Whistleblower Reporting (Improper Conduct) Procedure

Section 1 - Preamble

(1) Whistleblowers play a role in ensuring integrity in public administration. Charles Darwin University ('CDU, The University) is committed to fostering an ethical, transparent culture, which values the disclosure of information about actual or suspected corruption and other wrongdoing, including the danger to public health or safety of the environment.

(2) As a public body established by an Act of the Northern Territory Parliament, the University has mandatory reporting obligations under the Northern Territory Independent Commissioner Against Corruption Act 2017 (ICAC Act) and other legislation. As such, all University employees and members of Council are public officers who are obliged to report any instance of actual, or suspected, Improper conduct or breaches of the law under the ICAC Act mandatory reporting obligations.

Section 2 - Purpose

(3) This procedure provides guidance on how University employees and members of Council can fulfil their reporting obligations under the ICAC Act should they become aware of any form of misconduct or corruption that within the scope of the ICAC. The procedure also outlines the appropriate responses that should be undertaken by the University should a report be made.

(4) This procedure should be read in conjunction with the Fraud and Corruption Control Policy.

Section 3 - Scope

(5) All employees of the University and other members of the University community including students, contractors and adjuncts must be aware of their obligations under the ICAC Act to report improper conduct. Improper conduct includes corrupt conduct, misconduct, unsatisfactory conduct and anti-democratic conduct as defined in Division 2 of the ICAC Act. All senior employees of the University, including Council, must be aware of their obligations to protect Whistleblowers from retaliation.

Section 4 - Procedure

Who Can Make a Report

(6) Anyone who has reasonable grounds to suspect that Improper conduct has occurred or is occurring within or against the University must make a report in accordance with this Procedure. This includes a person who is currently, or was previously an associate of the University, including:

a. an employee, member of Council or another committee;

b. a student;
c. a contractor, supplier or tenderer;
d. another person, paid or unpaid, who has business dealings with the University;
e. a relative or dependent of such a person referred to above; or
f. any other individual prescribed by law.

(7) A report may be deemed a voluntary protected communication, in accordance with section 93 of the ICAC Act and Whistleblower protections may apply to anyone who meets the criteria for eligibility. When a report is received by the University it will be treated as a protected communication until such time that it is deemed otherwise. The University will not tolerate harassment of, retaliation against or victimisation of persons who report concerns.

How to Report

(8) A report of suspected corruption or improper conduct can be made verbally or in writing to the University's Disclosure Officer appointed in accordance with the ICAC Guidelines, or directly to the Office of the Independent Commissioner Against Corruption (Office of the ICAC). If an employee receives a report, they must immediately refer it to the Disclosure Officer. A person who chooses to make a report to the University may also make a report directly to the Office of the ICAC at any time.

(9) The Vice-Chancellor and the University's senior executives are the principal Disclosure Officers.

(10) The Vice-President Governance and University Secretary (privacy@cdu.edu.au) will be a Disclosure Officer if a report involves the Chancellor, the Vice-Chancellor or a member of the Council or one of its committees.

(11) If the Vice-President Governance and University Secretary has a conflict of interest in respect of, or is the subject of a report, or is otherwise unavailable, the Director People and Culture will be a Disclosure Officer.

(12) A report made to the Disclosure Officer should include details of:

a. the nature of the conduct alleged;
b. the person or people responsible for the conduct;
c. the facts on which the allegation is based on; and
d. the nature and whereabouts of any further evidence that would substantiate the allegations.

(13) A report can be made anonymously, however, the investigation of anonymous reports may be limited as will Whistleblower protections where identity is unknown.

(14) Persons making a Whistleblower report should carefully consider the legislation under which their disclosure is being made to ensure they meet the requirements of the applicable law to be protected. This may involve obtaining independent legal advice.

(15) A report made through the media, or to a political party, or industrial organisation does not attract protection under the ICAC Act. A Whistleblower report made to the University or ICAC ensures that adequate investigation is undertaken and the reputation of persons against whom allegations are made is not damaged by inappropriate publication.

(16) A Whistleblower report made to the Office of the ICAC (either directly or as reported to the Office of the ICAC by the University) may be determined to be a 'protected action'. A person taking a protected action incurs no civil or criminal liability and is not subject to disciplinary action (or other adverse administrative action) in relation to the protected action. It is an offence to provide information that is known to be misleading as part or all of the protected action.

(17) There are safeguards in place under the ICAC Act to protect a person from retaliation as a result of undertaking a protected action. Retaliation includes causing or threatening to cause a person harm in order to discourage a person or persons;

a. from taking a protected action; or
b. supporting a person taking a protected action.

(18) It may also include causing or threatening to cause harm because of a protected action taken or action taken to support a person in taking protected action.

(19) Under the ICAC Act, the identity of a person taking protected action will be protected wherever possible, as anonymity is considered to be the best protection from retaliation.

(20) Persons making a Whistleblower report should report any actual or potential retaliation to the Disclosure Officer. They may also make a complaint in relation to the handling of the protected action. Such complaints will be investigated as a separate matter by the University's Complaints Management Unit, who will ensure all reasonable steps are taken to stop the activity and protect the Whistleblower.

(21) The University counselling service is available to Whistleblowers and persons who may be subject to disclosures under this Policy. Information regarding the University counselling service is available from the Disclosure Officer.

Response to a Report

(22) As soon as reasonably practicable, and with the degree of confidentiality consistent with the nature of the report, the person making the report will be contacted to have the process explained for assessing the report and where required, the development of a plan to manage possible retaliation.

(23) If a report is made verbally, the person making the report may be required to provide more details in writing.

(24) The report is then assessed and documented in writing to decide whether:

a. the matter qualifies as a Whistleblower disclosure;
b. the matter should be investigated, taking into consideration whether the matter can be properly investigated or would be more appropriately resolved through another process either separately or concurrently;
c. the matter should be investigated internally or referred to an external investigator;
d. the report involves a criminal offence, corrupt or improper conduct that should be reported to the police or an investigating authority such as ICAC;
e. there is a risk of retaliation; and
f. any legal or professional advice should be obtained

(25) A report may not be investigated if it appears to be:

a. an allegation with no specific information that points to wrongdoing; and/or
b. not made as an honest or genuine report on reasonable grounds.

(26) The person making the report will be notified in writing of the assessment and what actions, if any, will occur next. If it is determined that the report will be investigated, the University will provide the person making the report a statement confirming:

a. that the University has received the report, the date it was received and confirmation that it is a protected communication;

b. the University's understanding of the content of the report;
c. information about the role of the Office of ICAC and the Office of ICAC's contact details;
d. that the person is not entitled to know the full details of subsequent investigations or disciplinary action that may result, but may contact the ICAC's Office for a general outline of action taken, who might be given access to the information, and what is likely to be done with it;
e. due care should be taken in communicating the information to other persons in ways that are not protected communications and that the person can apply for a declaration that the action is a protected communication;
f. information about what constitutes retaliation, including that maintaining confidentiality may reduce the risk of retaliation, and to seek assistance at an early opportunity if they fear or experience retaliation;
g. where and how to access support services to manage the impacts of making the protection communication in a timely manner to manage the impacts early; and
h. the importance of not providing false or misleading information, the penalties for doing so and the opportunity to retract or clarify that information.

(27) Where the Disclosure Officer decides the information contained in the voluntary protected communication does not give rise to a suspicion of corrupt or anti-democratic conduct, an informal resolution process may be undertaken. The protected person should be provided a written notice of the decision, with rationale. Informal resolution will be undertaken in accordance with the University's complaints handling function. The Disclosure Officer must ensure that confidentiality is maintained in accordance with section 146A of the ICAC Act.

Risk Assessment

(28) Following receipt of a report that qualifies as a whistleblower disclosure, a risk assessment will be conducted to assess:

a. the likelihood of retaliation using a matrix which considers the seriousness and likelihood of potential reprisals; and
b. the likely impact on the person who is the subject of the report, taking into account the seriousness of the matters raised in the report.

(29) Where there is a risk of retaliation a plan must immediately be developed, in conjunction with the person who made the report, to minimise or control risks of retaliation and other adverse impacts.

(30) The risk assessment plan must be monitored and regularly reviewed to ensure the strategies remain effective and take into consideration any changed circumstances.

Reporting to ICAC

(31) Where there is a reasonable suspicion that a matter may involve improper conduct, the Disclosure Officer is bound by section 22 of the ICAC Act to report the matter to the ICAC as soon as reasonably practicable.

(32) The Disclosure Officer must report improper conduct to the ICAC, even in the event that it has already been referred to another public body or public officer, including but not limited to, the Ombudsman, the Auditor-General or the relevant police force.

(33) The ICAC Commissioner may also choose to:

a. dismiss the matter;
b. investigate the matter;
c. investigate the matter in cooperation with the University – this approach may be undertaken for a variety of reasons, including if it is in the public interest, and where particular investigative powers are required; and/or

d. refer allegations involving criminal offences to the Police.

Investigation

(34) An investigation will be conducted in accordance with the principles of procedural fairness by an independent investigator appointed by the Disclosure Officer. All reasonable steps will be taken to ensure a confidential, timely, fair and unbiased investigation.

(35) Where the Disclosure Officer is unable to make enquiries without disclosing information about the identity of the protected person for the purpose of the investigation, in accordance with section 146A of the ICAC Act:

a. the recipient of the information must be advised that the information relates to the identity of a protected person;
b. the protected person must be advised that their identity has been disclosed and to whom;
c. the Disclosure Officer must be satisfied that the person or body receiving the information is the most appropriate person or body to deal with the referral; and
d. the Disclosure Officer must keep a written record of when, to whom and for what purpose identifying information has been provided.

(36) All employees are required to assist the Disclosure Officer and their delegated investigator to the maximum possible extent in conducting those investigations.

(37) On conclusion of the investigation, the investigator will prepare a written investigation report for the Disclosure Officer, who will notify the person that made the improper conduct report of the outcome.

Referral

(38) Where the recipient of a voluntary protected communication refers information contained within a protected communication to another person or entity, the recipient must advise the protected person, as soon as practicable after the referral has been made:

a. that the matter has been referred;
b. to whom it was referred;
c. the means by which the protected person can contact the person or entity to which the referral was made; and
d. whether information about the identity of the protected person was disclosed with the referral.

(39) The person or entity to which the referral was made must be made aware that the information referred was provided by way of a protected communication.

(40) If the recipient discloses information about the identity of the protected person (having regard to section 146A of the ICAC Act) as part of a referral, they must inform the receiver of the referral of that fact.

Records and Reports

(41) The Vice-President Governance and University Secretary will keep comprehensive records of all reports, investigations and referrals. Retention or disposal of all information related to Whistleblower matters will be managed in accordance with the University's Records Disposal Schedules and the Information Act 2002.

(42) All evidence will be retained until the case is fully closed, and any criminal charges or disciplinary action arising from the investigation outcomes have been finalised.

(43) The Vice-President Governance and University Secretary will provide a summary report prepared in accordance

with confidentiality requirements to the University's Audit, Risk and Compliance Committee, detailing the conduct of investigations and outcomes as well as any rectification actions required to ensure that any corrupt conduct or other wrongdoing does not recur.

Breach of Procedure

(44) The University will not tolerate harassment, retaliation or victimisation of a person they know or suspect to have made a whistleblower report. The University must report any potential, actual or suspected retaliation or reprisal to the Office of the ICAC immediately after it becomes aware of it. Those who are found to be engaging in retaliation will be subject to disciplinary action under the Code of Conduct - Employees.

Section 5 - Non-Compliance

(45) Non-compliance with Governance Documents is considered a breach of the Code of Conduct - Employees or the Code of Conduct – Students, as applicable, and is treated seriously by the University. Reports of concerns about non-compliance will be managed in accordance with the applicable disciplinary procedures outlined in the Charles Darwin University and Union Enterprise Agreement 2025 and the Code of Conduct – Students.

(46) Complaints may be raised in accordance with the Complaints and Grievance Policy and Procedure - Employees and Complaints Policy - Students.

(47) All employees have an individual responsibility to raise any suspicion, allegation or report of fraud or corruption in accordance with the Fraud and Corruption Control Policy and Whistleblower Reporting (Improper Conduct) Procedure.

Status and Details

Status	Current
Effective Date	17th October 2024
Review Date	17th October 2027
Approval Authority	Vice-Chancellor
Approval Date	17th October 2024
Expiry Date	Not Applicable
Responsible Executive	Brendon Douglas Vice-President Governance and University Secretary
Implementation Officer	Brendon Douglas Vice-President Governance and University Secretary
Enquiries Contact	Brendon Douglas Vice-President Governance and University Secretary --- Governance

Glossary Terms and Definitions

"Improper conduct" - Improper conduct is defined in the ICAC Act 2017. Improper conduct includes corrupt conduct, misconduct, unsatisfactory conduct and anti-democratic conduct. Corrupt conduct Corrupt conduct is conduct engaged in by a public officer that is an offence in the NT or elsewhere, for which the maximum penalty is imprisonment for a term of at least 2 years, with or without a fine, and where the conduct is connected to public affairs. Corrupt conduct is also the behaviour or actions of a public officer that might result in the public officer being dismissed or terminated from their role, is connected to public affairs, and involves: dishonesty failing to adequately manage an actual or perceived conflict of interest a serious breach of public trust by a public body, minister, Member of the Legislative Assembly (MLA) or councillor the illegal, unauthorised or inappropriate performance of official functions an adverse effect on the honest, impartial or effective performance of official functions by a public officer or public body using official information inappropriately. Corrupt conduct includes the behaviour or actions of anyone that could harm public confidence in public administration and that involves: collusive tendering intentionally or recklessly providing false or misleading information for an application for a licence, permit or other authority under legislation misappropriating or misusing public resources assisting in, or dishonestly benefitting from, the misappropriation or misuse of public resources dishonestly obtaining or retaining employment or appointment as a public officer. Corrupt conduct is also conduct that constitutes an offence against the administration of law and justice or an offence prescribed by regulation, the doing of which would adversely affect directly or indirectly the honest, impartial or effective performance of official functions. Misconduct Misconduct involves the behaviour or actions of a public officer or public body that that are connected to public affairs and constitute an offence, whether in the Territory or elsewhere, for which the maximum penalty is a fine or imprisonment for a term of less than 2 years, with or without a fine. Misconduct also includes certain behaviours or actions that would lead to disciplinary action, other than dismissal or termination. Misconduct also includes a breach or public trust by a judicial officer, the Director of Public Prosecutions, a public body, minister, MLA or local councillor. Unsatisfactory conduct Unsatisfactory conduct occurs when a public officer’s or public body’s behaviour or actions are connected to public affairs and involve: illegality or impropriety negligence incompetence. To be unsatisfactory conduct, it must result in: substantial mismanagement of public resources inappropriate or significantly ineffective use of public resources substantial mismanagement in performing an official function substantial detriment to the public interest. Anti-democratic conduct Anti-democratic conduct is behaviour or actions by any person or organisation that constitute an offence under the Electoral Act 2004 or Chapter 8 Local Government Act 2019, or Chapter 8 Local Government Act 2008 (before its repeal) that affect, or are intended to affect: the behaviour of the community, or people in the

community, about how they vote in elections the reputation, power or influence, or resources of a political party or candidate the ability of the public to understand the resources and associated entities of a political party or candidate the Electoral Commissioner’s ability to detect and investigate breaches of the Electoral Act 2004 or Chapter 8 of theLocal Government Act 2019 or to ensure compliance with those Acts.