



## Reporting Corruption, Maladministration or Serious and Substantial Waste of Public Money

For the definitions of terms used in this policy document refer to the [Delegations of Authority](#). Senior Delegated Officer (SDO) means the manager with the delegated authority for the management of a number of organisational units and/or University wide function(s), ie. the relevant DVC or PVC. As appropriate for the local nomenclature and reporting lines, when this document refers to Department read also School or Unit; to Faculty read also Sydney College of the Arts, Sydney Conservatorium of Music or Administrative Unit; to Head read Head of Department/School/Unit; and to Dean read also Director or College Principal. For Head, Dean and PVC read also HOA, Senior Manager and DVC, as appropriate

### 1 Policy

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The University will take appropriate disciplinary action against any staff member who is found guilty of corrupt conduct, maladministration or serious and substantial waste of public money.

It is important to note that even when a public official has not acted dishonestly or partially, if another person adversely affects or tries to adversely affect the exercise of the official's official functions, that other person may have acted corruptly. A fraud perpetrated on a University official is a common example of this type of corrupt conduct.

The University of Sydney expects staff members to report known or suspected instances of corrupt conduct, maladministration or serious and substantial waste of public money.

The University is committed to protecting employees who make disclosures about alleged corrupt conduct, maladministration or serious and substantial waste of public money.

### 2 Principles

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The University has an obligation to use its resources efficiently and effectively and to expose instances where this is not occurring. To this end the University has an obligation to ensure that disclosures are properly assessed and investigated in a timely manner.

### 3 Coverage

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This policy covers all academic and general staff (including casual staff).

### 4 Definitions

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The following words and phrases are used throughout this document. It may be helpful to read these definitions first.

**Corrupt conduct** is defined in the Independent Commission Against Corruption (ICAC) Act 1988, as the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the exercise of official functions by a public official who may be acting honestly or impartially, may also be corrupt conduct if the conduct constitutes a type of criminal behaviour listed in the ICAC Act. Corrupt conduct can take many forms including conflicts of interest, taking or offering bribes, dishonestly using influence, blackmail, fraud, theft, embezzlement, tax evasion, forgery, violence. The University's Corruption Prevention Strategy provides further information on corrupt conduct.

A **public official** is a member of a public authority. A University employee is a **public official**.

**Maladministration** is defined in the Protected Disclosures Act as conduct that involves action or inaction of a serious nature, that is:

- contrary to law;
- unreasonable;
- unjust;
- oppressive;
- improperly discriminatory;
- based wholly or partly on improper motives.

**Serious and Substantial Waste of Public Money**, according to the Auditor-General, refers to "...the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources. In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste."

A **disclosure** is a communication that reveals information about corrupt conduct, maladministration or serious and substantial waste of public money.

**The Protected Disclosures Act 1994** is a NSW Act that gives legal protection, under certain conditions that will be explained in this document, to persons who make disclosures of corrupt conduct, maladministration or serious and substantial waste of public monies.

A **protected disclosure** is a disclosure that satisfies the requirements of the Protected Disclosures Act. It must be a voluntary disclosure made by a public official:

- to a person nominated to accept disclosures in the University or to an investigating authority such as the Independent Commission Against Corruption, the Ombudsman or the Auditor-General; and
- show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money.

Note: Not all disclosures are protected disclosures.

## 5 Guidelines

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### A Where to Make a Disclosure

Disclosures of corrupt conduct, maladministration or serious and substantial waste of public money can be made to any of the following officers of the University:

- Director of Audit, Risk Management and Assurance;
- Manager Investigations;
- Vice-Chancellor;
- Deputy Vice-Chancellors;
- Pro-Vice-Chancellors;
- Deans.

These officers are responsible for:

- receiving disclosures confidentially; and
- immediately referring them to the Audit, Risk Management and Assurance Unit for investigation, without attempting to conduct a local investigation.

If for some reason a staff member does not want to make the disclosure to the University, he or she may choose to make the disclosure to an outside authority in the following way:

- Disclosures of corrupt conduct can be made to the Independent Commission Against Corruption (ICAC);
- Disclosures of maladministration can be made to the NSW Ombudsman;
- Disclosures of serious and substantial waste of public money can be made to the Office of the Auditor-General.

Disclosures can also be made to a member of Parliament or a journalist, however particular conditions apply. These are explained later in this document.

### B What a Protected Disclosure Means

The main purpose of the Protected Disclosures Act is to protect persons making legitimate disclosures, from retaliation or retribution.

This retaliation or retribution could take the form of intimidation or harassment, discrimination or adverse treatment, dismissal or disciplinary proceedings.

On the other hand, if a disclosure is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, or primarily questions the merits of government policy, or if the investigating authority or public authority (University) is of the opinion that the disclosure has been made frivolously or vexatiously, the disclosure will not be protected under the Act.

For a disclosure to be definitively deemed a protected disclosure it must be deemed so by a Court of Law. Such a determination would occur when a person who believed that detrimental action against them had occurred as a result of their disclosure, had sought protection under the Protected Disclosures Act in a Court. If the Court deemed the disclosure was protected and the person substantiated that detrimental action occurred against them, and if the party accused of the detrimental action could not prove that their actions were not in reprisal for the protected

disclosure, then the person taking that detrimental action would be guilty of an offence. This offence has a maximum penalty of 50 penalty units (\$5,500) or imprisonment for 12 months, or both.

In order for a disclosure, to a member of Parliament or a journalist, to receive protection under the Protected Disclosures Act, it must additionally be substantially true and the staff member must have first made the disclosure to the University or to an outside authority and these bodies must have:

- decided not to investigate, or
- failed to notify within 6 months of what they will do, or
- not completed the investigation within 6 months of the disclosure, or
- investigated but not recommended any action.

### C Confidentiality

Under the Protected Disclosures Act the investigating authority or public authority (University) is not to disclose information that might identify or tend to identify the person who has made the protected disclosure except where:

- the person who has made the protected disclosure consents in writing to the release of the information; or
- it is essential under the principles of natural justice that the identifying information is disclosed to the person whom the information concerns; or
- disclosure is necessary to investigate the matter or it is in the public interest to do so.

However as the determination of whether a disclosure is protected or not cannot be definitively known until tested in Court, the University makes every effort to ensure the confidentiality of any information that might identify the person making the disclosure, whether the disclosure is deemed by the University to be protected under the Act or not.

If there is any need to release information that might identify the person making the disclosure this will be discussed firstly with this person. In a matter where it is necessary to disclose the identity of the person making a protected disclosure because the matter cannot be investigated otherwise, this does not mean that protection under the Act is removed.

Confidentiality of information supplied by a witness in an investigation is similarly applied.

In a matter where a person who is not a public official makes a disclosure, that person cannot be protected under the Act, however this does not mean that their disclosure is not treated confidentially by the University.

### D Anonymous Disclosures

Anonymous disclosures will be accepted by the University, but as with all disclosures some form of evidence must be provided to support the disclosure.

## E The Assessment

All disclosures will be subjected to an initial assessment to determine if an investigation is required. The initial assessment may involve talking to the person making the disclosure and/or collecting background information. If it is deemed after this that there is sufficient evidence, an investigation will commence.

If Audit, Risk Management and Assurance claims it has a conflict of interest in relation to the disclosure, then the disclosure will be referred to an external investigative organisation for assessment and investigation if required.

## F The Investigation

An investigation aims to determine the facts surrounding the matter that has been disclosed. It will be conducted using interviews and examination of documentation.

The University will make every effort to complete investigations within 6 months of the receipt of the disclosure.

At the completion of the investigation, the Director of Audit, Risk Management and Assurance will issue an investigation report to the Vice-Chancellor and to the Chair of the University's Corruption Prevention Committee. The Chair of the University's Corruption Prevention Committee will assess this report to determine if any further action is required. If the Chair of the Corruption Prevention Committee claims a conflict of interest in relation to the matter then either the Vice-Chancellor or Chancellor will be called upon.

Where appropriate, the University will take any necessary action to discipline any staff members found to have committed an act or actions, or not to have taken appropriate action as the case may be, which constitutes corrupt conduct, maladministration or waste of public money. This will occur in compliance with relevant industrial requirements.

## G Persons Who Are the Subject of Disclosures

The investigating officer of the University will inform the staff member who is the subject of the disclosure, of the substance of the disclosure and the outcome of the investigation into the disclosure.

The persons who are the subject of disclosures will be given full opportunity to put their case to the investigator.

All dealings between the staff member who is the subject of the disclosure and the investigator are conducted with the understanding that as an employee the staff member will co-operate with the process.

The University will make every effort to ensure:

- the confidentiality of the persons who are the subject of the disclosure. However investigation of a disclosure will require that the staff members directly senior to the persons who are the subject of the disclosure are informed of the investigation;
- that disclosures are acted on impartially and fairly;
- that disclosures are investigated as discreetly as possible.

The University offers counselling services to the person who is the subject of the disclosure. Other staff members who may be involved in the investigation process may also seek counselling services through the University by contacting the Case Management Group.

If the University decides, as a result of the investigation, to consider taking disciplinary action against a staff member, the staff member will be given the opportunity to reply to the findings of the investigation. In this case the University will write to the staff member, providing the findings of the investigation and seeking the staff member's comments. Any action by the University, will occur in compliance with relevant industrial requirements.

In the case of criminal matters the above procedures may be altered at the formal direction of the Police.

#### H Interviews with Staff Members Who are the Subject of Disclosures and or Significant Witnesses to the Matter

Staff members have the right to refuse to attend an interview with the investigator. As all interviews with staff members who are the subject of disclosures and or significant witnesses to the matter will be electronically recorded, refusal to have the interview electronically recorded represents refusal to attend an interview.

Where a staff member refuses to have an interview, for whatever reasons, the University reserves the right to write to the staff member seeking a written response to questions.

If a staff member refuses to answer any or all of the questions at the interview the University reserves the right to put the questions in writing and require the staff member to provide a written response.

If a staff member refuses to answer questions put to them in writing, the University reserves the right to consider disciplinary action.

In most cases staff members will be provided with a copy of the electronically recorded interview at the completion of the interview. In some cases, copies of the interview may not be released until all parties affected by the matter have been interviewed.

Staff members who feel they require an interpreter should state this to the investigator prior to the interview.

## I The Observer

Staff members have the option of inviting another person to be present at the interview, as an observer. Where this occurs the investigator may request an additional University representative to be present at the interview.

The observer should adopt a supportive role only. The observer is not there to tell the staff member what answers or responses the staff member should give to the questions asked. Nor should the observer attempt to take over the interview. The observer cannot:

- be an advocate for the staff member;
- halt the interview at any time;
- seek to interfere with the answers of the person being interviewed; or
- restate the investigator's questions to the staff member or the staff member's answers.

If it becomes impossible for the interview to be properly conducted because of intervention or other inappropriate behaviour by the observer, the interview will either cease or continue without the observer, whichever is the staff member's decision. If the interview ceases as a result, the University then reserves the right to put the questions in writing.

The investigator reserves the right to find the observer unsuitable if it is deemed by the investigator that the observer may have some direct involvement in the matter being discussed.

An individual observer can only accompany one staff member being interviewed during the investigation.

The observer must agree to treating the content of the interview as confidential.

## J The Person Making the Disclosure

The person making the disclosure will be informed by the investigator, when and if the investigation of the matter will occur. They will also be informed, when the investigation is complete, whether the investigation found evidence of corrupt conduct, maladministration or serious and substantial waste of public money. The detail of the investigation will not be provided to the person making the disclosure.

## K Reprisal Action

If a person making a disclosure (including a disclosure made as a witness in an investigation) is of the opinion that as a direct result of making the disclosure they have been subjected to retaliation or retribution, the person should report this to the Director of Audit, Risk Management and Assurance. Such reports will be fully investigated.

## L Frivolous or Vexatious Complaints

Persons making disclosures that are untrue and are found to have been made vexatiously or frivolously may have action taken against them by the University.

## M The University's Requirement to Report to the ICAC

Under ICAC legislation, the University is required to report allegations of corrupt conduct to the ICAC.

## N Seeking Advice about the Process

The Director of Audit, Risk Management and Assurance is the University's co-ordinator for disclosures and protected disclosures, and is the person to contact to ask questions about making a disclosure, issues of confidentiality or protection under the Protected Disclosures Act. The Director of Audit, Risk Management and Assurance can be contacted on 9351 2415.

## Administration

## Background/Context

The purpose of this policy and guidelines document is to explain to staff members how the University accepts and deals with disclosures of corrupt conduct, maladministration or serious and substantial waste of public money.

### 1 Authority/consultation

This policy has been drafted by the Audit, Risk Management and Assurance Unit in consultation with the members of the Corruption Prevention Committee.

### 2 Management responsibility

Chair Corruption Prevention Committee

### 3 Implementation responsibility

Corruption Prevention Committee

### 4 Dates

#### Approval

Initial document approved by the Vice-Chancellor on 6 September 2000.

Revision 1 approved by the Vice-Chancellor on 28 March 2002.

Revision 2 approved by the Vice-Chancellor on 17 March 2003.

Revision 3 approved by the Vice-Chancellor on 15 October 2004.

Revision 4 approved by the Acting Vice-Chancellor on 27 September 2006.

Date of Effect

Initial date of effect: 11 September 2000.

Revision 1 effective from 15 April 2002.

Revision 2 effective from 17 March 2003.

Revision 3 effective from 15 October 2004.

Revision 4 effective from 5 October 2006.

Proposed Date of Review

2008

## 5 References

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University of Sydney Code of Conduct  
University of Sydney Corruption Prevention Strategy