



## Handling Complaints

### 1. Intent of Policy

This policy is intended to explain to staff, Councillors, agents and the community how Council will deal with complaints.

### 2. Scope of Policy

All staff are responsible for ensuring that any complaints are handled with the aim of satisfactorily resolving the complaint and ensuring that a similar problem does not occur in the future.

This Policy also establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Oberon Council, or its staff. The system enables such internal disclosures to be made to the Disclosure Coordinator or the Mayor, as an alternative to the General Manager.

The policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to continue to raise appropriate matters at any time with their supervisors, but as an alternative have the option of making a protected disclosure in accordance with this policy.

### Relevant Legislation

*Local Government Act 1993*

*Protected Disclosures Act 1994*

*Independent Commission Against Corruption Act 1988*

*Ombudsman Act 1974*

*Local Government Amendment (Discipline) Act 2004*

*Public Interest Disclosures Act 1994*

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## 1. Introduction

Oberon Council recognises that complaints provide a valuable resource for improving its services to ratepayers. Council is committed to providing a consistent, transparent and accountable process for residents and ratepayers to make complaints to Council and to ensuring all complaints are dealt with quickly and appropriately.

Oberon Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money. Oberon Council is committed to the Model Code of Conduct for Local Councils in NSW and the aims and objectives of the Protected Disclosures Act and Public Interest Disclosures Act. It recognises the value and importance of contributions of staff to enhancing administrative and management practices and strongly supports disclosures being made by staff or councillors which disclose corrupt conduct, maladministration, or serious and substantial waste of public money. Oberon Council will take all reasonable steps to provide protection to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

## 2. Definitions

### What is a complaint?

A complaint is an expression of dissatisfaction with a decision (outside of a structured process, eg a development application decision), level or quality of service, or behaviour of an employee, Councillor or agent, which can be investigated and acted upon.

### What is not a complaint?

- A request for service (unless there was no response to a first request for service)
- A request for information or an explanation of a policy or procedure
- Disagreement with a policy or lawfully made decision
- An appeal against a decision, other than that made as the result of a complaint.

For the purposes of this policy there are three kinds of complaint:

Administrative complaint means dissatisfaction with the level of service provided in regard to Council's operations, policies, procedures, charges, staff and agents. A customer request is not an administrative complaint but concerns about inaction in respect of a customer request constitute an administrative complaint.

Legal or criminal complaint means a complaint alleging either:

- A breach of the pecuniary interest provisions of the Local Government Act, (1993);
- Corrupt conduct as provided by the Independent Commission Against Corruption Act, (1988) and includes disclosures made under the Protected Disclosures Act 1994; or
- A breach of the Model Code of Conduct for Local Councils in NSW.

Competitive neutrality complaint means:

- A complaint that Council has not met the Government's requirements under the *Policy Statement on the Application of National Competition Policy to Local Government or Pricing and Costing of Council Businesses – A Guide to Competitive Neutrality*, including a concern that Council has not established an effective complaint handling mechanism;

- A complaint that Council has not abided by the spirit of competitive neutrality in the conduct of a business activity.

### 3. Confidentiality

Confidentiality will be given to all complaints according to the principles in the *Privacy and Personal Information Protection Act (NSW) 1998*.

Wherever possible complaints are resolved and reviewed locally and have the fewest people necessary involved. Complaints are treated confidentially and information is only used for the purposes for which it was collected unless:

- Either the consent of the individual(s) is obtained,
- Council has reasonable grounds for believing the use of the information will reduce a threat to the life of any person, or
- The use is authorised by law.

The *Protected Disclosures Act 1994* requires investigating authorities and Council officers to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that information; or
- it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to the person who is the subject of the disclosure, or
- the investigating authority or Council officer is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively; or
- disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the Disclosure Coordinator or the General Manager. In all cases the person who made the disclosure will be consulted before such a decision is made.

*Note:* If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority. Under the *Freedom of Information Act 1989*, a document is exempt from release if it contains matters the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

### 4. Complaints Register

All complaints will be notified to the Receptionist, who will keep a complaints register containing statistical information only. No personal information will be recorded in the register.

Statistical information will be reported to the Executive Management Team monthly and also presented to Council quarterly. The report will consist of the number of complaints received in what departments, the number of complaints attended to and the number of complaints outstanding.

The statistical information will be used to identify areas/services/procedures that need review or that need additional resources to provide the required level of service.

## **5. Anonymous Complaints**

Oberon Council cannot fully investigate anonymous complaints, as Council cannot determine the validity and nature of the complaint when the source of the complaint is unknown nor seek additional information when investigating the complaint. An anonymous complainant cannot be provided with reasons for any decision made about their complaint. Council encourages complainants to provide full contact information when lodging complaints.

Council will not disclose the identity of complainant(s), should the complainant request their details remain confidential at the time the complaint is lodged. Oberon Council manages personal and private information collected by Council in accordance with Council's Privacy Management Plan.

In the event that an anonymous complaint is received Council will note the issues raised and, where necessary, try and resolve them appropriately. However, for the reasons outlined above, issues raised in anonymous complaints may not be fully actioned.

## **6. Complainants who are abusive or vexatious**

Any interaction with members of the community where personal abuse or vulgar language is used may be stopped immediately by the employee if the complainant continues to be abusive after a first - polite - warning.

In the case of a vexatious complaint, that is, a complaint without substance, it will be recorded in the Complaints Register but no further action will be taken.

If an employee feels threatened by the language or behaviour of the complainant, the police shall be called.

## **7. Administrative complaints**

Administrative complaints are usually directed to Council in writing or verbally (in person at Council offices or by phone).

### Written Administrative Complaints

1. Upon receipt, the Receptionist refers the complaint to the appropriate director for investigation.
2. The director will acknowledge the complaint in writing within 2 working days of receipt.
3. The director will investigate complaints within 5 working days of receipt. Where the director is a party to the complaint, another director will be called upon to conduct the investigation. The General Manager will be kept informed.
4. If the complaint is against an employee, the employee against whom the complaint is made will be:

- a) Informed about the complaint/allegation made against him/her and the substance of any adverse comment made about him/her.
  - b) Provided with a reasonable opportunity to give his/her case.
  - c) Given the opportunity to be represented by his/her union.
5. All parties to the matter will be heard and submissions considered.
  6. Reasonable enquiries will be made, taking care that no person is involved in enquiries in which he/she has a direct interest.
  7. A report on the findings of the investigation and a recommended course of action will be prepared for the General Manager.
  8. A reply will be sent to the complainant. Where an investigation is unable to be completed within 5 working days an interim report will be prepared and all parties will be notified of the reasons for the delay.
  9. Appropriate action will be taken with the employee concerned where a complaint is justified, including addressing any training needs. Disciplinary action, including action that may lead to termination of employment, may be taken.
  10. All complaints will be treated as confidential and must not be discussed with anyone who is not involved in the complaint.
  11. Harassment or victimisation by/of the complainant or the staff member or by a third party will not be tolerated and appropriate action will be taken where harassment or victimisation occurs.
  12. Where a complaint is found to be frivolous or vexatious the General Manager will determine the appropriate course of action to be taken.
  13. The director shall advise the complainant in writing when action has been completed and advising what remedial action (if any) has been taken.

Note: In replying to the complainant the director shall explain that, if the complainant is unhappy with the way the complaint has been handled, or the result, an appeal may be lodged either internally (by writing to the Council) or externally to either the Department of Local Government, the Office of the Ombudsman or the Independent Commission Against Corruption.

#### Verbal Administrative Complaints

1. The officer who first receives a complaint (either by phone or over the counter) shall:
  - Record the details of the complaint on the Request/Complaint Form;
  - Confirm with the complainant the accuracy of what has been recorded;
  - Explain what will happen next;
  - Refer the matter to the appropriate director for attention with a copy to the Receptionist.

2. The director shall:

- Investigate the complaint as quickly as possible and recommend/take remedial action;
- Inform the complainant of the remedial action taken.

Note 1: People wishing to lodge a complaint about a staff matter should be advised to put their complaint in writing.

Note 2: In informing the complainant of the action taken, the director shall explain that, if the complainant is unhappy with the way the complaint has been handled, or the result, an appeal may be lodged either internally (by writing to the Council) or externally to either the Department of Local Government, the Office of the Ombudsman or the Independent Commission Against Corruption.

Note 3: An interpreter will be made available through the Telephone Interpreter Service for people who have difficulty speaking or understanding English to assist with verbal complaints and filling out forms.

## **8. Appeal process**

If a complainant is not satisfied with the way a complaint was handled, or the remedial action taken, an appeal may be lodged.

There is a two stage appeal process – internal and/or external.

### Internal Appeals

1. The reviewing officer\* will investigate the way the complaint was originally handled and the remedial action taken.
2. If, after investigation, the reviewing officer is satisfied with the process and the remedial action taken, he/she will inform the complainant accordingly.
3. If the reviewing officer is not satisfied with the way the complaint was handled or the remedial action taken, he/she will:
  - Counsel the officer who initially handled the complaint;
  - Institute action to achieve the appropriate result;
  - Inform the complainant of the outcome of his/her review.
4. In the case of reviews undertaken by the General Manager, he/she will inform the Mayor.

Note: In replying to the complainant, the reviewing officer shall explain that, if the complainant is unhappy with the way the complaint has been handled, or the result, an appeal may be lodged with either the Department of Local Government, the Office of the Ombudsman or the Independent Commission Against Corruption.

\* The Mayor is responsible for reviewing complaints relating to investigation by the General Manager and the General Manager is responsible for reviewing complaints relating to investigation by Directors.

### External Appeals

If a person feels the Council has not properly dealt with a complaint internally, that person may wish to refer the matter to any of the following Appeal Agencies:

*Investigations & Review Branch  
Department of Local Government  
Locked Bag 3015  
NOWRA NSW 2541  
Telephone: (02) 4428 4100  
Facsimile: (02) 4428 4199  
Email: [dlq@dlq.nsw.gov.au](mailto:dlq@dlq.nsw.gov.au)*

*NSW Ombudsman  
Level 24, 580 George Street  
SYDNEY NSW 2000  
Telephone: (02) 9286 1000  
Toll Free: 2800 451 524  
Facsimile: (02) 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)*

*Independent Commission Against Corruption  
GPO Box 500  
SYDNEY NSW 2001  
Telephone: (02) 8281 5999  
Toll Free: 1800 463 909  
Facsimile: (02) 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)*

## **9. Legal or criminal complaints**

### Breach of the Pecuniary Interest Provision of the Local Government Act

Complaints relating to alleged breaches of the pecuniary interest provisions of the Local Government Act (1993) should be made in writing, addressed to either the General Manager or Mayor.

1. Upon receipt of a complaint which refers, or appears to refer, to an alleged breach of the pecuniary interest provisions of the Local Government Act (1993), it shall be immediately referred to the General Manager (or the Mayor, if the allegation involves the General Manager).
2. The General Manager (or Mayor) shall assess the complaint to determine whether or not it involves a pecuniary interest breach.
3. If the General Manager (or Mayor) considers that the complaint does not involve a breach of the pecuniary interest provisions, it shall be dealt with in accordance with the practice involving administrative complaints, outlined above.

4. If the General Manager (or Mayor) considers the complaint does involve an alleged breach of the pecuniary interest provisions he/she shall investigate the facts of the matter. If there is a prima facie case then the matter, after reporting to Council, should be referred to the Department of Local Government. If on the evidence, there is no breach, the matter should be reported to Council only. The General Manager (or Mayor) shall also inform the Council.
5. The complainant shall be informed in writing of the action taken.

#### Breaches of the Code of Conduct by Councillors and/or the General Manager

1. Council's Conduct Committee is responsible for making enquiries into allegations of breaches of the code of conduct by councillors and/or the general manager.
2. The Committee consists of the Mayor, General Manager and an independent representative, being the Council's nominated legal adviser.
3. Where a complaint is made by or against the Mayor or the General Manager, the Deputy Mayor or another person who has been designated by Council, will take the place of the Mayor or General Manager on the Committee.
4. Suspected breaches of the code of conduct are to be reported to the General Manager, preferably in writing, in the first instance. Allegations should not be made at council meetings.
5. The General Manager will report the matter to the conduct committee only where it has been determined that a breach of the code of conduct may have occurred.
6. Where the General Manager has determined the complaint does not involve a breach of the code of conduct, he/she will not report the matter to the conduct committee and give the complainant/s the reason/s in writing.
7. Where the General Manager has determined the complaint does involve a breach of the code of conduct, he/she will report the matter to the conduct committee.
8. The conduct committee will determine whether or not to make enquiries into the allegation and advise of the reason/s for the decision in writing.
9. Where the conduct committee determines the complaint does involve a breach of the code of conduct, the conduct committee will either investigate the facts or engage an independent person to make enquiries into the allegation to determine the facts.
10. Any enquiries by the general manager, independent person or the conduct committee will follow the rules of procedural fairness by:
  - Informing the person/s against whose interests a decision may be made of any allegations against them and the substance of any adverse comment in respect of them.
  - Providing the person/s with a reasonable opportunity to put their case.
  - Hearing all parties to a matter and considering submissions.
  - Making reasonable enquiries before making a recommendation.

- Ensuring that no person is involved in enquiries in which they have a direct interest.
  - Acting fairly and without bias.
  - Conducting the enquiries without undue delay.
11. The conduct committee will decide whether a matter discloses a prima facie breach of the Code of Conduct, report its findings, and the reasons for these findings, in writing to the council, the complainant and the person the subject of the complaint.
12. The conduct committee will recommend that council take any actions provided for in the code of conduct that the committee considers reasonable in the circumstances.
13. Where it is found a councillor has breached the code, Council may decide by resolution to:
- Censure the Councillor for misbehaviour in accordance with section 440G of the Local Government Act.
  - Require the councillor to apologise to any person adversely affected by the breach.
  - Counsel the councillor.
  - Make public findings of inappropriate conduct.
  - Refer the matter to an appropriate investigative body if the matter is serious (for example, the Department of Local Government, the Independent Commission Against Corruption, the NSW Ombudsman or the NSW Police).
  - Prosecute for any breach of law.
14. Where it is found the general manager has breached the code, council may decide by resolution to impose one of the following sanctions, depending on the severity, scale and importance of the breach, and taking into account any staff agreements, awards, industrial agreements and contracts:
- counselling
  - documentation on the personnel file for a period of time depending on the nature of the breach of the code
  - dismissal
  - reference to an appropriate investigative body
  - prosecution for any breach of law which could lead to dismissal and recovery of costs/damages suffered by council and/or imprisonment.

### Breaches of the Code of Conduct by Staff

1. On receipt of a complaint of a breach of the Code of Conduct by council staff or others engaged by the council, the General Manager will make enquiries, or cause enquiries to be made.
2. Where the General Manager determines not to enquire into the matter, he/she will give the complainant the reason/s in writing.
3. The General Manager will follow the process outlined for dealing with a complaint against a staff member in the section dealing with written administrative complaints.

### Disclosures under the Protected Disclosures Act

The purpose of *Protected Disclosures Act 1994* is to ensure that staff who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

The Act aims to encourage and facilitate the disclosure - in the public interest - of **corrupt conduct, maladministration** and **serious and substantial waste** in the public sector (see definitions in Section 11). This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters;
- 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.

Disclosures are **protected** under the Act if they:

- are made in accordance with this Internal Reporting Policy; **AND**
- **show or tend to show** corrupt conduct, maladministration, or serious and substantial waste of public money by the Oberon Council or any of its staff; **AND**
- are made voluntarily.

A disclosure is **not protected** under the Act if it is made by a public official in the exercise of a duty imposed by or under an Act.

Protection is also not available for disclosures which:

- are **made** frivolously or vexatiously;
- primarily question the merits of government policy; or
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

Only the General Manager or an investigating authority (see the next section) can make the decision as to whether a disclosure is made frivolously or vexatiously.

Government policy includes any formal policy adopted by resolution of the Council.

It is an offence to wilfully make a false or misleading statement when making a disclosure

### Reporting Under the Internal Reporting System

The **nominated disclosure officers** to whom internal disclosures can be made in accordance with the Act and this policy are:

- the Disclosure Coordinator (John Chapman, Director of Corporate Services, direct phone 6329 8123);
- the General Manager (Leanne Mash, direct phone 6329 8125); or
- the Mayor (if the disclosure concerns or involves the General Manager or a Councillor).

Where persons contemplating making a disclosure are concerned about publicly approaching a nominated disclosure officer, they can ring the relevant official and request a meeting in a discreet location away from the workplace.

Alternatively, a disclosure may be made to one of the **investigative authorities** nominated in the Act. These are:

- Independent Commission Against Corruption (ICAC) for matters involving corrupt conduct;
- Ombudsman, for maladministration;
- Director-General of the Department of Local Government (DLG) for matters involving serious and substantial waste of local government money

### Roles and Responsibilities

This Policy places responsibilities upon people at all levels within the Oberon Council.

**Staff** are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

All staff of Oberon Council have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of a person who has made a disclosure. Furthermore, they should protect and maintain the confidentiality of any person they know or suspect to have made disclosures.

**Nominated Disclosure Officers** are responsible for receiving, forwarding and/or acting upon disclosures made in accordance with this Policy. Nominated Disclosure Officers will:

- clearly explain to persons making disclosures what will happen in relation to the information received;
- when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace);
- put in writing and date any disclosures received orally (and have the person making the disclosure sign the document);

- deal with disclosures impartially;
- forward disclosures to the Disclosure Coordinator or the General Manager (as appropriate) for assessment;
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential; and
- support any person who has made a disclosure and protect them from victimisation, harassment (see section on ‘definitions’ following) or any other form of reprisal.

The **Disclosure Coordinator** has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Coordinator will:

- impartially assess each disclosure to determine:
  - whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
  - the appropriate action to be taken in relation to the disclosure, for example:
    - no action/decline;
    - appropriate person to take responsibility for dealing with the disclosure;
    - preliminary or informal investigation;
    - formal investigation;
    - prosecution or disciplinary action;
    - referral to an investigating authority for investigation or other appropriate action; or
    - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).
- consult with the General Manager (if appropriate);
- be responsible for carrying out or coordinating any internal investigation arising out of a disclosure, subject to the direction of the General Manager (if appropriate);
- report to the General Manager on the findings of any investigation and recommended remedial action;
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential;
- support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal; and
- report actual or suspected corrupt conduct to the General Manager in a timely manner to enable them to comply with the *ICAC Act*.

If appropriate, the **General Manager** may take on the role of the Disclosure Coordinator, and would follow the steps noted above.

The General Manager also has the following duties:

- receive reports from the Disclosure Coordinator on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;
- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential;
- have primary responsibility for protecting any person who has made a disclosure, or provided information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- report criminal offences to the Police and actual or suspected corrupt conduct to ICAC (under s.11 of the *ICAC Act*).

**The Mayor** may receive internal disclosures from any member of staff or any Councillor concerning the General Manager or a Councillor. The Mayor will:

- impartially assess each disclosure to determine:
  - whether the disclosure appears to be a protected disclosure within the meaning of the Act; (**Note:** In making this assessment the Mayor may seek guidance from the Disclosure Coordinator or General Manager (if appropriate), or an investigating authority (i.e. the Ombudsman, ICAC, or the Director-General of the DLG)).
  - the appropriate course of action to be taken in relation to the disclosure (in consultation with the Disclosure Coordinator or the General Manager, if appropriate), for example:
    - no action/decline;
    - the appropriate person to take responsibility for dealing with the disclosure;
    - preliminary or informal investigation;
    - formal investigation;
    - prosecution or disciplinary action;
    - referral to an investigating authority for investigation or other appropriate action; or
    - referral to the Police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
- refer disclosures to the General Manager for appropriate action if they concern the Council's administration (which falls within the day to day responsibilities of the General Manager); and

- take all necessary and reasonable steps to ensure that the identity of the person who has made a disclosure, and any person who is the subject of a disclosure, are kept confidential.

#### Alternative Avenue for Disclosures

An alternative avenue available to staff for making a protected disclosure under the Act (**other than** as set out in 'Reporting Under the Internal Reporting System'), is to make the disclosure to a journalist or a Member of Parliament.

Disclosures made to a journalist or a member of Parliament will **only** be protected **if certain conditions are met:**

- the person making the disclosure to a journalist or Member of Parliament must have already made substantially the same disclosure through the internal reporting system;
- the person making the disclosure must have reasonable grounds for believing that the disclosure is substantially true, and the disclosure must be substantially true;
- the investigating authority, or Council official to whom the matter was originally referred has:
  - decided not to investigate the matter; or
  - decided to investigate the matter but not completed the investigation within 6 months of the original disclosure; or
  - investigated the matter but not recommended any action in respect of the matter; or
  - failed to notify the person making the disclosure, within 6 months of the disclosure, of whether the matter is to be investigated.

#### Rights of a Person who is the Subject of a Disclosure

The rights of any person who is the subject of a disclosure will also be protected. In this regard:

- the confidentiality of the identity of any person who is the subject of a disclosure will be protected and maintained (where this is possible and reasonable);
- all disclosures will be assessed and acted on impartially, fairly and reasonably;
- responsible officers who receive a disclosure in accordance with this Policy are obliged to:
  - protect and maintain the confidentiality of the identity of any person who is the subject of a disclosure
  - assess the disclosure impartially; and
  - act fairly toward any person who is the subject of a disclosure;
- all disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of the person making the disclosure and the person who is the subject of the disclosure;

- where investigations or other enquires do not substantiate a disclosure, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of any person who is the subject of the disclosure will be kept confidential, unless the persons the subject of the disclosure requests otherwise;
- a person who is the subject of a disclosure (whether a protected disclosure under the Act or otherwise) which is investigated by or on behalf of Council, has the right to be:
  - informed as to the substance of the allegations;
  - informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
  - given a reasonable opportunity to put their case (either orally or in writing) to the people carrying out the investigation for or on behalf of Council,

before any decision/determination/report/memorandum/letter or the like is made;

- where the allegations in a disclosure have been investigated by or on behalf of Council, and the person who is the subject of any allegation is aware of the substance of the allegation, the substance of any adverse comment, or the fact of the investigation, they should be formally advised as to the outcome of the investigation, regardless of the outcome; and
- where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person who is the subject of the disclosure is entitled to the support of Council and its senior management (the nature of the support - i.e. what is reasonable and appropriate - would depend on the circumstances of the case, but could include a public statement of support or a letter setting out Council's views that the allegations were either clearly wrong or unsubstantiated).

#### Protection Available Under the Act

The Act provides protection by imposing penalties on a person who takes detrimental action against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. 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; or
- disciplinary proceeding.

In any such proceedings the person making the disclosure only needs to show that they made a protected disclosure and suffered detrimental action. It then lies on the defendant to prove that the detrimental action shown to have been taken was not substantially in reprisal for the person making the protected disclosure.

Any member of staff who believes that detrimental action is being taken against them substantially in reprisal for the making of an internal disclosure in accordance with this Policy

should immediately bring the allegation to the attention of the General Manager or the Mayor.

If a member of staff who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the Ombudsman or the ICAC.

If an external disclosure was made to an investigating authority, the authority will either deal with the allegation or provide advice and guidance to the person concerned.

The Act provides that a person is not subject to any liability for making a protected disclosure and no action, claim or demand may be taken or made of or against the person for making the disclosure. This provision has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure by a public official.

A person who has made a protected disclosure has a defence of absolute privilege in proceedings for defamation.

A person who has made a protected disclosure is taken not to have committed any offence against an Act which imposes a duty to maintain confidentiality with respect to any information disclosed.

#### Notification of Action Taken or Proposed

A person who makes a protected disclosure must be notified, within 6 months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure.

If a disclosure is made in accordance with this Policy, the Disclosure Coordinator is responsible for the 6 month notification to the person who made the disclosure, unless this responsibility has been retained by or allocated to another officer by the General Manager. However, if a disclosure is made to the Mayor under this Policy, the Mayor is responsible for the 6 month notification to the person who made the disclosure, unless he or she directs the General Manager, Disclosure Coordinator or another nominated officer to assume this responsibility.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken, or is proposed to be taken, in respect of the disclosure. **This should include a statement of the reasons for the decisions made or action taken in response to the disclosure.**

The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances listed in section 19(3)(a)-(c) of the Act (relating to disclosures to members of Parliament and journalists) apply, i.e. whether:

- a decision was made not to investigate the matter; or
- a decision was made to investigate the matter, but the investigation was not completed within 6 months of the original decision being made; or
- a decision was made to investigate the matter, but the investigation has not been completed within 6 months of the original decision being made; or
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- the matter was investigated but no recommendation was made for the taking of any action in respect of the matter.

One of the purposes of this is to give the person making the disclosure enough information to properly assess whether it is appropriate or warranted to make a disclosure to an MP or journalist.

### Definitions

**Corrupt conduct** is defined in Section 8 and 9 of the *Independent Commission Against Corruption Act* (ICAC Act). The definition used in the Act is intentionally quite broad - corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms. Taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

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

- contrary to law; or
- unreasonable, unjust, oppressive or improperly discriminatory; or
- based wholly or partly on improper motives (section 11).

The conduct covered by these terms includes:

#### **(1) contrary to law**

- a decision or action contrary to law
- a decision or action *ultra vires* (ie. the decision maker had no power to make the decision or to do the act)
- a decision or action contrary to lawful and reasonable orders from people or agencies with authority to make or give such orders
- a breach of natural justice or procedural fairness
- improperly exercising a delegated power (ie. a decision or action not authorised by a delegation or acting under the director of another)
- unauthorised disclosure of confidential information
- a decision or action induced or affected by fraud

**(2) unreasonable**

- a decision or action inconsistent with adopted guidelines or policies or with a decision or action which involved similar facts or circumstances not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (ie. irrational)
- an arbitrary, partial, unfair or inequitable decision or action
- a policy that is applied inflexibly and without regard to the merits of an individual case
- a decision or action that does not take into account all relevant considerations or takes into account irrelevant considerations
- serious delays in making a decision or taking action
- failing to give notice or rights
- giving wrong, inaccurate or misleading advice leading to detriment
- failing to apply the law
- failing to rectify identified mistakes, errors, oversights or improprieties
- a decision or action based on incorrect or misinterpreted information
- failing to properly investigate

**(3) unjust**

- a decision or action not justified by any evidence or that is unreasonable
- a partial, unfair, inequitable or unconscionable decision or action

**(4) oppressive**

- an unconscionable decision or action
- where the means used are not reasonable proportional to the ends to be achieved
- an abuse of power, intimidation or harassment

**(5) improperly discriminatory**

- the inconsistent application of a law, policy or practices when there is no reasonable, justifiable or appropriate reason to do so
- applying a distinction not authorised by law, or failing to make a distinction which is authorised or required by law

**(6) based wholly or partly on improper motives**

- a decision or action for a purpose other than that for which a power was conferred (ie. in order to achieve a particular outcome)
- a conflict of interest
- bad faith or dishonesty
- seeking or accepting gifts or benefits in connection with performance of official duties
- misusing public property, official services or facilities

**Serious and Substantial Waste** serious and substantial waste is not defined in the *Protected Disclosures Act*. The Auditor General provides the following working definition:

Serious and substantial waste refers to the uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

In addressing any complaint of serious and substantial waste, regard will be had to the nature and materiality of the waste.

The following delineation of the definition of serious and substantial waste may be of assistance to public officials and/or public authorities.

- **Absolute** - serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$200,000.
- **Systemic** - the waste indicates a pattern which results from a system weakness within the public authority.
- **Material** - the serious and substantial waste is/was material in terms of the public authority's expenditure or a particular item of expenditure or is/was material to such an extent so as to affect a public authority's capacity to perform its primary functions.
- **Material By Nature Not Amount** - the serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate (alternatively, this type of waste may constitute "*maladministration*" as defined in the *Protected Disclosures Act*).

**Note:** it is possible that in assessing the seriousness of waste or administrative conduct for the purposes of whether either is covered by the Act, differences in the size, budgets, responsibilities of agencies may be taken into account (i.e. what is serious for a small agency may not be so serious for a large agency)

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;

- too many staff being employed in a particular area, incurring costs which might otherwise have been avoided;
- staff being remunerated for skills that they do not have, but are required to have under the terms or conditions of their employment;
- programs not achieving their objectives and therefore the costs being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent the theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest price is not obtained for comparable goods or services.

**Harassment** includes unwelcome behaviour which makes an employee feel intimidated, offended or belittled in the workplace such as physical contact, persistent verbal abuse or threats, persistent disruption to an individual's work, workspace, equipment or interfering with their personal property.

1. Upon receipt of a complaint alleging, or appearing to allege, corrupt conduct, it shall immediately be referred to the General Manager (or the Mayor, if the allegation involves the General Manager).
2. The General Manager (or the Mayor) shall assess the complaint to determine whether or not it involves corrupt conduct.
3. If the General Manager (or Mayor) is convinced the complaint does not involve corrupt conduct it shall be dealt with in accordance with the practice involving administrative complaints, outlined above.
4. If the General Manager (or Mayor) considers that the complaint does involve corrupt conduct he/she shall then report the matter to ICAC (in doing so, the General Manager (or Mayor) may decide to contact the ICAC for guidance on how to proceed). The General Manager (or Mayor) shall also inform the Council. If the conduct involves a criminal offence, the matter shall also be reported to the Police.
5. The complainant shall be informed of the action taken.

#### **10. Competitive Neutrality complaints**

People wishing to make complaints about competitive neutrality should do so in writing, addressed to the General Manager.

1. All competitive neutrality complaints shall be referred to the Public Officer
2. The Public Officer shall inform the General Manager of the receipt of any such complaint and shall acknowledge receipt of the complaint in writing (7 days).

3. The Public Officer shall properly investigate all such complaints.
4. All members of Council's staff shall co-operate with the Public Officer in the investigation of any competitive neutrality complaint and shall provide such information as the Public Officer shall required.
5. Council shall provide the Public Officer with the resources required to assist in the investigation of such complaints.
6. A record of every complaint and all action taken in relation to it shall be kept in Council's records system.
7. After investigating the complaint, the Public Officer shall recommend appropriate action to the General Manager which may include, but is not limited to:
  - Providing more information to the complainant to enable a more accurate understanding of competition policy;
  - Investigating/reviewing Council's business activity if a legitimate complaint is made;
  - Changing Council's business practice where a complaint is justified.
8. The General Manager shall review the recommendation and may either accept the recommendation or institute some other course of action.
9. Within 30 days of Council receiving the competitive neutrality complaint, the complainant shall be notified of:
  - The result of the complaint; and
  - The alternative avenues of redress that are available, including Department of Local Government, Ombudsman and Independent Commission Against Corruption.

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Contact	Director Corporate Services
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