

PROCEDURE FOR THE DISCLOSURE OF SERIOUS WRONGDOING

Taratahi Agricultural Training Centre QMS Component			
Category:	STAFF AND STUDENTS	Policy Number:	QMS 20
Title:	Procedure for the disclosure of serious wrongdoing	Date Approved:	12th Oct 2006
Prepared by:	Operations Manager	Date of Last Revision:	21 May 2010
Authorised by:	Taratahi Academic Committee	Next Review Date:	June 2011

1. PURPOSE

The Protected Disclosures Act 2000 (“the Act”) came into force on 1 January 2001. The purpose of the Act is to protect employees in organisations who raise concerns about serious wrongdoing in or by their organisation.

All public sector organisations must establish internal procedures through which employees can make disclosures under the Act. In accordance with the Act, this Procedure sets out the procedure applying at Taratahi for making a protected disclosure under the Act.

2. ORGANISATIONAL SCOPE

This is an organisational wide procedure.

3. DEFINITIONS

4. RESPONSIBILITIES

The Corporate Services Manager has day to day responsibility for this procedure.

5. THE PROCEDURE

5.1. Who can make a protected disclosure?

5.1.1. Only employees can make a protected disclosure. An employee includes existing and former employees, a person seconded to Taratahi, a contractor to Taratahi, and a person involved in the management of Taratahi.

5.2 Disclosures to which this procedure applies

5.1.2. An employee may make a protected disclosure of a serious wrongdoing under the Act if the disclosure is about serious wrongdoing in Taratahi or by Taratahi.

Serious wrongdoing includes any serious wrongdoing of any of the following types, whether the wrongdoing occurs before or after the commencement of the Act.

- An unlawful, corrupt, or irregular use of public funds or public resources.
- an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment.
- 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.

- an act, omission, or course of conduct that constitutes an offence.
- an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.
- The employee believes on reasonable grounds that the information he/she wishes to disclose is true or likely to be true.
- The employee wishes to disclose this information so that the serious wrongdoing can be investigated
- The employee wishes the disclosure to be protected.

5.3 Making a Protected Disclosure

- (a) An employee who wishes to make a protected disclosure must report the disclosure to their manager unless:
- i. the employee reasonably believes the manager is involved in the serious wrongdoing; or
 - ii. the manager has a personal relationship or association with someone who is believed to be involved in the serious wrongdoing.
- (b) If clause 5.3 (a)(i) or (ii) is applicable, the employee must report the wrongdoing to their manager's manager unless:
- i. the employee reasonably believes that manager is involved in the serious wrongdoing; or
 - ii. that manager has a personal relationship or association with someone who is believed to be involved in the serious wrongdoing.
- (c) If clause 5.3 (b)(i) or (ii) is applicable, the employee must report the wrongdoing to the CEO, unless:
- i. the employee reasonably believes the CEO is involved in the serious wrongdoing; or
 - ii. the CEO has a personal relationship or association with someone who is believed to be involved in the serious wrongdoing.
- (d) In such cases as above the employee must then approach the Chair of the Taratahi Trust Board and/or other members of the Trust Board
- (d) If the employee reasonably believes that s/he cannot approach any level of management in 5.3 a,b or c because they may be involved or associated with the serious wrongdoing, the employee may approach one or more of the following authorities:
- 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

5.4 Submission of a Protected Disclosure

- The submission of a protected disclosure must be reported as soon as is practicable to their reporting manager.
- When making a disclosure of serious wrongdoing, the employee must advise that the disclosure is made under the Act for it to qualify as a protected disclosure.
- Once a disclosure has been submitted, the reporting manager must notify the CEO, and assess whether the disclosure meets the criteria (as set out in clause 5.1).
- If it is determined that the disclosure should be investigated, a formal investigation will be commenced and preliminary findings made within 20 working days.
- The employee may appeal a decision not to investigate the disclosure to any Minister of the Crown or to the Ombudsman.

5.5 Investigation of a Protected Disclosure

- The reporting manager will be responsible for carrying out the investigation unless that manager considers, after consultation with the CEO, that the matter would be more suitably and conveniently investigated by another person.
- Where a criminal offence is probable or possible, the investigator may also refer it to the police or other enforcement agency.
- An investigation carried out under clause 5.5(a) will be conducted in accordance with the principles of natural justice.
- The CEO will determine whether or not the allegation of serious wrongdoing is substantiated, and if so, whether it constitutes misconduct or serious misconduct. The investigator will also determine the appropriate penalty.
- Any disciplinary action taken will follow the process set out in the Discipline and Dismissal procedures as set out in the Taratahi Employment Agreements.

5.6 Appeals

- Where the investigator decides not to take action in respect of a protected disclosure, and the employee continues to believe on reasonable grounds that the matter is true, the employee may appeal the decision not to act to one or more of the authorities set out in clause 5.3(d).
- The employee cannot appeal any decision if action has been taken by Taratahi

5.7 Protection for Employees who make Protected Disclosures

Every person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the employee who made the protected disclosure unless that employee consents in writing to the disclosure of their identity; or the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information:

- is essential to the effective investigation of the allegations in the protected disclosure; or
- is essential to prevent serious risk to public health or public safety or the environment; or
- is essential having regard to the principles of natural justice.

Any employee who makes a protected disclosure under the Act is immune from criminal or civil proceedings, and disciplinary action in relation to that disclosure, provided that the employee did not make the disclosure in bad faith or know it to be false.

5.8 Retaliatory Action and Victimisation

- (a) Where an employee feels they have been victimised or retaliated against for making a disclosure under this Act, they may take a personal grievance under the Employment Relations Act 2000 or make a complaint under the Human Rights Act 1993.
- (b) Taratahi treats seriously any allegation of victimisation or retaliation. Allegations of this nature that are established may result in dismissal.

6. REFERENCES

Protected Disclosures Act 2000.