

# Protected disclosure internal reporting system

PROCEDURE 1.2.1(r)

POLICY NO AND TITLE	<b>1.2.1</b>	<b>Conditions of employment policy</b>
PROCEDURE	1.2.1(r)	Protected disclosure internal reporting system
VERSION AND DATE ADOPTED	1	
RESPONSIBLE OFFICER		Manager Human Resources

## Introduction

Council recognises the need to have a relevant internal reporting procedure to encourage and facilitate the disclosure, in the public interest, of cases where corrupt conduct, maladministration and serious and substantial waste occurs within Council.

Council welcomes the introduction of the Protected Disclosures Act and has adopted procedures to ensure the full protection and maintenance of confidentiality to staff and councillors who wish to make a disclosure. Staff or councillors who take detrimental action, as defined in the Act, against another person in reprisal for a protected disclosure will face disciplinary action.

Council further recognises that disclosed information can lead to organisational improvement and commits to thoroughly investigate all disclosures for the primary purpose of gaining increased efficiency and eliminating any impediments to Council achieving its overall objectives.

Council finally commits to providing adequate training to ensure that all staff (and Councillors) are acquainted with the provisions of the Act including the reporting mechanisms.

## Background Information

### Aims of the Act

The object of the Protected Disclosures Act 1994 is to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. This is achieved by :

implementing or enhancing procedures for making disclosures concerning such matters.

protecting people from reprisals that might be inflicted on them because of these disclosures and.

providing for those disclosures to be properly investigated and dealt with.

### What Disclosures are Protected?

The Protected Disclosures Act provides four (4) avenues by which public officials can make protected disclosures and is specifically applicable to Council staff and Councillors. It is essential that the correct procedures are followed to enable Council staff and Councillors to enjoy the full protection that the Act provides.

1. Disclosures may be made directly to the Mayor, the General Manager, the Directors or the Human Resources Manager, relating to any matters covered by the Act. i.e. corruption, maladministration, serious and substantial waste.  
( see Section Internal Reporting Systems )
2. Disclosures relating to corruption may be referred to the Independent Commission Against Corruption ( ICAC). The Commission may also deal with matters of serious and substantial waste where corruption is involved.
3. Disclosures relating to maladministration may be referred to the NSW Ombudsman. The Ombudsman may also be able to deal with matters of serious and substantial waste where maladministration is involved.
4. Disclosures made to a journalist or Member of Parliament will only be protected if certain conditions are met. The disclosure must have initially been forwarded through one of the previous four avenues and the referral authority ;
  - a) has decided not to investigate the matter
  - b) has not completed the investigation within six months of the original disclosure
  - c) has investigated the matter but not recommended any action or
  - d) has failed to notify the person making the disclosure, within six months of the disclosure, of whether or not the matter is to be investigated.

## **Protection**

The Act creates offences, punishable by fines and imprisonment, where wilfully false allegations are made or where reprisals or detrimental action are taken against a person as a result of that person making a protected disclosure.

“Detrimental action” is action that can cause, comprise or involve any of the following;

- a) injury, damage or loss
- b) intimidation or harassment
- c) discrimination, disadvantage or adverse treatment in relation to employment
- d) dismissal from or prejudice in employment
- e) disciplinary proceedings

Cases of alleged reprisal or detrimental action should be referred to the General Manager, the relevant investigating authority or to the Department of Local Government and Co-operatives without delay.

## **What is not Protected?**

Protection is not available for disclosures which are frivolous, vexatious, primarily question the merits of government policy or are made in an attempt to avoid dismissal or disciplinary action. It is an offence to wilfully make a false or misleading statement when making a disclosure.

Initial disclosures made to any person or authority other than those stated internal or external sources are not protected by the Act.

## Duty to Notify

The investigating authority or officer to whom the disclosure is referred must notify the person who made the disclosure of the action taken or proposed in respect of the disclosure within six months.

## Explanation of Terms

**Corruption** is defined under the ICAC Act as the dishonest or partial exercise of official functions by a public official. For the Commission to become involved in an issue, the conduct must involve a criminal or disciplinary offence or conduct serious enough to warrant dismissal. Bribery, blackmail, theft or the dishonest use of influence of a public official are some examples of corruption.

**Maladministration** is defined in the Protected Disclosures Act as conduct that involves action or inaction of a serious nature that is;

- a) contrary to law
- b) unreasonable, unjust, oppressive or improperly discriminatory or
- c) based wholly or partly on improper motives.

**Serious and Substantial Waste** refers to any uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in significant loss or wastage of public funds/resources.

Note that a disclosure which is made by an employee or Councillor that principally involves questioning the merits of government policy is not protected.

## Internal Reporting System

### Guidelines/ Procedures

Staff and councillors who wish to make an internal protected disclosure may elect to follow one of the following procedures.

#### Procedure 1

Staff or councillors who have information to disclose in respect of corruption, maladministration or serious and substantial waste may provide that information directly to the General Manager who will assume the role of the investigating authority. The General Manager will assess the information, undertake the relevant investigations and decide upon an appropriate course of action. Such action may include disciplinary action, referral to the ICAC, the State Ombudsman and/or the police.

#### Procedure 2

Councillors who have information to disclose in respect of corruption, maladministration or serious and substantial waste may provide that information directly to the Mayor who will assume the role of the investigating authority.

The Mayor will assess the information, undertake the relevant investigations and decide upon an appropriate course of action, in consultation with the General Manager. Such action may include disciplinary action, referral to the ICAC, the State Ombudsman and/or the police.

#### Procedure 3

Staff who have information to disclose in respect of corruption, maladministration or serious and substantial waste may provide that information to the Director of the relevant

Department who will assess the information, undertake the relevant investigations and recommend an appropriate course of action to the General Manager. This recommendation may include disciplinary action, referral to the ICAC, the State Ombudsman and/or the police.

#### **Procedure 4**

Staff who have information to disclose in respect of corruption, maladministration or serious and substantial waste may provide that information to the Human Resources Manager who will assess the information, undertake the relevant investigations and recommend an appropriate course of action to the General Manager. This recommendation may include disciplinary action, referral to the ICAC, the State Ombudsman and/or the police.

#### **Procedure 5**

Staff or Councillors who have information to disclose in respect of corruption, maladministration or serious and substantial waste concerning the General Manager may provide that information directly to the Mayor who will assume the role of the investigating authority. The Mayor will assess the information, undertake the relevant investigations and decide upon an appropriate course of action. Such action may include disciplinary action, referral to the ICAC, the State Ombudsman and/or the police.

### **General Information**

- It is important that staff and Councillors understand the options available to them prior to the making of a protected disclosure and to fully understand the investigation process that occurs. A brief summary is outlined below but it may be prudent to obtain more specific information to ensure that full protection may be afforded. The Mayor, the General Manager, the Directors or the Human Resources Manager should be able to provide the necessary advice or assistance.
- If a disclosure is received verbally, it must be clearly documented by the person receiving the information ( the investigating authority) and accepted as accurate by the person making the disclosure. Once the initial information has been assessed, the person to whom the disclosure has been made will prepare a written account of the actual or recommended investigations and an action plan to ensure appropriate follow-up. The action plan should outline the arrangements considered necessary to gain organisational improvement from the process and give details of any recommended referrals to the external agencies ( ICAC, Ombudsman, police).
- Procedural fairness must provide the opportunity for the subject of the disclosure to explain his or her version of events. Confidentiality helps to protect both those who make disclosures from reprisals as well as the subjects of the disclosure. Details of persons making disclosures will only be revealed to those people who need to know. Situations may arise where, in order to fully investigate a matter, the source of a disclosure will have to be revealed and it is important that staff and Councillors understand this limitation. The organisation will ensure that confidentiality is maintained unless it is unreasonable or not possible to do so. Disciplinary action may be taken against staff who breach confidentiality. It is the responsibility of the person to whom the disclosure is made to give feed-back to the person who made the initial disclosure.
- The effectiveness of the internal reporting procedure will be reviewed annually to ensure that the overall objectives of the Act are being met.
- These procedures should be read in conjunction with the guidelines "Internal Reporting Systems" produced by the ICAC, the NSW Ombudsman and the Audit Office of NSW. The guidelines are available from the Mayor, the General Manager, Directors or the Human Resources Manager.