		Type: Policy	Document reference: 5151	Manual Classification: Administration and Clinical	
Title: Protected Disclosure				Effective date: 10 October 2008	
Facilitator <small>sign/date</small>	Sponsor <small>sign/date</small>	Authorised <small>sign/date</small>		Version: 01	Page Number: 1 of 7
<i>Barbara Crawford</i> Manager Quality and Risk	<i>Neville Hablous</i> Director of Board Governance	<i>Craig Climo</i> Chief Executive		Document expiry date: 10 October 2011	

©Waikato DHB, June 2008

1. Purpose and Scope

The purpose of the Protected Disclosures Act 2000 is

- To facilitate the disclosure and investigation of matters of alleged serious wrongdoing in or by an organisation; and
- To promote the public interest by protecting employees who, in accordance with the Act, disclose information about perceived serious wrongdoing in or by an organisation.

The Act does not set out a procedure to be followed. Rather it requires the creation of a clear internal procedure within an organisation for the disclosure of specific types of information to specific categories of people.

The purpose of this policy therefore is to specify Waikato DHB's procedure which staff must follow if they wish to make a protected disclosure.


This policy applies to all Waikato DHB employees.

2. Policy

- **Waikato DHB shall provide staff with a clear and supportive process for making a protected disclosure.**

3. Authorisation


As signed above by the Chief Executive.

	Document reference:	Effective date:	Expiry date:	Page Number:
	5151	10 Oct 2008	10 Oct 2011	2 of 7
Title: Protected Disclosure			Version: 01	Authorising initials:

Contents

APPENDIX A	: POLICY PROCESSES.....	3
1.	<i>Philosophy</i>	<i>3</i>
2.	<i>Definitions for Protected Disclosure.....</i>	<i>3</i>
3.	<i>Waikato District Health Board Procedure for Making a Protected Disclosure</i>	<i>4</i>
	<i>Figure 1: Procedure for Making a Protected Disclosure</i>	<i>6</i>
4.	<i>Rights of employees making a Protected Disclosure</i>	<i>6</i>
5.	<i>Responsibilities of Waikato District Health Board</i>	<i>7</i>
APPENDIX B	: ASSOCIATED INFORMATION.....	7
1.	LEGISLATIVE REQUIREMENTS.....	7
2.	ASSOCIATED DOCUMENTS	7

Disclaimer: This document has been developed by Waikato District Health Board specifically for its own use. Use of this document and any reliance on the information contained therein by any third party is at their own risk and Waikato District Health Board assumes no responsibility whatsoever.

 Waikato District Health Board	Document reference: 5151	Effective date: 10 Oct 2008	Expiry date: 10 Oct 2011	Page Number: 3 of 7
	Title: Protected Disclosure		Version: 01	Authorising initials:

Appendix A: Policy Processes

- 1. Philosophy**
- In the case of a serious incident or clinical risk, staff and managers are required to use the Waikato DHB's Incident / Accident / Near Miss Notification process in the first instance.
 - The use of the 'protected disclosures' process is seen as an act of last resort when staff feel unable to approach management or to get management action through the usual risk management mechanisms.

2. Definitions for Protected Disclosure

Employee

Includes:

- A current employee
- A former employee
- A person seconded to the organisation
- An individual who is engaged or contracted under a contract for services to do work for the organisation
- A person concerned in the management of the organisation

Where 'the organisation' is the Waikato DHB or its predecessor.

Protected Disclosure


A disclosure will be a 'protected disclosure' if:

- The information is about serious wrongdoing in or by Waikato District Health Board; and
- The employee believes on reasonable grounds that the information is true or likely to be true; and
- The employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
- The employee wishes the disclosure to be protected.

A protected disclosure can therefore only relate to 'serious wrongdoing'.

Serious Wrongdoing is defined in the Act to include:

- An unlawful, corrupt, or irregular use of public funds or public resources: 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 constitutes an offence; or
- An act, omission, or course of conduct by a public official (an

 Waikato District Health Board	Document reference: 5151	Effective date: 10 Oct 2008	Expiry date: 10 Oct 2011	Page Number: 4 of 7
Title: Protected Disclosure			Version: 01	Authorising initials:


employee or a person involved in management) that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement - whether the wrongdoing occurs before or after the commencement of the Act.

It should be noted that the Act does not authorise disclosure of information protected by legal privilege (refer to Appendix A, 4). A disclosure of such information is not a protected disclosure for the purposes of the Act.

It should also be noted that the requirements of reasonable belief of the truth of the allegation and a genuine motivation on the part of the employee preclude the Act being used by employees to make malicious or trivial accusations.

3. Waikato District Health Board Procedure for Making a Protected Disclosure

- Waikato DHB employees wishing to make a Protected Disclosure are required by the Act to follow Waikato DHB's procedure (see flowchart) for doing this except for the specific circumstances noted below.
- A Protected Disclosure may be made directly to the Waikato DHB Chief Executive Officer (CEO) only in the following circumstances.
 - If the employee making the disclosure believes on reasonable grounds that the Corporate Solicitor:
 - ⇒ is or may be involved in the serious wrongdoing alleged in the disclosure, or
 - ⇒ is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.
- There are specific circumstances in which a Protected Disclosure may be made "outside" of Waikato DHB, i.e. where the employee believes on reasonable grounds that;
 - the CEO of Waikato DHB is believed to be involved in the alleged misconduct, or
 - immediate reference to an appropriate authority (a list of these is set out below) is justified by reason of the urgency of the matter to which the disclosure relates, or
 - there has been no action or recommended action on the matter to which the disclosure relates within 20 working days of the disclosure.

 Waikato District Health Board	Document reference: 5151	Effective date: 10 Oct 2008	Expiry date: 10 Oct 2011	Page Number: 5 of 7
Title: Protected Disclosure		Version: 01	Authorising initials:	

- Under these specific extraordinary or emergency circumstances, a Waikato DHB employee may disclose a Protected Disclosure to any one of the following authorities:

- The Commissioner of Police
- The Controller and Auditor-General
- The Director the Serious Fraud Office
- The Inspector-General of Intelligence and Security
- An Ombudsman
- The Parliamentary Commissioner for the Environment
- The Police Complaints Authority
- The Solicitor-General
- The State Services Commissioner
- The Health and Disability Commissioner and
- The head of any public sector organisation (as defined under the State Sector Act 1988) and
- The head of a private sector body which comprises members of a particular profession which has power to discipline its members.

This list does **not** include a Minister of the Crown or a Member of Parliament.

- Protection is not available under the following circumstances:
 - Where a person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.
 - Where the Waikato DHB Protected Disclosure procedure is not followed (excepting specific circumstances specified above).


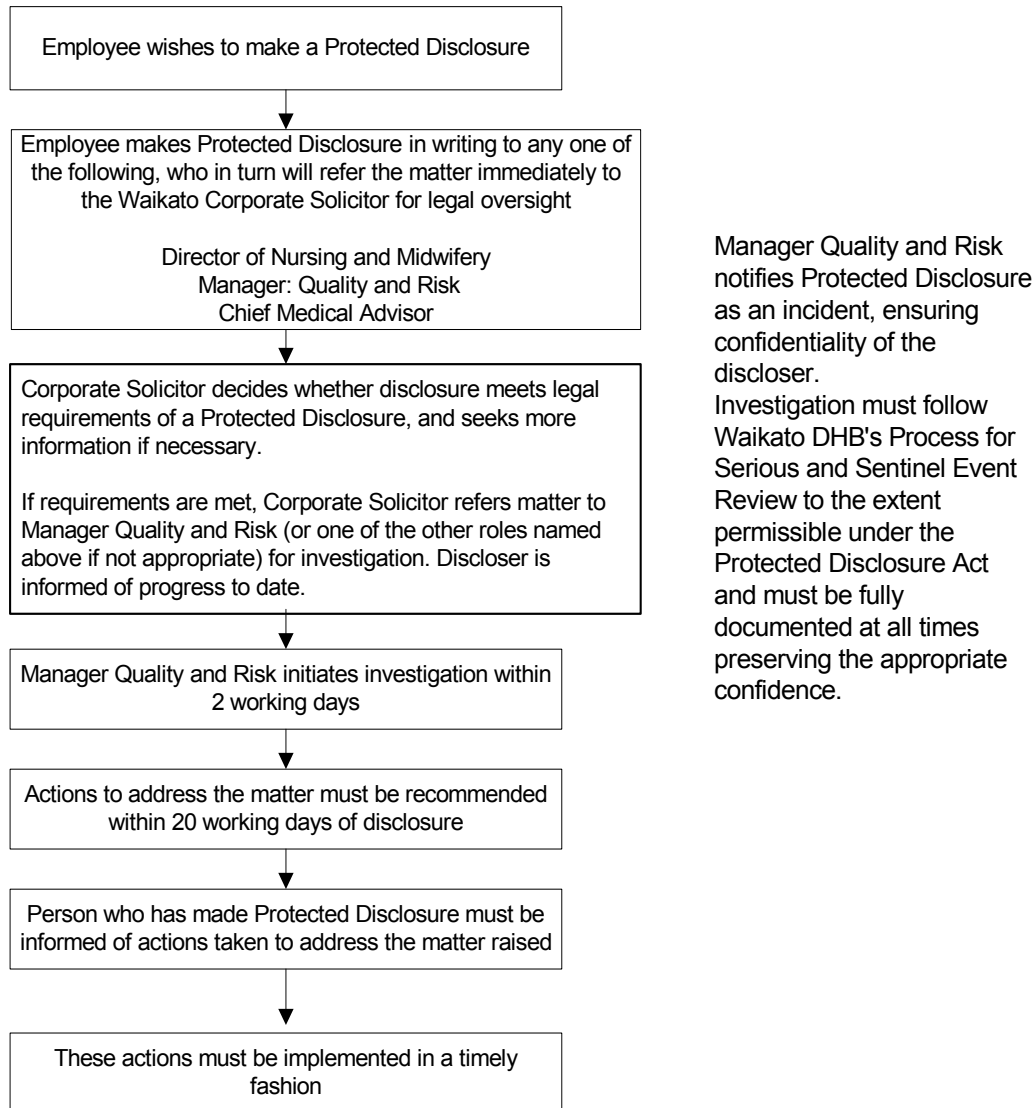

 Waikato District Health Board	Document reference: 5151	Effective date: 10 Oct 2008	Expiry date: 10 Oct 2011	Page Number: 6 of 7
	Title: Protected Disclosure		Version: 01	Authorising initials:

Figure 1: Procedure for Making a Protected Disclosure



4. Rights of employees making a Protected Disclosure

- Where an employee makes a Protected Disclosure of information in accordance with the provisions in the Act, that employee has the following rights:
 - (a) The right to be informed of:
 - Waikato DHB's procedure for making Protected Disclosure
 - Whether the disclosure meets the legislative requirements for being deemed 'protected'

 Waikato District Health Board	Document reference: 5151	Effective date: 10 Oct 2008	Expiry date: 10 Oct 2011	Page Number: 7 of 7
Title: Protected Disclosure		Version: 01	Authorising initials:	

- Their rights, and
 - The possible implications of making a disclosure.
- (b) The right not to be subjected to any retaliatory action by Waikato DHB. This right extends to relatives / whānau / associates of the person making the disclosure.
- (c) The right to make a personal grievance claim.
- (d) The right to immunity from any civil or criminal proceeding or to any disciplinary proceeding. This does not mean there will be automatic immunity in relation to the wrongdoing of the person disclosing. Legal advice should be sought in regard to this matter before disclosure is made.
- (e) 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 person who made the protected disclosure unless:
- that person consents in writing to the disclosure of that information; or
 - the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of the identifying information:
 - is essential to the effective investigation of the allegations in the protected disclosure
 - is essential to prevent serious risk to public health or public safety or the environment
 - is essential having regard to the principles of natural justice.
- (f) Protection is also available to an employee under Section 66(1) of the Human Rights Act 1993 and s103(1) of the Employee Relations Act 2000.

5. Responsibilities of Waikato District Health Board

- Waikato DHB is responsible for ensuring that:
- All new staff are informed of Waikato DHB's procedure for Protected Disclosure as part of orientation.
 - Staff and managers are required to use the Waikato DHB incident notification process in the first instance.
 - All documentation relating to the Protected Disclosure shall be retained by the Waikato DHB legal service for 10 years.

Appendix B : Associated Information

1. **Legislative Requirements**
 - Protected Disclosures Act 2000
2. **Associated Documents**
 - Waikato DHB Protected Disclosures Staff Information Sheet