

Universities New Zealand Policy on Dealing with Claims of Serious Wrong-Doing Under the Protected Disclosures Act 2000

June 2017

1. Introduction

- a. This policy provides guidance as to how Universities New Zealand will respond to claims of serious wrong-doing under the Protected Disclosures Act 2002 (the Act). The policy explains, and should be read alongside, the relevant provisions of the Act.

2. Universities New Zealand

- a. The legal name of Universities New Zealand (UNZ) is the New Zealand Vice-Chancellors' Committee (NZVCC).
- b. The NZVCC was established under the Education Act 1989 and comprises the Vice-Chancellors of New Zealand's universities.
- c. Universities New Zealand can only receive Protected Disclosures where they relate to statutory functions of the NZVCC. Section 241 of the Education Act details the functions of the NZVCC. These include;
 - i. S241(a) - setting up inter-university course approval and moderation processes.
 - ii. S241(b) - exercising, in relation to universities, some of the powers of the New Zealand Qualifications Authority – namely approving the establishment and operation of university programmes subject to any conditions it wishes to impose and accrediting universities to provide approved programmes. NZVCC may issue compliance notices and withdraw accreditation if appropriate.
 - iii. S241(ba) - listing university qualifications on the Qualifications Framework.

- d. The NZVCC has established a sub-committee, the Committee on University Academic Programmes (CUAP), to act on their behalf in administering the functions listed above.
- e. CUAP has a published handbook that details the rules and processes that it operates within.¹ This includes detailed criteria that must be met before approval is given to offer a programme and before a qualification can be registered on the Qualifications Framework. The criteria most relevant to this policy are:
 - i. The title, aims, learning outcomes, and coherence of the whole programme are adequate and appropriate and clearly meet the graduate profile and specification for the qualification as listed on the Qualification Framework.
 - ii. The delivery methods are adequate and appropriate, given the stated learning outcomes for the programme. Where specific resources are necessary for the programme to be provided, those resources are specified.
 - iii. There are clear regulations covering requirements for admission, credit recognition and transfer, recognition of prior learning, programme length and structure, integration of practical and work-based components, assessment procedures (including authenticity of student work), and normal progression within the programme.
 - iv. Assessment methodology is fair, valid, consistent and appropriate given stated learning outcomes and there is an effective system for moderation of assessment materials and decisions.
- f. Approval to offer a programme is conditional on these criteria being met and, after an appropriate review and notice period, NZVCC can withdraw approval and order that the qualification be removed from the Qualification Framework.

3. What disclosures will Universities New Zealand investigate?

- a. The head of The New Zealand Vice-Chancellors' Committee (NZVCC) is an appropriate authority under the Protected Disclosures Act 2000, meaning that in certain circumstances the head of UNZ may deal with claims of serious wrong-doing by employees of New Zealand universities.
- b. For the purposes of this policy, the head of UNZ is the Executive Director of UNZ. In the event that a disclosure is made to the head of UNZ, the head of

¹ The most recent version of the handbook (as at April 2017) can be found here: <http://www.universitiesnz.ac.nz/files/2015%20CUAP%20Handbook%20-%20Jan-17.pdf>

UNZ may delegate the task within UNZ. Accordingly, this policy refers to UNZ acting in this context, rather than the head of UNZ.

- c. A disclosure should be made to UNZ only if the employee making the disclosure believes on reasonable grounds:
- i. that all those nominated as being able to receive a disclosure under the Protected Disclosure policy of the employee's university are involved in the wrongdoing.;
 - ii. that immediate reference to UNZ is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
 - iii. that there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the date on which the disclosure was made in accordance with the university's own internal policies.²
- d. UNZ will consider and, if appropriate, investigate claims of serious wrongdoing where the following criteria are met:
- i. Any of the circumstances in c. above applies.
 - ii. The disclosure is made by an employee of the university to which the allegation relates. "Employee" means any existing or former employee, individuals seconded to the university, part time staff and people engaged under contract to work for the university and people working for the university as a volunteer, or as a member of a university Council or in some other capacity.³
 - iii. The disclosure concerns conduct capable of being serious wrongdoing. Serious wrongdoing is defined in s3 of the Protected Disclosures Act as including:
 - an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or
 - an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
 - 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; or
 - an act, omission, or course of conduct that constitute an offence; or

² See the Protected Disclosures Act 2000, s9.

³ See the Protected Disclosures Act 2000, s 3(1) "employee".

- an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

In the context of this policy, UNZ considers that the following are likely to constitute serious wrongdoing;

- fraudulent awarding of marks or grades to students or awarding of marks or grades that have not been fairly gained by students;
 - failure to follow policy and regulations in making decisions where the intent is to award marks that have not been fairly gained by students;
 - mis-representation of the level of academic preparedness of students for the course to which they are admitted;
 - receiving money or other gifts in return for award of marks that have not been fairly gained.
- iv. The Protected Disclosures policy of the employee's university has been followed.⁴
 - v. There is sufficient evidence provided with the disclosure that the Executive Director believes there is a prima facie case for further investigation.
 - vi. The disclosure regards an academic programme or qualification offered by a New Zealand university.
 - vii. The disclosure involves an allegation that one or more of the CUAP-imposed conditions applying to an approval of or accreditation to offer an academic programme have been breached or not met.
- e. This policy does not extend to disclosures by students.
 - f. If UNZ receives a disclosure that is a protected disclosure but UNZ believes that another authority is better placed to investigate the information, UNZ may in consultation with the employee redirect the information to that other authority.

4. Making a disclosure

- a. Disclosures should be made via email to the Executive Director of Universities New Zealand using the following email address; complaints@universitiesnz.ac.nz.

⁴ See the Protected Disclosures Act, ss 7, 9.

- b. If there is any concern about making the disclosure via the Executive Director of Universities New Zealand, a disclosure can be made to the Ombudsman via email at info@ombudsman.parliament.nz.
- c. An employee making a disclosure should specify that the disclosure is being made as a protected disclosure under the Act. However, failure to do so will not remove the protection of the Act.

5. Confidentiality of a Disclosure

- a. Anyone receiving a disclosure at Universities NZ will use their best endeavours not to disclose information that might identify the person who made the protected disclosure. Such information may only be disclosed if;⁵
 - i. The person making the disclosure consents in writing to the disclosure of that information; or
 - ii. It is essential to the effective investigation of the allegations;
 - iii. It is essential to prevent serious risk to public health or public safety or the environment; or
 - iv. It is essential having regard to principles of natural justice.

6. Determining process for handling a disclosure

- a. After considering the criteria in Part 3(b) of this policy, the Executive Director will determine whether it is appropriate for UNZ to further investigate the disclosure. If the Executive Director considers that it is appropriate for UNZ to investigate further, the Executive Director will inform the person who made the disclosure that:
 - i. Universities New Zealand will investigate the complaint and the expected processes and timeframes for the investigation.
 - ii. If they are not satisfied with the expected process or timeframe for an investigation that they may instead refer the matter to the Ombudsman's Office.
- b. If the Executive Director, after consideration of the criteria in Part 3(b) of this policy:
 - i. does not consider that it is appropriate for UNZ to further investigate the disclosure or,

⁵ See the Protected Disclosures Act, s 19.

- ii. after consultation with another appropriate authority, considers that the information disclosed can be more suitably and conveniently investigated by that other appropriate authority,

the Executive Director may refer the disclosure to that other appropriate authority and/or decline to investigate and, in either case, will inform the person who made the disclosure:

- iii. Why the disclosure falls outside the scope of matters able to be investigated by Universities New Zealand;
- iv. If the disclosure has been redirected to another appropriate agency, the fact that the disclosure has been so redirected; and
- v. If UNZ declines to investigate, that the employee can continue to pursue the matter through the Ombudsman's Office or another appropriate authority.

7. Investigation of a Disclosure

- a. Investigation of disclosures will be overseen by the Executive Director of UNZ who may engage another suitably qualified person to carry out investigative work once satisfied that person has no actual or potential conflict of interest or bias.
- b. The investigation will be carried out in accordance with the principles of natural justice.
- c. Findings of any investigation will be reported to the next meeting of Universities New Zealand following the conclusion of the investigation.
- d. The Vice-Chancellors of the universities not involved in the disclosure will consider the findings of the investigation and any other information provided by the Vice-Chancellor of the university involved in the disclosure. They will then take one of two decisions;
 - i. If satisfied that there has been no serious wrongdoing, they will take no further action.
 - ii. If satisfied that there has been serious wrongdoing, they will refer the matter to the Vice-Chancellor (or the Council) of the university involved in the disclosure for further consideration in accordance with the policies and procedures of that university. They may also refer the matter to CUAP for CUAP to recommend appropriate next steps in accordance with the role, functions and powers of UNZ. CUAP may recommend one or more of the following to the Vice-Chancellors group;

- Placing conditions around the programme(s) and putting in place mechanisms to verify compliance;
- Withdrawing approval for the programme(s) to be offered or withdrawing accreditation to provide the programme(s) and removing the programme(s) from the Qualifications Framework.

The Vice-Chancellors of the universities not involved in the disclosure will then consider the recommendation of CUAP and any further views provided by the Vice-Chancellor of the university involved in the disclosure and will make a final binding decision on the matter in accordance with the role, functions and powers of UNZ

8. Questions about this Policy

- a. If there are any questions regarding this policy, they should be directed either to complaints@universitiesnz.ac.nz, or to the Executive Director of Universities New Zealand.