



Policy Document HP3.0

Protected Disclosures

Act 2000 Policy

Date Approved 15 June 2016

Swimming New Zealand Protected Disclosures Act 2000 Policy

1. Purpose

The purpose of this policy is to ensure the making of disclosures is made a necessary component in the detection and prevention of fraud and/or dishonest dealings within Swimming New Zealand and to comply with the Protected Disclosures Act 2000.

Section 18 of the Protected Disclosures Act 2000 outlines an employee's immunity from civil and criminal proceedings when he or she has made a disclosure, as long as he or she follows specified procedures. The Act specifies that a person may not (unless there are special circumstances) make a disclosure outside Swimming New Zealand if there is an internal system established.

Protection applies where:

- a. the information is about a serious wrongdoing in or by Swimming New Zealand; and
- b. the employee believes on reasonable grounds that the information is true or likely to be true; and
- c. the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
- d. the employee wishes the disclosure to be protected.

2. Scope and relationship with Anti-Match Fixing and Sports betting Policy of Swimming New Zealand

This policy applies to all persons covered by the definition "employee" (see definitions below) including Board members.

Clause 7 of this policy is inserted:

- a. to ensure employees are aware that a disclosure of serious wrongdoing under this policy may also be a disclosure which should be made under the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand; and
- b. to ensure that disclosures that should be made under the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand, are made; and
- c. to avoid unnecessary duplication of investigation processes.

3. Definitions

Act means the Protected Disclosures Act 2000.

appropriate authority includes:

- a. the following persons
 - i. the Commissioner of Police;
 - ii. the Controller and Auditor-General;
 - iii. the Director of the Serious Fraud Office;
 - iv. the Inspector-General of Intelligence and Security;
 - v. an Ombudsman;
 - vi. the Parliamentary Commissioner for the Environment;
 - vii. the Independent Police Conduct Authority;
 - viii. the Solicitor-General;
 - ix. the State Services Commissioner;
 - x. the Health and Disability Commissioner;
- b. the head of every public sector organisation, whether or not mentioned in paragraph (a); and
- c. a private sector body which comprises members of a particular profession or calling and which has power to discipline its members; but
- d. does not include:
 - i. a Minister of the Crown; or
 - ii. a member of Parliament

Board means the group of persons who have responsibility for Governance of Swimming New Zealand and Board Member means a member of the Board of Swimming New Zealand;

Chief Executive means the Chief Executive of Swimming New Zealand or if there is no such person, the person who undertakes the senior executive role in Swimming New Zealand;

disclosure means an allegation of and/or information about serious wrongdoing;

employee includes:

- a. a former employee;
- b. a homemaker within the meaning of section 5 of the Employment Relations Act 2000;
- c. a person seconded to Swimming New Zealand;
- d. an individual who is engaged or contracted under a contract for service to do work for Swimming New Zealand;
- e. a person concerned in the management of Swimming New Zealand (including a person who is a member of the Board); and
- f. a person who works for the Swimming New Zealand as a volunteer without reward or expectation of reward for that work.

Head of Swimming New Zealand means the Chair of the Board of Swimming New Zealand.

serious wrongdoing includes any serious wrongdoing of any of the following types:

- a. an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; or
- b. an act, omission or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
- c. 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
- d. an act, omission or course of conduct that constitutes an offence; or
- e. an act, omission or course of conduct by a public official that is oppressive, improperly discriminatory or grossly negligent or that constitutes gross mismanagement.

4. Discovery of serious wrongdoing and advising a Swimming New Zealand representative

4.1 Subject to clauses 4.2 to 4.5, a disclosure is to be made to the Swimming New Zealand Privacy Officer.

4.2 A disclosure may be made directly to the Chief Executive if the employee making the disclosure believes on reasonable grounds that:

- a. the Privacy Officer is or may be involved in the serious wrongdoing alleged in the disclosure; or
- b. the Privacy Officer 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.

4.3 A disclosure may be made directly to the Head of Swimming New Zealand if the employee making the disclosure believes on reasonable grounds that:

- a. the Chief Executive or a Board Member of Swimming New Zealand is or may be involved in the serious wrong doing alleged in the disclosure; or
- b. the Chief Executive or a Board Member of Swimming New Zealand 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.

4.4 A disclosure may be made to an appropriate authority if the employee making the disclosure believes on reasonable grounds that:

- a. the Head of Swimming New Zealand is or may be involved in the serious wrongdoing alleged in the disclosure; or
- b. immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or

- c. 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.
- 4.5 A disclosure may be made to a Minister of the Crown or an Ombudsman if the employee making the disclosure –
- a. has already made substantially the same disclosure in accordance with clauses 4.1 or 4.2 or 4.3 or 4.4; and
 - b. believes on reasonable grounds that the person or appropriate authority to whom the disclosure was made
 - i. has decided not to investigate the matter; or
 - ii. has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or
 - iii. has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
 - c. continues to believe on reasonable grounds that the information disclosed is true or likely to be true.
- 4.6 A disclosure under clause 4.5 of this policy may only be made to an Ombudsman if it is made for the purpose of allowing the Ombudsman to act under Sections 15 or 16 of the Act.
- 4.7 The Privacy Officer and anyone else to whom a disclosure is made have authority either to investigate or arrange an appropriate person to investigate the disclosure.
- 4.8 A disclosure may be made orally or in writing and should, wherever possible, provide sufficient information to allow an investigation to commence.

5. **Dealing with the disclosure**

- 5.1 Swimming New Zealand will investigate all disclosures, but this is subject to clause 7 in relation a disclosure to which the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand applies. The person conducting the investigation may contact the employee, if required, to obtain:
- a. additional information to progress the investigation;
 - b. confirmation of the facts of the initial disclosure;
 - c. evidence relating to the allegation of serious wrongdoing.
- 5.2 Where serious wrongdoing is found to have occurred then a full report of the situation will be sent to the Chief Executive for action. If the Head of Swimming New Zealand is believed to be involved, then the report is to be sent to an appropriate authority as defined in clause 3 of this policy and to the Deputy Chair if there is one, of Swimming New Zealand.

5.3 Where the information is found as a result of the investigation not to have substance, then the person making the disclosure (if known) is to be advised of the outcome of the investigation.

6. **Protections for employees who make disclosures**

6.1 The person investigating the disclosure must make all reasonable efforts to protect the identity of the employee making a disclosure, unless that person consents in writing that his or her identity may be disclosed.

6.2 The Act sets out additional protections that will be extended to those making a disclosure including:

- a. immunity from civil and criminal proceedings; and
- b. the right of an employee making a disclosure to raise a personal grievance against the organisation if he or she is subject to retaliation or unjustified disadvantage.

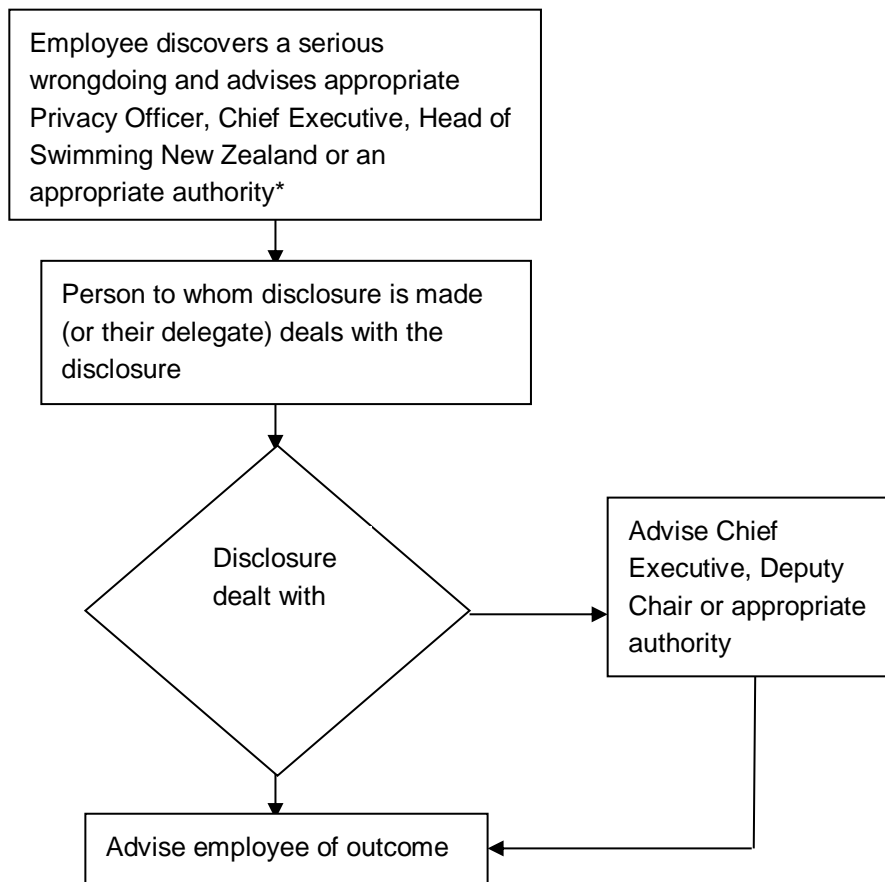
6.3 The protections conferred by the Act do not apply where an employee makes a disclosure knowing that the allegation is false or the employee otherwise acts in bad faith.

7. **Disclosures under Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand**

7.1 If the person to whom a disclosure is made considers that the disclosure should be made under the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand, the person to whom the disclosure is made shall report the disclosure in accordance with the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand, and

- a. Swimming New Zealand is not required to investigate the disclosure under clause 5.1 of this policy if:
 - i. the disclosure is about serious wrongdoing to which the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand applies, and
 - ii. the disclosure is not about other serious wrongdoing to which the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand does not apply.
- b. Swimming New Zealand is required to investigate the disclosure under clause 5.1 of this policy if:
 - i. the disclosure is about serious wrongdoing to which the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand applies, and
 - ii. the disclosure is about other serious wrongdoing to which the Anti-Match-Fixing and Sports Betting Policy of Swimming New Zealand does not apply.
- c. if Swimming New Zealand is required to investigate the disclosure under this policy Swimming New Zealand may, subject to obtaining agreement of the Swimming New Zealand Integrity Officer, engage the Swimming New Zealand Integrity Officer to undertake the investigation under this policy.

Flowchart



*In the circumstances set out in clause 4.5 the disclosure may be made to a Minister of the Crown or Ombudsman.