

# REPORTING WRONGDOING POLICY 2012

The Vice-Chancellor and Principal, as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 16 January 2012

Last amended: 3 October 2012

15 March 2016, commencing 22 March 2016

8 June 2017 (administrative amendments only)

Signature:

Name: Dr Michael Spence

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### 1 Name of policy

This is the Reporting Wrongdoing Policy 2012.

### 2 Commencement

This policy commences on 16 January 2012.

### 3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University, staff, students and affiliates.

### 4 Statement of intent

This policy:

- (a) sets out the University's approach to reporting and managing reports of corruption and wrongdoing;
- (b) states the University's unequivocal commitment to:
  - (i) identifying, investigating and appropriately addressing wrongdoing within the University;
  - (ii) appropriately handling reports of wrongdoing, particularly reports which are protected under the *Public Interest Disclosures Act 1994 (NSW)*; and
  - (iii) supporting and protecting staff who report wrongdoing.
- (c) provides for the University's compliance with its statutory obligations under the *Public Interest Disclosures Act 1994 (NSW)*.

### 5 Application

This policy applies to all University staff and affiliates.

### 6 Definitions

**affiliate** has the meaning set out in the [Code of Conduct – Staff and Affiliates](#), which is:

a clinical title holder; an adjunct, conjoint or honorary appointee; a consultant or contractor to the University; an office holder in a University entity; a member of any University committee; and any other person appointed or engaged by the University to perform duties or functions on its behalf.

**authorised disclosure officer** means any one of the following, each of whom is authorised to receive public interest disclosures on the University's behalf:

- Vice-Chancellor
- General Counsel
- Director, Audit and Risk Management
- Senior Solicitor
- Workplace Relations Director
- Manager, Archives & Records Management Services
- Manager, HR Case Management
- Manager, Investigations.

- corrupt conduct** means the dishonest or partial exercise of official functions by a public official. It includes, but is not limited to:
- the improper use of knowledge, power or position for personal gain or the advantage of others;
  - acting dishonestly or unfairly, or breaching public trust;
  - a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.
- delegate** has the meaning given in the [Enterprise Agreement](#), which at the date of this policy is:
- the holder of an office to which authority has been:
- delegated by the University Senate in relation to management of matters pertaining to staff employment, performance and or conduct; or
  - delegated under a University policy or Code of Conduct.
- detrimental action** means action causing, comprising or involving any of:
- injury, damage or loss;
  - intimidation or harassment;
  - discrimination, disadvantage or adverse treatment in relation to employment;
  - dismissal from, or prejudice in, employment; or
  - disciplinary proceedings.
- disclosure** means any report of actual or suspected wrongdoing within the University.
- Note:** Some, but not all, disclosures are protected disclosures – see clause 12 of this policy.
- Enterprise Agreement** means the [University of Sydney Enterprise Agreement 2013 – 2017](#) or any replacement agreement.
- GIPA Act** means the [Government Information \(Public Access\) Act 2009 \(NSW\)](#) including any subordinate legislation made under it, as amended or replaced from time to time.
- government information contravention** means a failure properly to fulfil functions under the [GIPA Act](#). It includes but is not limited to:
- destroying, concealing or altering records to prevent them being released;
  - knowingly making decisions that are contrary to the [GIPA Act](#); or
  - directing another person to make a decision contrary to the [GIPA Act](#).
- Note 1:** Unauthorised destruction of University records is an offence under section 21 of the *State Records Act 1998 (NSW)*.
- Note 2:** See also the [University Recordkeeping Policy](#).

- investigator** means an individual or individuals (whether or not staff or affiliates of the University) to whom responsibility is assigned for investigating and reporting on allegations of wrongdoing.
- maladministration** means conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. It includes, but is not limited to:
- making a decision and or taking action that is unlawful; or
  - making a decision for reasons not related to the merits of the matter under consideration.
- PID Act** means the [Public Interest Disclosures Act 1994 \(NSW\)](#), including any subordinate legislation made under it, as amended or replaced from time to time.
- public interest disclosure** means a disclosure of actual or suspected wrongdoing which meets the requirements of Part 2 of the [PID Act](#), and thereby attracts the protection against reprisals which is provided in Part 3 of the [PID Act](#).
- Note:** Public interest disclosures are further discussed in clause 12 of this policy.
- public official** includes University staff and affiliates when acting in those capacities.
- serious and substantial waste of public money** means the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public resources. It includes but is not limited to:
- failure to follow a competitive tendering process for a large scale contract; or
  - having poor or no processes in place for a system involving large amounts of public funds.
- supervisor** means:
- in the case of a staff member, the person nominated by the University from time to time as that person's supervisor;
  - in the case of a clinical title holder, or an adjunct, conjoint or honorary appointee, the dean of the relevant faculty;
  - in the case of a consultant or contractor to the University, the University officer nominated as the relevant contact officer in relation to their engagement;
  - in the case of an office holder in a University entity or a member of any University committee, the chair of the relevant entity or committee;
  - in any other case, the University officer nominated as the relevant contact officer in relation to the person's engagement.

## 7 Governing principles

- (1) The University is committed to ensuring its operations are conducted according to high standards of ethical conduct, and will not tolerate any form of wrongdoing.
- (2) Staff and affiliates are expected to disclose anything they consider to be wrongdoing within the University, whether to the University itself or to an appropriate external organisation.  
**Note:** The [PID Act](#) prescribes the relevant external authorities and the circumstances in which reports can be made to them. See sections 10 -14 of the [PID Act](#).
- (3) Staff and affiliates who disclose wrongdoing help to promote integrity, accountability and good management.
- (4) The University is committed to supporting staff and affiliates who disclose wrongdoing and will:
  - (a) protect the identity of any person disclosing wrongdoing wherever possible and appropriate;
  - (b) protect individuals who make disclosures from detrimental action by way of reprisal for the disclosures;
  - (c) deal with disclosures thoroughly and impartially, and conduct investigations when appropriate;
  - (d) inform individuals who make disclosures of the outcome of any investigation.
- (5) The University will take appropriate action to rectify any wrongdoing which is discovered.
- (6) The University will take prompt and appropriate disciplinary action against any person found to have engaged in wrongdoing.

## 8 Responsibilities

- (1) Staff and affiliates are expected to:
  - (a) disclose known or suspected wrongdoing within the University;
  - (b) assist actively in any investigation under this policy;
  - (c) support those who have made disclosures; and
  - (d) protect the identity of those who have made disclosures.
- (2) Staff and affiliates must not:
  - (a) disclose the identity of any person who has made a disclosure without that person's authorisation, except where required by law or for the proper implementation of this policy;
  - (b) victimise, harass or otherwise take detrimental action against any person who has made, or is suspected to have made, a disclosure; or
  - (c) make a false or misleading disclosure.  
**Note:** Victimisation or harassment of a person who has, or may have, made a disclosure may constitute a criminal offence under section 20 of the [PID Act](#).

## **9 Procedures**

- (1) The Director, Audit and Risk Management may, by written determination, establish procedures for the implementation of this policy.
- (2) Any such procedures will be published in the University's online policy database.

## **10 Serious Complaints Committee**

- (1) There shall be a Serious Complaints Committee, membership of which comprises:
  - (a) the Provost and Deputy Vice-Chancellor, who shall chair the committee;
  - (b) the Vice-Principal (Operations);
  - (c) the General Counsel; and
  - (d) one Dean, or Head of School and Dean (University school), appointed by the Vice-Chancellor on a two-yearly rotational basis.
- (2) The Serious Complaints Committee will meet at least twice a year.
- (3) The Serious Complaints Committee is responsible for:
  - (a) overseeing the functioning of this policy and procedures established under it;
  - (b) establishing reporting, review and other associated arrangements to ensure that the University complies with relevant legislation;
  - (c) providing advice to University management on corruption prevention issues;
  - (d) monitoring the outcome of investigations to ensure that adequate action is taken to implement any recommendations;
  - (e) evaluating the factors contributing to wrongdoing which is disclosed and developing strategies to minimise the likelihood of recurrence of any wrongdoing; and
  - (f) ensuring the University maintains appropriate liaison with external agencies, such as the police, Independent Commission Against Corruption and the NSW Ombudsman's Office.

## **11 Disclosing wrongdoing – what should be disclosed**

- (1) A staff member or affiliate should disclose conduct which they believe constitutes or may constitute any of the following:
  - (a) corrupt conduct;
  - (b) maladministration;
  - (c) serious and substantial waste of public money;
  - (d) government information contravention; or
  - (e) some other kind of wrongdoing.
- (2) Other kinds of wrongdoing may include, but are not limited to reprisal action taken against a person who has made, or is thought to have made, a disclosure.

## 12 Public interest disclosures distinguished from other disclosures of wrongdoing

- (1) Not all disclosures are public interest disclosures.

**Note:** See Part 2 of the [PID Act](#). As at the date of this policy, the [PID Act](#) requires that a public interest disclosure must:

- be an honest belief made on reasonable grounds;
  - relate (relevantly to the University) to any or all of:
    - corrupt conduct;
    - maladministration;
    - serious and substantial waste of public money; or
    - a government information contravention; and
  - be made to an authorised disclosure officer or an external agency as prescribed in the [PID Act](#).
- (2) The protections provided by Part 3 of the [PID Act](#) apply only to public interest disclosures.
- (3) Disclosures will not be public interest disclosures if they:
- (a) mostly question the merits of government policy; or
  - (b) are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

## 13 Making a disclosure within the University

- (1) A disclosure may be made orally or in writing.
- (2) Disclosures which are, or may be, public interest disclosures must be made to an authorised disclosure officer.
- Note 1:** Public interest disclosures may be made to external investigating authorities in appropriate circumstances – see sections 10 – 14 of the [PID Act](#).
- Note 2:** Public interest disclosures may be made to a member of parliament or to a journalist in limited circumstances – see section 19 of the [PID Act](#).
- (3) An authorised disclosure officer receiving a disclosure must immediately forward it to the Director, Audit and Risk Management.
- (4) Disclosures which are not public interest disclosures may be made to the relevant supervisor. (see clause 12)
- (5) If a supervisor receives a disclosure which the supervisor believes might be a public interest disclosure, the supervisor must refer the person making the disclosure to an authorised disclosure officer.
- (6) An authorised disclosure officer receiving an oral disclosure must:
- (a) make a comprehensive written record of it;
  - (b) ask the person making the disclosure to sign the record;
  - (c) provide a copy to the person making the disclosure; and
  - (d) ensure the record is filed in accordance with the [University Recordkeeping Policy](#).

## 14 Confidentiality

- (1) The University is committed to protecting the identity of individuals disclosing wrongdoing, and the fact of any such disclosure, as far as possible. The person receiving a disclosure must discuss any applicable limitations on confidentiality with the person making the disclosure.

**Note:** For a full description of the exceptions, see section 22 (1) of the [PID Act](#).

- (2) The University is also committed to protecting, as far as possible, the identity of those who are the subject of a disclosure.
- (3) A person wishing to make a disclosure may request a meeting in a discreet location, away from their workplace or that of the person receiving the report.
- (4) A person making a disclosure should discuss it only with those dealing with it. This will include the Director, Audit and Risk Management, the relevant authorised disclosure officer and any counsellor or legal adviser assisting the person.

## 15 Assessment and investigation generally

- (1) The Director, Audit and Risk Management will make an initial assessment of each report of wrongdoing as soon as possible after it has been received, in order to:
  - (a) determine if the report is a public interest disclosure as defined in the [PID Act](#); and
  - (b) if so, comply with the requirements of the [PID Act](#).
- (2) The Director, Audit and Risk Management will consult with the supervisor of the person who is the subject of the report or other relevant delegate, and determine the appropriate course of action to deal with the matter.
- (3) If the person who is the subject of the report is a person to whom the [Enterprise Agreement](#) applies, any preliminary or subsequent investigation will be conducted in accordance with the [Enterprise Agreement](#).

**Note:** See clause 309 of the [Enterprise Agreement](#).

- (4) If the person who is the subject of the report is not a person to whom the [Enterprise Agreement](#) applies, any preliminary or subsequent investigation will be conducted as provided in clause 16 of this policy.

## 16 Assessment and investigation where Enterprise Agreement does not apply

- (1) The Director, Audit & Risk Management may undertake or arrange such preliminary investigations as they consider necessary.
- (2) In the case of less serious matters, the relevant supervisor or delegate may, in consultation with the Director, Audit and Risk Management, determine to address the matter directly with the person who is the subject of the report through guidance, counselling, warning, mediation or another form of dispute resolution.
- (3) In all other cases:
  - (a) the Director, Audit and Risk Management may appoint an investigator to investigate the allegations and report on their findings of fact and any other



- matter considered by the Director, Audit and Risk Management to be relevant;
- (b) the relevant supervisor or delegate will provide the allegations to the person who is the subject of the report in sufficient detail to ensure that they have a reasonable opportunity to respond; and
  - (c) the person who is the subject of the report will be given a period of 10 days in which to respond to the allegations.
- (4) If an investigator is appointed, the investigator will determine the procedure to be followed in conducting the investigation, provided that:
- (a) the person who is the subject of the investigation is allowed a reasonable opportunity to respond to all allegations, including any new matters or variations to the initial allegations; and
  - (b) the investigator will provide a written report to the Director, Audit and Risk Management, and a copy to the person who is the subject of the investigation.
- (5) Where an investigation concludes that a staff member or affiliate has engaged in conduct which constitutes misconduct or serious misconduct, the University will take appropriate disciplinary action according to applicable policies and contract of employment. Commensurate action (such as terminating an honorary appointment) will be taken in the case of misconduct or serious misconduct by an affiliate

## 17 Feedback to those making disclosures

The Director, Audit and Risk Management will:

- (a) provide any person making a disclosure under this policy with a written acknowledgement and a copy of this policy within 45 days of the disclosure; and
- (b) notify the person, no later than 6 months after the disclosure was made, of action taken or proposed to be taken in relation to it.

## 18 Protection against reprisals

- (1) Staff and affiliates who disclose wrongdoing or suspected wrongdoing must not be subjected to detrimental action by way of reprisal for having done so.
- (2) Disciplinary action may be taken against anyone who takes such action.

**Note 1:** See the [Code of Conduct – Staff and Affiliates](#). **Note 2:** Taking detrimental action that is substantially in reprisal for a person making a protected disclosure is an offence under the [PID Act](#) – see section 20 of the [PID Act](#).

## 19 Responding to reprisals

- (1) A staff member or affiliate who believes that detrimental action has been, or is being, taken against them or another person in reprisal for a disclosure should immediately inform an authorised disclosure officer.
- (2) If the Director, Audit and Risk Management becomes aware of possible reprisal action he or she will:

- (a) ensure a senior and experienced person, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal; and
- (b) give the results of that investigation to the Vice-Chancellor for a decision.
- (c) If it has been established that reprisal action is occurring, the Vice-Chancellor will ensure that all steps possible are taken to stop that activity and protect the person who made the disclosure. This may include disciplinary action under clause 16 of this policy.

**Note:** Any evidence of reprisal action in breach of the [PID Act](#) must be referred to the Commissioner of Police or to the Independent Commission Against Corruption – see section 20 of the [PID Act](#).

- (3) With the consent of the person who made the disclosure, the Vice-Chancellor may cause specific directions to be issued to help protect that person against reprisals, including:
  - (a) issuing warnings to those alleged to have taken reprisal action;
  - (b) relocating the person who made the disclosure or the person the subject of the disclosure within the workplace;
  - (c) transferring the person who made the disclosure or the person the subject of the disclosure to another position for which they are qualified; or
  - (d) granting the person who made the disclosure or the person the subject of the disclosure leave of absence during any investigation.
- (4) Any direction pursuant to subclause (4) above may be clarified, where appropriate, to ensure that other staff understand that the action taken is not a punishment and has been taken in consultation with the relevant staff member or affiliate.
- (5) A staff member or affiliate who believes that reprisal action is not being dealt with effectively by the University may contact the Ombudsman or the ICAC as appropriate.

**Note:** Contact information for the Ombudsman is found at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).  
Contact information for the ICAC is found at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

## 20 Professional support for those making reports

Information about professional support services for staff and affiliates who make, or are the subject of, a disclosure is available from the Director, Audit and Risk Management.

## 21 False or misleading reports

- (1) Wilfully making a false or misleading statement in breach of this policy may constitute misconduct or serious misconduct
- (2) The University may take disciplinary action against any person who makes such a statement.

## NOTES

### Reporting Wrongdoing Policy 2012

Date adopted:	16 January 2012
Date commenced:	16 January 2012
Date last amended:	15 March 2016, commencing 22 March 2016 8 June 2017 (administrative amendments only)
Administrator:	Director, Audit and Risk Management
Review date:	16 January 2017
Related documents:	<i>Public Interest Disclosures Act 1994 (NSW)</i> <i>Government Information (Public Access) Act 2009 (NSW)</i> <i>State Records Act 1998</i> NSW Ombudsman's Guideline <i>What can be reported</i> <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a> <a href="http://www.icac.nsw.gov.au">www.icac.nsw.gov.au</a> <i>Code of Conduct: Staff</i> <i>University Record Keeping Policy</i>

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## AMENDMENT HISTORY

Provision	Amendment	Commencing
	Amendments	3 October 2012
Various	Minor administrative and typographical corrections	22 March 2016
6	Amendments to definitions for consistency with other registered documents	22 March 2016
11(2)	Subsections (a) and (c) deleted	22 March 2016
15	New clause inserted	22 March 2016
16	New clause inserted	22 March 2016
17-20	Consequential renumbering of clauses	22 March 2016
10(1)(d)	Amendments relating to organisational design changes	8 June 2017

<b>Provision</b>	<b>Amendment</b>	<b>Commencing</b>
Related documents	Removed rescinded <i>Corruption Prevention Strategy</i>	8 June 2017