Protected Disclosures

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Applies From:	4 yearly Immediately	**Responsible:**	Performance (SPP)

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1 Introduction

1.1 Purpose

Ara Institute of Canterbury (Ara) employees are covered by the Protected Disclosures (Protection of Whistleblowers) Act 2022.This means that they may disclose information ("blow the whistle") about serious wrongdoing in or by Ara to the Disclosures Officer, the Chief Executive (CE), the Chair of the Council, an Ombudsman, a Minister of the Crown, or another appropriate authority in confidence and safely. Should they choose to do so, the Act and this policy will protect 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.

b It does not apply where a person makes a disclosure of information knowing it to be false or otherwise acting in bad faith.

1.3 Formal Delegations

The responsibilities of the Disclosures Officer are given by the Director – Strategy, Planning and Performance to a specified delegate.

1.4 Definitions

a **Protected Disclosure**: 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 Protected Disclosures (Protection of Whistleblowers) Act 2022, and they do not disclose in bad faith.

b **Serious Wrongdoing:** Serious wrongdoing is an act, omission, or course of conduct, which constitutes one or more of the following:

i An offence.

ii A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment.

iii A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial.

iv An unlawful, corrupt, or irregular use of public funds or public resources.

v 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.

c **Colleague:** A person employed in any capacity by the Ara Council or by the Ara CE including an employee, kaimahi a former employee, a homeworker, 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 **Receiver:** The person who received the disclosure from the discloser (Ara or an appropriate authority).

e **Disclosures Officer:** The person appointed by the Director – Strategy, Planning and Performance to receive and deal with information about serious wrongdoing under this policy.

f **Discloser:** A discloser 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 Council members.

g **Chief Executive:** The Chief Executive of Ara.

h **Chair of the Council:** The Chair of the Ara Council.

i **Good Faith:** 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 employee to actively work constructively together and with open communication.

j **Appropriate Authority:** An appropriate authority is a trusted external party who can be approached if a discloser is not confident about making the disclosure within Ara. An appropriate authority includes –

i The head or deputy head of any public sector organisation.

ii Any officer of Parliament (the Ombudsman, Controller and Auditor-General, Parliamentary Commissioner for the Environment); as examples the persons or bodies listed in Schedule 2 of the Act.

iii The membership body of a particular profession, trade, or calling with the power to discipline its members.

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.

- Disclosures that include international relations information must only be disclosed to an Ombudsman.
- 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.

Note: Ministers and Members of Parliament are not appropriate authorities.

k **Confidentiality:** Notwithstanding the provisions of the *Official Information Act 1982*, the *Privacy Act 2020*, and the general principles of natural justice/procedural fairness, the Disclosures Officer, the CE, the Chair of The 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 their best endeavor 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.

l **Natural Justice:** Natural Justice refers to a process must be conducted without bias. It includes three key rules to enable this:

- In an investigation, responders 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.
- 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.
- Decisions must be based on logical proof or evidence. Investigator 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.

m **Disclosure Date:** The date on which the protected disclosure is received by the Disclosures Officer, the CE, or the Chair of The Council, as the case may be.

n **Frivolous complaint:** 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.

o **What is not serious wrongdoing**? Things like dissatisfaction with the leadership of an organisation or more minor misconduct matters may not amount to serious wrongdoing and thus may not be covered by the Act. The Act does not cover employment issues that are more properly covered by the *Employment Relations Act 2000*.

p **What is the role of the Ombudsman**? As well as being an appropriate authority, the Ombudsman has a wide role supporting the operation of the Act. For example, the Ombudsman can provide information and guidance to disclosers who approach it about how to make a disclosure and the protections under the Act, or to organisations who are unsure what to do about a disclosure

Related Ara Procedures CPP117c Ara Institute of Canterbury Student complaints procedure CPP117d Student Complaint Flowchart	**Related Ara Policies** CPP102 Disclosure and Management of Conflict of Interest CPP109 Disclosing Personal Information about Learners and Colleagues CPP110 Legislative Compliance CPP117 Raising Problems or Complaints
Related Legislation or Other Documentation Protected Disclosures (Protection of Whistleblowers) Act 2022 Employment Relations Act 2000 Human Rights Act 1993 Official Information Act 1982 Privacy Act 2020	**Good Practice Guidelines**) Summary of Guidance: Protected Disclosures (Protection of Whistleblowers) Act 2022 Guidance: Protected Disclosures (Protection of Whistleblowers)
References https://www.publicservice.govt.nz/ https://www.publicservice.govt.nz/resources/protected-disclosures-act-2022	

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 (Protection of Whistleblowers) Act 2022.

2.3 Ensuring effective processes that support the Protected Disclosures (Protection of Whistleblowers) Act 2022.

3 Associated procedures for Ara Corporate Policy on: Protected Disclosures

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 them and the consequences of any allegation being proved.

e Every person has the right to respond to any allegation about them 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 them unless good reason exists under the Official Information Act 1982 or the Privacy Act 2020 or the Protected Disclosures (Protection of Whistleblowers) Act 2022 for not disclosing such information. This right does not include the right to know the identity of the person who made the protected disclosure, unless that person consents in writing to the disclosure of their identity.

3.2 Serious Wrongdoing

Serious Wrongdoing is an act, omission, or course of conduct		
Type of serious wrongdoing	**Does it apply to the public sector?**	**Does it apply to the private sector?**
An offence	Yes	Yes
A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment	Yes	Yes
A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial	Yes	Yes
An unlawful, corrupt or irregular use of public funds or public resources	Yes	Yes, but does not include the use of private sector funds or resources
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	Yes	Yes, but does not include the use of private sector powers

3.3 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.

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 Protected Disclosures (Protection of Whistleblowers) Act 2022, any person making a genuine protected disclosure is immune from civil or criminal proceedings arising out of making the disclosure.

3.4 Making a Protected Disclosure – to Whom?

a Any employee who believes on reasonable grounds that they have 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 3.4b it is not appropriate for the disclosure to be made to the Disclosures Officer, a disclosure may be made to the CE.

d If the employee making the disclosure believes on reasonable grounds that the CE is or may be involved in the serious wrongdoing alleged, they may make a disclosure to the Chair of The Council or to an appropriate authority.

e An employee may make a disclosure to another appropriate authority if they believe 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.

3.5 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, or email. The contact details of the Disclosures Officer, the CE, and the Chair of the Ara Council must be set out in the published information.

c When reporting wrongdoing, it will be helpful if you are able to provide some, or all the following information to assist with an investigation:

i The nature of the wrongdoing.

ii Any background including dates and history of the issue.

iii Why you believe the allegation of wrongdoing is true.

iv Any other supporting information you may have including the name(s) of others that may be able to verify or provide further relevant information.

d The employee making the disclosure need not identify themself. If the employee does identify themself, the employee should state clearly whether or not they wish confidentiality to apply. If the employee does not identify themself, 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.

e 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.

f An employee may make a disclosure to a Minister of the Crown or an Ombudsman if they have 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.

3.6 Making a Protected Disclosure – What Happens Next?

a The Disclosures Officer, the CE, or the Chair of the Ara 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 The Disclosures Officer, the CE, or the Chair of the Ara 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).

c 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.

d Within 20 working days of receiving a protected disclosure, the receiver (Ara or an appropriate authority) will acknowledge to the discloser the receipt of the disclosure, consider whether it warrants investigation, and deal with the matter by doing one or more of –

i Investigating the disclosure.

ii Addressing any serious wrongdoing by acting or recommending action.

iii Referring the disclosure to an (or another) appropriate authority.

iv Deciding that no action is required.

e The receiver will ask you to confirm whether you have made the disclosure to anyone else, and the outcome of that disclosure.

f The receiver will inform you about what they have done or are doing to address the matter, including reasons for that decision.

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

3.7 Referrals

a 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 –

i By someone who receives a disclosure within Ara, to another Ara people as listed.

ii By an appropriate authority to Ara, or to another appropriate authority.

b The person 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.

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i By someone who receives a disclosure within Ara, to another Ara people as listed.

ii By an appropriate authority to Ara, or to another appropriate authority.

d The person 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.

3.8 Further Disclosure

a 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 Ara or the appropriate authority –

i Has not acted as it should as set out in the “what happens once you have made your disclosure” section; or

ii Has not dealt with the matter so as to address the serious wrongdoing.

b You cannot make a further disclosure to a Minister or the Speaker if the disclosure relates to serious wrongdoing in or by the office of an Officer of Parliament.

3.9 Anonymity and Confidentiality

a Any information you disclose will be treated confidentially and only shared to the extent necessary to allow for a fair and thorough investigation and to take remedial action in accordance with the applicable laws.

b 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 –

i The effective investigation of the allegations; or

ii Prevent serious risk to public health, public safety, the health or safety of an individual, or the environment; or

iii Comply with the principles of natural justice; or

iv An investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

c The receiver will consult with the discloser before releasing identifying information in accordance with a) or c) above. And if practical, will consult with the discloser before releasing identifying information in accordance with b) or d). In any event, where information is released in accordance with, the receiver will inform the discloser of its release.

d Where you make a disclosure of wrongdoing you must keep the information disclosed confidential between yourself and the receiver in accordance with this policy (with the exception of a support person as specified below).

e If you need to talk a support person, like a friend or a 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 –

i On a confidential basis; and

ii For the purpose of seeking advice about whether or how to make a protected disclosure in accordance with this policy.

3.10 Breaches of confidentiality

a If you believe information which identifies you has been released for reasons beyond those listed in 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. Information relating to complaints under the Privacy Act 2020 can be found here: https://www.govt.nz/browse/consumer-rights-and-complaints/how-to-complain/privacy-complaints/

3.11 Investigation process

a 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.

b The allegations will be considered by the receiver to determine whether an investigation is warranted. The receiver may need to seek advice which will be done ensuring confidentiality of the discloser is maintained.

c In accordance with 3.6(e) you will be notified of this decision as soon as possible and no later than 20 working days and will be provided with reasons if no action is required.

d 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.

e Those accused of the wrongdoing will have the right to be heard on the allegation(s). If you made the allegation other than anonymously, you will also have a right to be heard during the investigation and to be kept informed of progress as appropriate.

f If you make an allegation 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 this Protected Disclosures policy and under the Act.

g 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

3.12 No retaliation or unfavourable treatment

a 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.

b It is in Ara interest for wrongdoing to be reported. Ara will not tolerate or engage in any actual or threatened behaviour which –

i Discourages someone from reporting serious wrongdoing.

ii Is seen as a retaliation to a reported serious wrongdoing.

iii Is seen as treating someone less favourably because they reported a serious wrongdoing.

c When making a protected disclosure and reporting serious wrongdoing in good faith –

i No civil, criminal, or disciplinary proceedings can be taken against you for making a protected disclosure or referring it to an appropriate authority.

ii If you suffer retaliatory action from Ara, or a representative of Ara, for making a protected disclosure, you can raise a personal grievance under the Employment Relations Act 2000.

iii Under the Human Rights Act 1993, you cannot be treated any less favourably than others in the same or similar circumstances.

iv If there are reports of any potential discrimination, retaliation, threats, or harassment arising from the reporting or investigation of any serious wrongdoing, Ara will investigate and you must co-operate, as required, in the investigation.

v If you are unsure about anything relating to protected disclosures, you can seek information and guidance from the Office of the Ombudsmen: https://www.ombudsman.parliament.nz/what-ombudsman-can-help/serious-wrongdoing-work-whistleblowing.