good Faith</b>	<p>To deal with each other in a way that does not, or will not, mislead or deceive each other. A mutual obligation shared by both the employer and kaimahi to actively work constructively together and with open communication.</p>
<b>Legal Professional Privilege</b>	<p>Legal professional privilege, protects communications between a client (e.g. Te Pūkenga) and their legal adviser if the communication were:</p> <ol style="list-style-type: none"> <li>intended to be confidential; and</li> <li>made for the purposes of requesting or obtaining legal advice.</li> </ol>
<b>Natural Justice</b>	<p>Natural justice means that a process must be conducted without bias. It includes three key rules to enable this:</p> <ol style="list-style-type: none"> <li>In an investigation, kaimahi must be advised of the allegations in as much detail as possible, given time to prepare and present their side of the story including evidence and must be given the opportunity to reply to the allegations.</li> </ol>

Term	Definition
	<ul style="list-style-type: none"> <li>b) Investigators and decision makers must be impartial and act without bias in procedures connected with the making of a decision. Decisions must be based on a balanced and considered assessment of the information and evidence.</li> <li>c) Decisions must be based on logical proof or evidence. Investigators or decision makers should be able to clearly point to the evidence on which the decision is based. Evidence presented by one party must be disclosed to the other party, who may then subject it to scrutiny.</li> </ul>
<b>Protected Disclosure</b>	A protected disclosure is when the discloser believes on reasonable grounds that there is, or has been, serious wrongdoing in or by their organisation, they disclose in accordance with the Act, and they do not disclose in bad faith.
<b>Receiver</b>	The person who received the disclosure from the discloser (Te Pūkenga or an appropriate authority).
<b>Retaliate</b>	<p>Retaliate means doing any of the following:</p> <ul style="list-style-type: none"> <li>a) dismissing the employee</li> <li>b) refusing or omitting to offer or afford to the employee 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</li> <li>c) subjecting the employee to any detriment or disadvantage (including any detrimental or disadvantageous effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment or disadvantage</li> <li>d) retiring the employee, or requiring or causing the employee to retire or resign</li> <li>e) organising to do any of the above.</li> </ul>
<b>Serious Wrongdoing</b>	<p>Serious wrongdoing is an act, omission, or course of conduct, which constitutes one or more of the following:</p> <ul style="list-style-type: none"> <li>a) An offence</li> <li>b) A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment</li> <li>c) A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial</li> <li>d) An unlawful, corrupt or irregular use of public funds or public resources</li> <li>e) Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government.</li> </ul>
<b>Vexatious Complaint</b>	A complaint without merit that is intended to cause inconvenience or expense to Te Pūkenga or any Te Pūkenga kaimahi. Includes obsessive, persistent, insistent, prolific, harassing or repetitious complaints. Where the complainant is insistent on pursuing unmeritorious complaints and/or unrealistic outcomes beyond all reason, or complaints with merit in an unreasonable manner.

## 7. Ngā Hononga ki Tuhinga kē | Links to Other Documents

### **Ngā Kaupapa-Here e Hāngai ana | Related Policies**

- Bullying, Discrimination and Harassment Policy
- Conflicts of Interest Policy
- Fraud and Corruption Policy
- Protected Disclosures (Whistleblowing) Policy
- Privacy Policy
- Code of Conduct

### **Ngā Tukanga me ngā Hātepe | Processes, Procedures**

- Problem Resolution Procedures – in development