

PROTECTED DISCLOSURES POLICY

PURPOSE

Kiwifruit New Zealand (KNZ) has developed this Protected Disclosures Policy to meet its responsibilities under the Protected Disclosures (Protection of Whistleblowers) Act 2022 ('PD Act').

The purpose of this policy is to establish and set out KNZ's internal procedures and requirements for the proper management of disclosures of serious wrongdoing in or by KNZ and to provide the framework for the persons to whom a disclosure is made, the way the disclosure will be handled, and the protection offered to person who makes a disclosure.

SCOPE

A Discloser who reports serious wrongdoing happening in the workplace are provided protection from retaliatory or detrimental action as a result of the disclosure under the PD Act. To make a protected disclosure under the PD Act and this Policy, an individual must be an Discloser as defined in the PD Act.

This policy applies to any Discloser and any person to whom a disclosure is made or is responsible or otherwise involved with the handling and investigation of protected disclosures.

DEFINITIONS

Discloser has the meaning set out in the PD Act and includes, an individual who is (or was formerly):

- a) an employee;
- b) a secondee to the organisation;
- c) engaged or contracted under a contract for services to do work for the organisation; and
- d) concerned in the management of the organisation (including, for example, a person who is or was a member of the board or governing body of the organisation).

Serious Wrongdoing has the meaning set out in the PD Act and includes any act, omission, or course of conduct in (or by) any organisation that is 1 or more of the following:

- a) an offence;
- b) a serious risk to:
 - i. public health; or
 - ii. public safety; or
 - iii. the health or safety of any individual; or
 - iv. the environment;
- c) a serious risk to the maintenance of law, including:
 - i. the prevention, investigation, and detection of offences; or
 - ii. the right to a fair trial;
- d) an unlawful, a corrupt, or an irregular use of public funds or public resources;
- e) oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by:
 - i. an employee (if the organisation is a public sector organisation):

- ii. a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the Government.

POLICY

KNZ does not tolerate any form of Serious Wrongdoing will take all concerns raised seriously.

KNZ expects all KNZ Directors and employees to act ethically and honestly at all times and to report any possible wrongdoing in or by KNZ as soon as possible. KNZ recognises that individuals who come forward and report wrongdoing help promote integrity, accountability and good management within KNZ.

Any disclosure of information to KNZ or an appropriate authority, will be protected under the provisions of the PD Act (**'Protected Disclosure'**) if the Discloser:

- a) believes on reasonable grounds that there is, or has been, a Serious Wrongdoing in or by KNZ; and
- b) discloses the information about the serious wrongdoing in accordance with the PD Act (even if the PD Act is not referenced); and
- c) the disclosure substantially complies with the PD Act (even if it does not technically comply); and
- d) the information is disclosed confidentially to another person, to seek advice about whether or how to make a protected disclosure.

The disclosure will not be protected if the Discloser:

- a) acts in bad faith; or
- b) the information being disclosed is protected by legal professional privilege.

An individual who discloses information in support of, or relating to, a Protected Disclosure is also entitled to protection under the PD Act.

PROCESS

If a Discloser is unsure about whether the information relates to a Serious Wrongdoing or wishes to receive advice or guidance on making a Protected Disclosure they can contact the Ombudsman for advice or consult the Ombudsman's guidance on making a protected disclosure (refer to References and Relevant Legislation section below). Similarly, any person who receives a disclosure can contact the Ombudsman for advice on whether it relates to Serious Wrongdoing or what action to take.

Disclosure

A Discloser wishing to disclose information about a Serious Wrongdoing in or by KNZ should make the disclosure either verbally or in writing, as soon as possible after the event that has given rise to the reasons for disclosure to:

- a) the Chief Executive or the Chair of KNZ; or
- b) Jonathan Kaye, Barrister & Solicitor by email (Jonathan@jonathankayelaw.co.nz) or phone ((04) 499 9465); or

- c) an “Appropriate Authority” (as defined in section 25 of the PD Act), whose responsibility relate most closely to the subject matter of the disclosure (but does not include a Minister of the Crown or a member of Parliament).

A further disclosure can be made to a Minister or an appropriate authority (including the Ombudsman) if the Discloser believes, on reasonable grounds, that the person or authority to whom the initial disclosure was made:

- a) has not acted as it should in receiving the disclosure; or
b) has not dealt with the matter so as to address the wrongdoing.

Receipt of Disclosure

If the Chief Executive or Chair of KNZ receives a Protected Disclosure, they should:

- acknowledge the date of receipt of the disclosure and summarise their understanding of the disclosure if it was made orally;
- immediately advise the Discloser if they have any personal involvement in the alleged Serious Wrongdoing or association with the alleged wrongdoer which would make it inappropriate for that person to consider the information and advise to whom the disclosure should be made;
- ensure that the Discloser is made aware of their rights and obligations, notify the Discloser that they can contact the Ombudsman for information and guidance on the matters set out in the PD Act;
- take steps to identify, assess and mitigate the risk of detriment to the Discloser and provide any necessary support to the Discloser to keep them safe from reprisal;
- give full consideration to the information and consider whether the disclosure warrants investigation;
- check with the Discloser whether the disclosure has been made elsewhere (and any outcome);
- consider whether the disclosure should be referred to an appropriate authority and consult with the Discloser and the intended recipient of a referral before making any referral;
- deal with the matter by doing one of more of the following (in accordance with the PD Act):
 - investigate the disclosure;
 - address any Serious Wrongdoing by acting or recommending action;
 - refer the disclosure to an appropriate authority;
 - decide that no action is required.
- inform the Discloser within 20 working days after the date on which disclosure was made of any action or proposed action being taken to deal with the matter;

If it is impractical to complete the above actions within 20 working days the Chief Executive or Chair of KNZ should inform the Discloser of the expected timeframe to deal with the matter and provide appropriate updates.

Unless the Chair is, or may be, involved in the serious wrongdoing, the Chief Executive will promptly advise the Chair of the allegations and any investigation. Where necessary the Chief Executive or Chair of KNZ may engage external advice to assist with an investigation. The Chief Executive or Chair of KNZ will:

- ensure the investigation is undertaken with the appropriate level of independence, objectivity and investigative skill and on the principle that every effort will be made to gather sufficient reliable evidence to support a prosecution if necessary;
- ensure any investigation is conducted in accordance with the principles of natural justice, including providing prior notice of any allegations or the relevant material relied upon to the affected persons, so they have a fair opportunity to make representations in the absence of bias or pre-judgment;
- Keep a confidential record of the investigation process; and
- Provide updates on the progress of the investigation to the Discloser making the disclosure and to the alleged wrongdoer in the most appropriate way to protect privacy.

After the resolution of an investigation, KNZ internal systems and procedures must be reviewed, to determine whether any improvements should be made to those systems. Should the investigation establish Serious Wrongdoing has occurred the Chief Executive or Chair must notify the Board and recommend a decision as to whether to involve any law enforcement agencies. An investigation may require the Chief Executive or Chair to secure evidence to ensure it is not interfered with and ensure that any equipment involved is left untouched until the relevant authorities are involved. Any person who is the subject of an investigation may be suspended on full pay until the investigation is completed. Any return to work or subsequent disciplinary action will depend on the outcome of the investigation. KNZ will pursue every reasonable course (including court ordered restitution) to recover any loss from the offender and through prosecution if appropriate.

A Discloser who believes that an allegation has not been satisfactorily dealt with or have concerns about the investigation process should contact the Ombudsman (refer to References and Relevant Legislation below).

PROTECTIONS

Confidentiality

Where a Protected Disclosure is made, the person to whom the disclosure is made must use their best endeavours to keep confidential information that might identify the person making the disclosure unless:

- a) the person consents to the release of identifying information; or
- b) there are reasonable grounds to believe that disclosure of the identifying information is *essential*:
 - i. to the effective investigation of disclosure; or
 - ii. to prevent serious risk to public health or public safety, the health or safety of any individual or to the environment; or
 - iii. to comply with the principles of natural justice; or
 - iv. to an investigation by a law enforcement or regulatory agency for the purpose of law enforcement.

The person who received the disclosure will first consult with the Discloser about the release if required under section 17(3) of the PD Act.

Protection from retaliatory action or unfavourable treatment

KNZ must not retaliate, threaten to retaliate or treat an individual less favourably because they have made or intend to make a Protected Disclosure. An employee may have a personal grievance which can be dealt with in accordance with the provisions of the Employment Relations Act 2000 if subject to such treatment.

Immunity from civil, criminal and disciplinary proceedings

If an individual makes a Protected Disclosure, they will not be liable to any civil, criminal proceeding or disciplinary proceeding, by reason of having made or referred the disclosure of information.

KNZ may refuse a request for information under the Official Information Act 1982, if it might identify the individual who has made a Protected Disclosure.

REFERENCES AND RELEVANT LEGISLATION

This policy should be read in conjunction with the Protected Disclosures (Protection of Whistleblowers) Act 2022 and KNZ's Fraud Policy.

For further information, guidance or advice on making a Protected Disclosure or the receipt and handling of disclosures:

- refer to the guidance published by the Ombudsman (<https://www.ombudsman.parliament.nz/resources/making-protected-disclosure-guide-blowing-whistle>); or
- Or contact the Ombudsman directly:
The Ombudsman
PO Box 10152
Wellington 6143
Ph 0800 802 602
Email: info@ombudsman.parliament.nz
Web: www.ombudsman.parliament.nz

Acting in the Spirit of Service: Speaking up [Model-Standards-Speaking-up-v3_0.pdf \(publicservice.govt.nz\)](#)

POLICY REVIEW

This policy is endorsed by the KNZ Board and will apply from 23 March 2022.

It will be reviewed every three years or earlier if deemed necessary.

Reviewed and confirmed by the KNZ Board on 13 September 2022.