

Protected Disclosure Procedure

Purpose and Scope

New Zealand Kindergartens (NZK) are supportive of developing a culture whereby acts of serious wrongdoing within the organisation can be raised and investigated without fear of retribution to the individual raising the matter. This procedure sets out how an employee can make a disclosure under the *Protected Disclosures Act 2000*, without fear of retribution or risk to employment.

The purpose of this procedure is to ensure all staff members across the NZK network understand what constitutes an act of serious wrongdoing and the process that will be followed, including the protections afforded under law.

This procedure applies to current or former General Managers/Chief Executives (GMs/CEs) and staff members (whether permanent, fixed, casual, or relieving), contractors and volunteers engaged by the NZK network

Legislation

NZK's Protected Disclosure Procedure is covered by the *Protected Disclosures (Protection of Whistleblowers) Act 2022* and the *Human Rights Act 1993*.

Key Definitions

Protected Disclosure Occurs when an individual reports a serious wrongdoing in the workplace that they reasonably believe is true or likely to be true. This is often referred to as 'whistle blowing'.

Discloser Is the person that brings forward the wrongdoing.

Receiver Is the person that allegations of wrongdoing are reported to.

Serious Wrongdoing, includes:

- An offence;
- A serious risk to public health, safety, the environment of the public or an individual;
- any conduct that poses a serious risk to the maintenance of law;
- unlawful, corrupt or irregular use of public money or resources;
- unlawful, corrupt or irregular use of public funds or resources
- improper oppressive and discriminatory acts or gross negligence or gross mismanagement

Examples of Serious Wrongdoing

- Financial mismanagement
e.g. Fraud
- Corruption e.g. bribery
- Serious safety breaches
(or covering up of such breaches)
- Involvement in, or the covering up of criminal activity e.g. Drug dealing
- Money Laundering

Elements that must be met for the disclosure to be protected

NZK actively encourages any individual to report an act of serious wrongdoing. NZK is committed to investigating and providing protection to any individual that comes forward to 'blow the whistle'.

A Discloser will be protected under law where they believe there is, or has been, a serious wrongdoing in or by NZK. The disclosure will remain protected even in cases where there was a mistake, and there was no serious wrongdoing discovered. However, a disclosure is not protected in circumstances where:

- the Disclosure was deliberately falsified, or
- the Discloser has acted in bad faith, or
- the information is protected by legal professional privilege (this is information that is confidential legal advice, which may include emails, memos or reports to or by a lawyer in the workplace).

Protections for Individual making the Protected Disclosure

As a Discloser you will be protected from:

- **breach of confidentiality:** your identity is to be confidential unless an exception applies;
- **civil liability:** any legal action for a breach of an employment contract, confidentiality agreement or another contractual obligation;
- **criminal liability:** prosecution for the unlawful releasing of information;
- **administrative liability/retaliation:** disciplinary action for making the disclosure or threats to take disciplinary action, and
- **anti-victimisation:** you will be protected by the anti-victimisation provisions of the *Human Rights Act 1993*.

The exceptions to the right to confidentiality include:

- you consent to being identified, or
- there are reasonable grounds to believe that the release of the identifying information is essential for:
 - the effective investigation of the disclosure; or
 - preventing a serious risk to public health, public safety, the health of safety of any individual, or the environment; or
 - compliance with the principles of natural justice; or
 - an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

Rights and Obligations

NZK has an obligation to seriously consider and take the appropriate action for any disclosure made under this procedure. Specifically, within 20 working days NZK must:

- acknowledge receipt of the disclosure;
- consider whether it warrants investigation;
- check to understand if the complaint has been disclosed to anyone else; and
- deal with the matter by:
 - investigating the disclosure;
 - addressing any serious wrongdoing by acting or recommending action;
 - potentially referring the disclosure elsewhere — to an appropriate authority;
 - or
 - deciding that no action is required
- provide you with an outcome, with reasons as to what has been done or what will be done to deal with the matter.

If NZK determines it will not be possible to achieve these actions within 20 working days, you will be informed (with reasons why this isn't possible), provided an alternative timeframe, and you will be kept updated on progress.

How to raise a Protected Disclosure



- ✓ **Raise your concern directly with your General Manager**, let them know you are wanting to make a Protected Disclosure. If you suspect the General Manager is involved in (or may be associated with) the serious wrongdoing, raise your concern with the **CE of the Board**.
- ✓ **Ideally put your disclosure in writing**: keep the information factual, in date/sequence order, and in as much detail as possible with any supporting evidence. If you are not confident in putting your concerns in writing you may provide a disclosure verbally to your GM/CE.

Please note: if your disclosure has the potential to provide a serious and imminent risk to the Business the GM may refer the matter to the CE or an external authority for investigation.

- ✓ **The GM/CE will consider the disclosure** and keep you regularly informed on progress during this time. NZK may also seek further information from you to clarify the allegations. If this is the case you will be welcome to bring a support person to follow up meetings.
- ✓ **The GM/CE will inform you** if unable to keep your identity confidential, and provide a reason as to why this is not possible.
- ✓ **An outcome will be provided** to you within 20 days (unless you are notified as to why this needs to be extended) as to what action has or will be undertaken. Should NZK make a determination that no action will be taken, you will be provided a reason as to why. (e.g. the length of time since the alleged wrongdoing was made makes an investigation impractical, or that the matter is better addressed via the grievance process.)
- ✓ **Make a claim with the Employment Relations Authority (ERA) or Human Rights Commission** if you have reason to believe that NZK has taken retaliatory action against you by raising a protected disclosure you can make a personal grievance claim with the ERA. If you have reason to believe that you have been victimised or treated less favourably by bringing forward an allegation, you may be able to take legal action at the Human Rights Commission. While this is possible, our preference is that any grievance is resolved internally in the first instance.

Can I raise a Protected Disclosure externally?

NZK's preference is to handle serious wrongdoings internally in the first instance. You can however raise via an external party, and we recommend contacting the Ombudsman for initial support and guidance

Word of Warning

This procedure does not form part of an employee's contract of employment. However, it is important that you understand that a breach of this procedure may result in disciplinary action including but not limited to, termination of your employment. If you want to make a complaint or raise a concern regarding a breach of this procedure, please speak with your Head Teacher, or GM/CE.

Procedure Reviews

This procedure may be amended from time to time at the discretion of NZK. Please ensure you regularly review all company procedures, so the content is front of mind in all you do.



Related Procedures, Agreements & Frameworks

Grievance Procedure

[The Statement of National Education and Learning Priorities \(NELP\)](#)

Kindergarten Teachers Collective Agreement (KTCA)

External support

How to contact the Ombudsman

Phone: 0800 802 602

Email: info@ombudsman.parliament.nz

Web: www.ombudsman.parliament.nz

