

PROCEDURE FOR THE DISCLOSURE OF SERIOUS WRONGDOING

Section	Risk Management
Contact	Risk Manager
Last Review	October 2013
Next Review	October 2016
Approval	Council C13/145
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Protected Disclosures Act 2000:

The Protected Disclosures Act 2000 ("the Act") came into force on 1 January 2001.

The purpose of the Act is to:

Facilitate the disclosure and investigation of matters of Serious Wrongdoing in or by Massey University

The Act also provides protections against victimization and retaliation, and criminal and civil proceedings for Massey University employees who, in accordance with this Act, disclose information about serious wrongdoing in or by the University.

The following operative provisions describe the internal procedure for reporting serious wrongdoing, as defined by the Act, at Massey University.

Operative Provisions:

Serious Wrongdoing Defined

Serious Wrongdoing is defined as:

- An unlawful, corrupt, or irregular use of public funds or public resources; 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, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

Employee defined

A protected disclosure must be made by an employee (staff member) of Massey University.

An employee is defined under the Act as including:

- a current employee
- a former employee
- a home-worker
- a person seconded to the University
- a contractor to the University
- a person involved in the management of the University

When an employee may make a Protected Disclosure

A protected disclosure may only be made where:

- the disclosure is about serious wrongdoing in the University or by the University; and
- the staff member believes on reasonable grounds that the information he/she wishes to disclose is true or likely to be true; and
- the staff member wishes to disclose this information so that the serious wrongdoing can be investigated; and
- the staff member wishes the disclosure to be protected.

Who to report a protected disclosure to

Under the Act, Massey University is required to have an internal procedure that is published and made available to all staff members. The internal procedure available to Massey University staff members to make a protected disclosure is as follows:

1. All disclosures of serious wrong doing, as defined in the Act, in or by Massey University should be submitted in writing using the report form attached as Appendix 1 of these procedures. Disclosures may be submitted verbally, but in these instances should be recorded in writing.
2. The protected disclosure must be submitted, to the staff member's manager unless the staff member:
 - (a) Reasonably believes that manager is involved in the serious wrongdoing; or
 - (b) the manager, for reasons of relationship or association with someone who is believed to be involved in the serious wrongdoing, cannot be approached.
3. If this is the case, the staff member must then report the protected disclosure to a Deputy Vice-Chancellor ,Pro Vice-Chancellor, or Assistant Vice-Chancellor unless the staff member:
 - (a) reasonably believes that al the Deputy Vice-Chancellor, Pro Vice-Chancellors, and Assistant Vice-Chancellors are involved in the serious wrongdoing; or
 - (b) these senior managers, for reasons of relationship or association with someone who is believed to be involved in the serious wrongdoing, cannot be approached.
4. If this is the case, the staff member must then report the protected disclosure to the Vice-Chancellor unless the staff member:
 - (a) reasonably believes that the Vice-Chancellor is involved in the serious wrongdoing; or
 - (b) the Vice-Chancellor, for reasons of relationship or association with someone who is believed to be involved in the serious wrongdoing, cannot be approached.
5. If this is the case, the staff member must then report the protected disclosure to the Chair of the Audit and Risk Committee of Council unless the staff member:

- (a) reasonably believes that the Chair of Audit and Risk Committee of Council is involved in the serious wrongdoing; or
- (b) the Chair of Audit and Risk Committee of Council, for reasons of relationship or association with someone who is believed to be involved in the serious wrongdoing, cannot be approached

If this is the case, the staff member must then report the protected disclosure to an external authority.

External Authorities

If the staff member reasonably believes that s/he cannot approach any of the managers within Massey University because they may be involved or associated with the serious wrongdoing, the staff member may approach an appropriate external authority. The external authorities are:

- Commissioner of Police;
- Controller and Auditor General;
- Director of the Serious Fraud Office;
- Inspector General of Intelligence and Security;
- Ombudsman
- Parliamentary Commissioner for the Environment;
- Police Complaints Authority;
- Solicitor General;
- State Services Commissioner;
- Health and Disability Commissioner;
- Head of any Public Sector organisation.

Receiving a Protected Disclosure

Once a disclosure has been submitted the manager receiving the report must formally acknowledge receipt of it within 48 hours of receiving it.

The manager should assess whether s/he considers the protected disclosure meets the criteria of the Act and if it does, the manager should undertake an investigation into the facts of the disclosure. The staff member should be informed, within seven days after receipt of the disclosure, whether or not the matter is to be investigated. If the matter is not to be investigated, the manager must detail the reasons why.

A staff member can appeal the University's decision not to investigate a protected disclosure, to any Minister of the Crown or to the Ombudsman.

Investigating a Protected Disclosure

Where the manager considers the disclosure meets the criteria of the Act, s/he should undertake an investigation.

Any investigation conducted to examine allegations of serious wrongdoing by a staff member of the University is an employment investigation and must be conducted within the terms of the applicable employment agreement and the principles of natural justice.

Before conducting an employment investigation, a manager should always seek People and Organisational Development advice.

The investigating manager shall be required to make a preliminary finding within 20 working days of agreeing to conduct an investigation into the protected disclosure, unless the circumstances of the investigation are such that a longer timeframe is necessary. If more time is required, the staff member making the disclosure should be notified of when a preliminary finding is expected and why the timeframe has been extended.

Confidentiality

The University will endeavour to keep the identity of the employee making the protected disclosure confidential. However, if an employment investigation results from the disclosure, Massey University is required to provide, under the principles of natural justice, the alleged wrongdoer with any information or allegation relating to them. This may include the identity of the staff member who alleged the serious wrongdoing and the information recorded on the formal protected disclosure form (Appendix 1).

Protections

Any staff member of Massey University who makes a disclosure under the Act is immune from criminal or civil proceedings.

Where a staff member feels they have been victimized or retaliated against for making a disclosure under the Act, they may take a personal grievance under the Employment Relations Act 2000 or make a complaint under the Human Rights Act 1993. The University will treat seriously any allegation of victimization or retaliation.

Alternatively, any staff member who makes a disclosure knowing that it is false or makes the disclosure in bad faith will not be protected by this Act.

Appeals

Where the University decides not to take action in respect of a disclosure it has investigated or does not make progress with a disclosure investigation within the timeframes set by these procedures or extended for good reason under clause 8, the staff member may make their protected disclosure to a Minister of the Crown or the Ombudsman.

To make a disclosure to Minister of the Crown or the Ombudsman, the staff member must continue to believe on reasonable grounds that the information disclosed is true or likely to be true.

Special Circumstances

A disclosure of serious wrongdoing may be made immediately to an appropriate external authority where the employee has reasonable grounds to believe this action is justified by the urgency of the matter, or some other exceptional circumstance.

MASSEY UNIVERSITY
PROTECTED DISCLOSURE REPORTING FORM

1 Is this report being made to your manager? **Yes/No**

If yes, please provide name of manager:

If no, please provide the name of the person you are making the report to and why:

2. Describe the nature of the protected disclosure

This would include the nature of any incident, the names of persons involved, the area and location and any other relevant information. You may continue on a separate sheet and/or attach evidence as necessary.

3. Please provide a list of any attachments to this report

4. In making this disclosure I understand the following:

- a) I will receive immunity from criminal and civil proceedings that may result from this protected disclosure provided I have not acted in bad faith in making the disclosure; and
- b) If I suffer any retaliatory or discriminatory action within the University as a result of making this disclosure, I can take a personal grievance or make a complaint under the Human Rights Act 1993; and
- c) Whereas the University will take all practicable steps to protect my identity, in the interests of natural justice, it may be necessary for the University to disclose my identity and the information contained in this form and its attachments.

Signed:

Date:

Name:

Designation:

Department/Institute/School/Unit:

Manager's Use only

Disclosure Received:

Manager's Name:

Acknowledgement of receipt sent:

Decision to proceed or not to proceed with investigation made:

Your Manager and HR notified:

Reasons for decision not to proceed (attach report)