Te Whānau o Ōtūmatua School Board

Protected Disclosures and Whistleblowers Policy

Purpose

This policy ensures Te Whānau o Ōtūmatua (OTM) handles protected disclosures properly as required under the Protected Disclosures (Protection of Whistleblowers) Act 2022.

1. Key Principles

1.1. Te Whānau o Ōtūmatua (OTM) treats people fairly and seeks to protect their mana and dignity. We encourage anyone who meets the definition of a discloser (i.e. staff members, contractors, members of the board, and volunteer workers) to make a protected disclosure if they believe on reasonable grounds there is or has been serious wrongdoing. We treat protected disclosures seriously, assess them promptly to determine if an investigation is required, and seek legal advice as needed.

1.2. Our Protected Disclosure and Whistleblowers procedure meets the requirements of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (s 29) and this procedure is stored on eTAP Filestore which is available to staff members and a printed copy is available at reception for contractors, members of the board, and volunteers.

2. Grounds for a Protected Disclosure

2.1. Discloser

2.1.1. Under the Protected Disclosures (Protection of Whistleblowers) Act 2022 Act (s 8), the person reporting serious wrongdoing is called the "discloser".

2.1.2. At OTM a "discloser" means an individual who is or has been an employee (including someone who is/was employed on secondment), a contractor, a volunteer, or a member of the board. A person who discloses information in support of, or relating to, a protected disclosure by someone else is also entitled to protection, as long as they meet the requirements of the Act.

2.2. Serious wrongdoing

2.2.1. The Protected Disclosures (Protection of Whistleblowers) Act 2022 explains the procedures to follow when making a disclosure, as well as the protections available to anyone who makes a disclosure. The Act is about reporting "serious wrongdoing". Not all wrongdoing is covered by the Act.

2.2.2. Employees at OTM can report serious wrongdoing in the workplace by making a protected disclosure.

2.2.3. Under the Protected Disclosures (Protection of Whistleblowers) Act (s 10), "serious wrongdoing" includes:

- an offence
- a serious risk to public health, public safety, the health and safety of any individual, or the environment

- a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences, and the right to a fair trial
- an unlawful, corrupt, or irregular use of public funds or public resources
- oppressive, unlawfully discriminatory, or grossly negligent conduct or gross mismanagement by:
    - a public sector employee, or
    - a person performing a function or duty or exercising power on behalf of a public sector organisation (the government).

3. When a disclosure will be protected

3.1. Under the Protected Disclosures (Protection of Whistleblowers) Act (s 11), a person's disclosure will be protected if:

3.2. they believe on reasonable grounds that there is, or has been, serious wrongdoing in the workplace (even if the belief is mistaken)

3.3. they disclose information about the serious wrongdoing in accordance with the Act (even if the Act is not mentioned)

    - to OTM in accordance with any internal procedures, or
    - to an appropriate authority
- they substantially comply with the Act's requirements, and
- they disclose information confidentially to another person, to seek advice about whether or how to make a protected disclosure.

4. When a disclosure will not be protected

Under the Act (s 9, s 39), a person's disclosure will not be protected if:

4.1. they act in bad faith
4.2. the information being disclosed is protected by legal professional privilege.

5. Protections under the Act

5.1. Under the Protected Disclosures (Protection of Whistleblowers) Act, disclosers are protected in the following ways:

- A discloser's identity is kept confidential (unless certain exceptions apply) (s 17–19). See below.
- A discloser is protected from civil, criminal, and disciplinary proceedings that might otherwise arise "because of making the disclosure" (s 23).

5.2. Disclosers are not protected from civil or criminal liability if they were also involved in the wrongdoing.

- A discloser is protected from retaliation or unfavourable treatment by their employer, including dismissing or retiring the employee, failing to offer the same terms and conditions of employment as other employees, and subjecting the employee to any detriment or disadvantage (s 21).

5.3. If the discloser is an employee as defined in the Employment Relations Act 2020 and has experienced or been threatened with retaliatory action they may consider a personal grievance.

5.3.1. A discloser is protected by the anti-victimisation provisions of the Human Rights Act 1993 (Protected Disclosures (Protection of Whistleblowers) Act, s 22).

5.4. Protections still apply if the discloser is mistaken about the nature or accuracy of the information they disclose.

6. Confidentiality

6.1. At OTM we endeavour to keep confidential any information that might identify a discloser, unless one of the exceptions in the Act applies (see below). This also means we will refuse any request for official information if releasing that information might identify a discloser. We encourage anyone in our OTM community to seek information and guidance from the Ombudsman in relation to confidentiality and making a protected disclosure. It is possible to make an anonymous protected disclosure, but we might not be able to investigate the information if we don't know who the discloser is and we can't ask further questions. The Ombudsman can provide advice about anonymous disclosures.

6.2. Exceptions to the requirement for confidentiality include:

- where the discloser consents to the release of identifying information
- if there are reasonable grounds to believe that the release of identifying information is essential to:
    - the effective investigation of the disclosure
    - prevent serious risk to public health, public safety, the health or safety of any individual, or the environment
    - comply with the principles of natural justice
    - an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

6.3. The Protected disclosure and Whistleblowers procedure details how to make a protected disclosure and how OTM will manage the disclosure.

7. Review Schedule

7.1. This policy will be reviewed according to the **Board's Review Schedule** or earlier if required due to legislative change or identified need.

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