
FAR NORTH WEST JOINT ORGANISATION

POLICY:

PUBLIC INTEREST DISCLOSURES (PROTECTED DISCLOSURES)

ADOPTED: 25 July 2018

PREAMBLE

The aim of this policy is to establish guidelines to facilitate the introduction of an effective internal reporting system, which enables the Joint Organisation (JO) to acknowledge and act upon reports of *corruption, maladministration* and *serious and substantial waste*. These guidelines are to serve as Council's internal system for the purpose of the Public Interest Disclosures Act 1994.

PURPOSE AND CONTEXT OF THE POLICY:

The aim of this policy is to establish guidelines to facilitate the introduction of an effective internal reporting system, which enables the JO to acknowledge and act upon reports of *corruption, maladministration, serious and substantial waste, government information contravention and/or local government pecuniary interest contravention*. These guidelines are to serve as the JO's internal system for the purpose of the Public Interest Disclosures Act 1994 (PID Act). The Public Interest Disclosures Act 1994 aims to encourage and facilitate disclosures – in the public interest – by:

- enhancing and augmenting established procedures for making disclosures,
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures, and
- providing for those disclosures to be properly investigated and dealt with.

The JO is committed to providing an appropriate avenue for staff and other parties to make Public Interest Disclosures and to provide a safe working environment for any person who makes a Public Interest Disclosure.

1. Roles and responsibilities of staff

This policy will apply to:

- both JO staff and representatives
- all permanent employees, whether full-time or part-time
- temporary or casual employees
- consultants
- individual contractors working for the JO.

The policy may also apply to other people who perform public official functions and their conduct and activities could be investigated by an investigating authority. This can include volunteers and those **contracted to work for the JO.**

2. What should be reported?

You should report any wrongdoing you see relating to the work of the JO. Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention, and also local government pecuniary interest contravention – will be dealt with under the PID Act as public interest disclosures and according to this policy.

(a) Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others
- acting dishonestly or unfairly, or breaching public trust
- a member of the public influencing a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's guidelines on what can be reported.

(b) Maladministration

Maladministration is conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives.

For example, this could include:

- making a decision and/or taking action that is unlawful
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

For more information about maladministration, see the NSW Ombudsman's guidelines on what can be reported.

(c) Serious and substantial waste in local government

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the JO.

For example, this could include:

- poor project management practices leading to projects running over time
- having poor or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see the NSW Ombudsman's guidelines on what can be reported.

(d) Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009* (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation. For more information about government information contravention, see the NSW Ombudsman's guidelines on what can be reported.

(e) Local Government pecuniary interest contravention

A local government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at council and council committee meetings. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

For example, this could include:

- a senior JO staff member recommending a family member for a JO contract and not declaring the relationship
- a general manager holding an undisclosed shareholding in a company competing for a council contract

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's guidelines on what can be reported.

(f) Other wrongdoing

Although reports about the previous five categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- harassment or unlawful discrimination
- reprisal action against a person who has reported wrongdoing
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with the JO's policies. Copies of the policies are available from the Executive Officer of the JO.

Even if these reports are not dealt with as public interest disclosures, the JO will investigate and consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

3. When will a report be protected?

The JO will support any staff who report wrongdoing. For a report to be considered a public interest disclosure, it has to meet all of the requirements under the PID Act. These requirements are:

- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report has to be made to one or more of the following:
 - a position nominated in this policy – see section 8 below
 - the general manager
 - one of the investigating authorities nominated in the PID Act – see section 9 below:

Reports by staff and councillors will not be considered to be public interest disclosures if they:

- mostly question the merits of government policy, including the policy of the governing body of the council.
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

How to make a report

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

4. Can a report be anonymous?

There will be some situations where you may not want to identify yourself when you make a report. Although these reports will still be dealt with by the JO, it is best if you identify yourself. This allows us to provide you with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent you from being identified. If we do not know who made the report, it is very difficult for us to prevent any reprisal action.

5. Maintaining confidentiality

The JO realises many staff will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

We are committed to keeping your identity, and the fact you have reported wrongdoing, confidential. **However there may be situations where this may not be possible or appropriate.** We will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, we will develop a plan to support and protect you from risks of reprisal. You will be involved in developing this plan. You will also be told if your report will be dealt with under the council's code of conduct, as this may mean certain information will have to be tabled at a council meeting.

If you report wrongdoing, you should only discuss your report with those dealing with it. This will include the disclosures coordinator and the general manager. If you discuss your report more broadly, you may affect the outcome of any investigation.

6. Who can receive a report within the far north west joint organisation?

You are encouraged to report general wrongdoing to your supervisor. However the PID Act requires that – for a report to be a public interest disclosure – it must be made to a public official in accordance with the council's disclosure procedures. For the JO, this means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the staff member making the report to one of the positions listed below. The broader responsibilities of these positions are outlined below.

If you are council staff and your report involves a councillor, you should make it to the general manager or the Mayor. If you are a councillor and your report is about another councillor, you should make it to the general manager or the Mayor.

The following table provides:

- a) For internal disclosures:- a list of JO representatives to whom a Public Interest Disclosure can be made and
- b) For External disclosures: - a list of bodies to whom a Public Interest Disclosure can be made.

The following positions are the only staff within the JO who can receive a public interest disclosure.

a) Executive Officer

You can report wrongdoing directly to the Executive Officer. The Executive Officer is responsible for:

- deciding if a report is a public interest disclosure
- determining what needs to be done next, including referring it to other authorities
- deciding what needs to be done to correct the problem that has been identified. The Executive Officer must make sure there are systems in place in the JO to support and protect staff who report wrongdoing.

The Executive Officer also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption. The Executive Officer can be contacted via the Executive Officer's office.

b) Chair

If you are making a report about the Executive Officer, you should make your report to the Chair. They are responsible for:

- a. deciding if a report is a public interest disclosure
- b. determining what needs to be done next, including referring it to other authorities
- c. deciding what needs to be done to correct the problem that has been identified. The Chair must make sure there are systems in place in the JO to support and protect staff who report wrongdoing.

If the report is about the Executive Officer, the Chair is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption. The Chair may be contacted via the Chair's office.

c) Disclosures Co-ordinator

The Disclosures Co-ordinator for the JO is appointed by the Executive Officer

7. Who can receive a report outside of the jo?

Staff are encouraged to report wrongdoing within the JO, but internal reporting is not the only option. If you follow the guidance below, your report can still be a public interest disclosure.

You can choose to make your report to an investigating authority. You can do this first, or at any stage after your initial report to the JO. If your report is about the Executive Officer or the Chair, you should consider making it to an investigating authority.

You can also choose to make a report to a Member of Parliament or a journalist, but only in limited circumstances.

(a) Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

In relation to council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Division of Local Government, Department of Premier and Cabinet — for disclosures about local government agencies
- the Information Commissioner — for disclosures about a government information contravention.

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

You should be aware that it is very likely the investigating authority will discuss the case with the JO. We will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. We will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

(b) Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the Executive Officer
- a person nominated in this policy
- an investigating authority in accordance with the PID Act.

Also, the JO or investigating authority that received the report must have either:

- decided not to investigate the matter
- decided to investigate the matter, but not completed the investigation within six months of the original report
- investigated the matter but not recommended any action as a result
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or the CNSWJO code of conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside the JO contact the disclosures coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

8. FEEDBACK TO STAFF WHO REPORT WRONGDOING

Staff who report wrongdoing will be told what is happening in response to their report. When you make a report, you will be given:

- an acknowledgement that your disclosure has been received;
- the timeframe for when you will receive further updates;
- the name and contact details of the people who can tell you what is happening.

The PID Act requires that you are provided with an acknowledgement letter and a copy of this policy within 45 days after you have made your report. We will attempt to get this information to you within seven working days from the date you make your report.

After a decision is made about how your report will be dealt with, you will be given:

- information about the action that will be taken in response to your report
- likely timeframes for any investigation
- information about the resources available within the JO to handle any concerns you may have
- information about external agencies and services you can access for support.

This information will be given to you within 10 working days from the date you make your report.

During any investigation, you will be given:

- information on the ongoing nature of the investigation
- information about the progress of the investigation and reasons for any delay
- advice if your identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

At the end of any investigation, you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified
- advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

Protection against reprisals

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the public interest disclosure.

The JO will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. People who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from, or prejudice in, employment
- disciplinary proceedings.

(a) Responding to reprisals

The JO will act to protect staff who report wrongdoing from reprisals.

When a report is received, we will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If you believe that detrimental action has been or is being taken against you or someone else who has reported wrongdoing in reprisal for making a report, you should tell your supervisor, the disclosures coordinator or the general manager immediately.

All supervisors must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the disclosures coordinator or the general manager.

If the disclosures coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal
- give the results of that investigation to the Executive Officer for a decision
- give the results of that investigation to the Chair for a decision if the allegation of reprisal action is about the Executive Officer

- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If you report reprisal action, you will be kept informed of the progress of any investigation and the outcome.

The general manager may issue specific directions to help protect against reprisals. These may include:

- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer within the current workplace
- transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified
- granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be taken if the member of staff who made the disclosure agrees to it. The disclosures coordinator will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If you have reported wrongdoing and feel that any reprisal action is not being dealt with effectively, contact the Ombudsman or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are included at the end of this policy.

(b) Protection against legal action

If you make a disclosure in accordance with the PID Act, you will not be subject to any liability and no action, claim or demand can be taken against you for making the disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

9. Support for those reporting wrongdoing

The JO will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

We also have staff who will support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal.

All supervisors must notify the disclosures coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

10. Sanctions for making false or misleading disclosures

It is important that all staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

11. Support for the subject of a report

The JO is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If you are the subject of a report, you will be:

- treated fairly and impartially
- told your rights and obligations under our policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against you
- told the result of any investigation.

12. Review

This policy will be reviewed by council every two years. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

13. More information

More information around public interest disclosures is available from the NSW Ombudsman's website at www.ombo.nsw.gov.au.

14. Resources

The contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed following.

For disclosures about corrupt conduct:

Independent Commission
Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email:
icac@icac.nsw.gov.au
Web:
www.icac.nsw.gov.au
Address: Level 21, 133 Castlereagh
Street,
Sydney NSW 2000

For disclosures about breaches of the GIPA Act:

Information
Commissioner Toll free:
1800 463 626
Facsimile: 02 8114 3756
Email:
oiinfo@oic.nsw.gov.au
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh
Street,
Sydney NSW 2000

For disclosures about maladministration:

NSW Ombudsman
Phone: 02 9286
1000
Toll free (outside Sydney metro): 1800
451 524
Tel. typewriter (TTY): 02 9264 8050
Facsimile: 02 9283 2911
Email:
nswombo@ombo.nsw.gov.au
Web: www.ombo.nsw.gov.au
Address: Level 24, 580 George
Street,
Sydney NSW 2000

For disclosures about local government agencies:

Division of Local Government in
the Department of Premier and
Cabinet Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Facsimile: 02 4428 4199
Email:
olg@olg.nsw.gov.au
Web:
www.olg.nsw.gov.au
Address: 5 O'Keefe Avenue,
Nowra, NSW 2541