



# **PUBLIC INTEREST DISCLOSURES POLICY**

***PUBLIC INTEREST DISCLOSURES ACT 1994***

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## 1. Purpose and Scope of the Policy

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The purpose of the *Public Interest Disclosures Act 1994* (the PID Act) is to ensure that public officials who 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, serious and substantial waste, and government information contravention in the public sector. This is achieved by:

- Enhancing and augmenting established procedures for making disclosures concerning such matters
- Protecting people from reprisals that might otherwise be inflicted on them because of these disclosures
- Providing for disclosures to be properly investigated and dealt with

This document provides the procedures for the reporting and handling of public interest disclosures within Mosman Council and is supported by procedures based on the NSW Ombudsman's guidelines. It contains, in summary form, the crucial information staff and Councillors may need in relation to the following:

- Definitions of misconduct capable of being the subject of a public interest disclosure, namely for "corrupt conduct", "maladministration", "serious and substantial waste" or "government information contravention"
- What disclosures are protected and which are not protected under the PID Act
- Who are the "Nominated Disclosure Officers" within the Council and what their responsibilities are
- Who are the external investigation authorities that can receive a public interest disclosure
- Other provisions of the PID Act
- How a public interest disclosure will be dealt with by Council

This internal reporting policy should be read in conjunction with the Council's *Code of Conduct and Procedures*, *Complaints Handling Policy* and *Workplace Grievance Policy* as well as the other reference items listed in section 20 below.

In relation to reporting misconduct or ethical issues which do not fall within the parameters of the PID Act, public officials should follow the existing protocols for reporting matters to the Director Corporate Services or the General Manager.

Public officials who require more detailed information about the PID Act than is contained in this document should contact the General Manager or Director Corporate Services for advice.

Public officials reporting disclosures can play an important role in organisational accountability by bringing wrongdoing to the attention of those who can effect change. The protection of persons making disclosures is fundamental to the implementation of the Act and to organisational integrity. Legislative provisions are however insufficient on their own to either protect or encourage reporting. An organisation-wide commitment to protecting and respecting persons making disclosures and dealing properly with valid disclosures is essential.

Implementation of this internal reporting policy and system will, as a minimum:

- Confirm that the Council and the General Manager do not tolerate corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention.

- Confirm that the Council and the General Manager recognise the value and importance of individual staff contributions to high standards of administrative and management practices and strongly supports reporting of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention.
- State that while opportunities for reporting outside the Council are legal and valid, the Council is committed to developing a system for reporting within Council wherever possible so that management is given an opportunity to remediate a problem in the first instance.
- Commit Council to an effective response to public interest disclosures in a way that will protect the identity of the person making disclosures, wherever possible and appropriate.
- Establish procedures for protecting persons making disclosures against reprisals for making a disclosure.
- Supplement normal communication channels between supervisors and staff. It is not intended that all issues must be raised as public interest disclosures rather than an option to do so is clearly available.

## **2. Organisational Commitment**

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We have a total commitment to providing services to the community of Mosman in an ethical and accountable manner. Corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention and other wrongdoing will not be tolerated.

The provisions of the PID Act are intended to support accountability and ethical conduct by encouraging and facilitating the disclosure in the public interest of the above.

Mosman Council has a strong commitment to:

- creating a climate of trust, where individuals are comfortable and confident about reporting wrongdoing
- encouraging individuals to come forward if they have witnessed what they consider to be wrongdoing within the Council
- keeping the identity of the person disclosing wrongdoing confidential, wherever possible and appropriate
- protecting individuals who make disclosures from any adverse action motivated by their report
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it
- keeping the individual who makes a report informed of their progress and the outcome
- encouraging the reporting of wrongdoing within the Council, however respecting any decision to disclose wrongdoing outside the Council – provided that disclosure outside the council is made in accordance with the provisions of the PID Act
- ensuring managers and supervisors at all levels in the Council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing
- providing adequate resources, both financial and human, to:
  - encourage reports of wrongdoing
  - protect and support those who make them
  - provide training for key personnel
  - provide training about how to make reports and the benefits of internal reports to the council and the public interest generally
  - properly investigate allegations
  - properly manage any workplace issues that the allegations identify or that result from a report
  - appropriately address any identified problems
- reassess / review the policy every two years to ensure it is still relevant and effective

Public officials are encouraged to observe their duty to report all forms of wrongdoing and we will fully support any staff member or Councillor who wishes to utilise the PID Act to make disclosures

within the parameters of the Act.

Councillor Carolyn Corrigan  
Mayor

Dominic Johnson  
General Manager

Under the PID Act, the General Manager as the head of the public authority is responsible for ensuring that the:

- Council has a public interest disclosures policy
- public officials of the Council are aware of the contents of the policy and the protection under the PID Act for people who make public interest disclosures
- Council complies with the policy and the council's obligations under the PID Act
- policy delegates at least one staff member as being responsible for receiving public interest disclosures

### **3. Roles and Responsibilities of Public Officials**

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Under the PID Act public officials may make public interest disclosures. This includes public servants, Council employees, Councillors, MPs, and any other persons who have public official functions or act in a public official capacity.

This policy will apply to people who perform public official functions for Mosman Council and include:

- Council staff and councillors
- Permanent employee (either full-time or part-time)
- Temporary or casual employees
- Consultants
- Contractors
- Volunteers
- Accredited certifiers

Refer to s4A of the PID Act for further detail on the definition of a 'public official'.

A public official may make a public interest disclosure about a NSW agency (including a council) even if that person has never been or is no longer employed by that agency or council.

All public officials of Mosman Council are encouraged to report known and suspected incidences of corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention and other wrongdoing in accordance with this policy.

Public officials are reminded that this policy is just one of several relating to conduct, grievances and complaints – details of which appear in section 20 below and which can be accessed on Council's web site or intranet, as appropriate, and document management systems (ECM).

Public officials are also encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality. They must not victimise or harass anyone who has made a disclosure.

### Reports to Ombudsman by Council:

- Each public authority must provide a report under this section to the Ombudsman for each six month period
- The report is to provide statistical information on the public authority's compliance with its obligations under this Act during the six month period to which the report relates
- The report is to be provided to the Ombudsman within 30 days after the end of the six month period to which the report relates, or by such later time as the Ombudsman may approve
- In this section, "six month period" means the period of six months ending on 30 June and 31 December in any year

The roles and responsibilities of officers of Mosman Council who can receive a public interest disclosure are detailed in section 9 below.

## 4. What Should be Reported?

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

### **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 council official using their position in a way that is dishonest, biased or breaches public trust

For more information about corrupt conduct, see the NSW Ombudsman's guideline 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, visit the NSW Ombudsman's website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

### **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 council.

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 guideline on [what can be reported](#).

**d. Government information contravention**

A government information contravention is a failure to properly fulfill 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 guideline 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* (LG Act) relating to the management of pecuniary interests. These include obligations to lodge disclosure of interest 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 council staff member recommending a family member for a council 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 guideline 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 Mosman Council's policies. Council has a governance framework in place supported by a Governance Plan which provides



policy on such things as grievance and harassment handling – these are listed in section 20 below. You should refer to these policies for further information and guidance.

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

## **5. When will a Report be Protected?**

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Mosman Council will support any person that reports 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 Ombudsman Guidelines provides further detail on when a report will be protected).
- The report has to be made to one or more of the following:
  - a position nominated in this policy – refer section 9 below
  - the General Manager
  - one of the investigating authorities nominated in the PID Act – refer section 10 below

Reports by public officials 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

Reports made by public officials in complying with a statutory duty will also be protected. Examples include corrupt conduct notifications to ICAC and mandatory child protection notifications.

## **6. How to Make a Report**

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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 public official should keep a copy of this record.

The channels for making an internal public interest disclosure at Mosman Council are detailed in section 9 below.

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

## **7. Can a Report be Anonymous?**

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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 Mosman Council, it is best if you identify yourself.

This allows Council 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 Council do not know who made the report, it is very difficult to prevent any reprisal action.

The PID Act does not refer to anonymous disclosures, or impose any obligation on a person to identify themselves in a disclosure.

It seems likely that anonymous disclosures can be protected under the Act in the event that the identity of the person making the disclosure becomes known. Anyone claiming to be the author of an anonymous disclosure would be responsible for proving the claim.

A person's need for protection, and their rights and obligations, are the same whether they made their disclosure anonymously or identified themselves.

## **8. Maintaining Confidentiality**

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Mosman Council realises many public officials will want their report to remain confidential. This can help to prevent any action being taken against you for reporting wrongdoing.

Council is 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. Council will discuss with you whether it is possible to keep your report confidential.

If confidentiality cannot be maintained, Council 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 the staff of Mosman Council responsible to deal with it. This will include the disclosures coordinator and the General Manager. In the case of a report about the General Manager, you should only discuss your report with the disclosures coordinator and the Mayor.

Where your complaint is made under the Council's Code of Conduct and relates to the General Manager or a Councillor, you may be required to discuss it with a conduct reviewer.

The PID Act requires investigating authorities, councils and Council officers to whom public interest disclosures are made or referred, not to disclose information that might identify or tend to identify persons who make such a disclosure. The exceptions to the confidentiality 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, Council 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 name responsible officer. In all cases the person who made the disclosure will be consulted before such a decision is made.

It is essential that a person who has made a disclosure does not draw attention to themselves as reporters or to their disclosure and does not alert the subjects of a disclosure that a report has been made about them. It is very important that persons making disclosures themselves are mindful of the need for confidentiality.

The GIPA Act - Section 11 referencing Schedule 1 "Overriding Secrecy Laws", prohibits the disclosure or release of information which is prohibited under Section 22 of the PID Act 1994.

## 9. Who can receive a Report within Mosman Council?

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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 Mosman Council, 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 individual making the report to one of the positions listed below. The broader responsibilities of these positions are outlined in this section.

If your report involves a Councillor, you should make it to the Mayor or General Manager. If your report relates to the General Manager, you should make it to the Mayor.

The following positions are the only staff within Mosman Council who can receive a public interest disclosure:

- The Disclosure Coordinator: Director Corporate Services
- Nominated disclosure officers: Director Environment and Planning  
Director Community Development  
Manager Human Resources  
Manager Governance
- The General Manager
- The Mayor (if the disclosure concerns or involves the General Manager or a Councillor)

The specific roles of these officers in relation to the public interest disclosures system and the channels to be used for making public interest disclosures within Mosman Council are explained as below.

### Disclosures Coordinator

Council has nominated the Public Officer, being the Director Corporate Services, as the Disclosure Coordinator under this policy.

The Disclosure Coordinator has a central role in dealing with reports made by staff and Councillors. They receive them, assess them, and refer them to the people within or contracted by the Council to be dealt with appropriately. The Disclosure Coordinator will:

- Provide an alternative internal reporting channel to nominated disclosure officers and to the General Manager
- Impartially assess each disclosure to determine:
  - Whether the disclosure appears to be a public interest disclosure within the meaning of the Act
  - Where the disclosure concerns another agency and should therefore be referred to the principal officer of that agency
  - The appropriate action to be taken in relation to a disclosure that covers Mosman Council, 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 NSW Police Force (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct)

- Consult with the General Manager, about all disclosures received, other than where the disclosure concerns the General Manager
- Be responsible for either carrying out or coordinating any internal investigation arising out of a disclosure, subject to any relevant directions of the General Manager
- 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 (where this is practical and reasonable)
- Support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal
- Report actual or suspected corrupt conduct to the General Manager in a timely manner to enable that officer to comply with the ICAC Act

### **Nominated disclosures officers**

All Directors, Manager Human Resources and Manager Governance are designated Disclosure Officers and they are responsible for receiving, forwarding and/or acting upon disclosures made in accordance with the policy. The nominated disclosure officers will:

- Clearly explain to the person making a disclosure what will happen in relation to the information received
- When requested by a person wishing to make a disclosure, 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 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 (where this is practical and reasonable)
- Support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal

### **General Manager**

Disclosures may be made directly to the General Manager, rather than by way of the internal reporting system established under this policy. In addition to public interest disclosures about serious and substantial waste of local government money they can also receive disclosures about corrupt conduct, maladministration, breaches of pecuniary interest obligations under the LG Act and failure to exercise functions properly in accordance with the GIPA Act. In such circumstances, the General Manager will:

- Impartially assess each disclosure to determine:
  - Whether the disclosure appears to be a public interest disclosure within the meaning of the Act
  - Whether the disclosure concerns another agency and should therefore be referred to the principal officer of that agency
  - The appropriate action to be taken in relation to a disclosure that concerns the Council, 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
- Referral to the NSW Police Force (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct)
- 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 (where this is practical and reasonable)
- Have primary responsibility for protecting any person who has made a disclosure, or provided information to any internal or external investigation or 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
- Report criminal offences to the NSW Police Force and actual or suspected corrupt conduct to ICAC (under s.11 of the ICAC Act)

### **Mayor**

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

- Impartially assess each disclosure made to him/her about the General Manager or a Councillor to determine:
  - Whether the disclosure appears to be a public interest disclosure within the meaning of the Act
  - Note: In making this assessment the Mayor may seek guidance from the disclosure coordinator, General Manager (if appropriate) or an investigating authority (ie the Ombudsman, ICAC, the Office of Local Government or the Information Commissioner)
  - The appropriate course of action to be taken in relation to the disclosure (in consultation with 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
    - Referral to the NSW Police Force (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, within the day to day responsibilities of the General Manager
- 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 (where this is practical and reasonable)

Council staff who wish to make a public interest disclosure which involves a Councillor may do so to the Mayor, the General Manager, or an investigating authority (ie the Ombudsman, ICAC, the Office of Local Government or the Information Commissioner).

A Councillor who wishes to make a public interest disclosure which involves another Councillor may do so to the Mayor, the General Manager, or an investigating authority (ie the Ombudsman, ICAC, the Office of Local Government or the Information Commissioner).

If the Mayor wishes to make a public interest disclosure they may do so to the General Manager or an investigating authority (ie the Ombudsman, ICAC, the Office of Local Government or the Information Commissioner).

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## 10. Who can receive a Report outside of Mosman Council?

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Public officials are encouraged to report wrongdoing within Mosman Council, but internal reporting is not your only option. If you follow the guidance below, you can make a public interest disclosure to:

- An investigating authority. If your report is about both the General Manager and the Mayor, you may wish to consider making the report to an investigating authority.
- A Member of Parliament or a journalist, but only in limited circumstances outlined below.

### a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that public officials 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 Chief Executive of the Office of Local Government— for serious and substantial waste in local government (reports about serious and substantial waste in State government agencies should be made to the Auditor General)
- the Information Commissioner — for disclosures about a government information contravention
- the Pecuniary Interest and Disciplinary Tribunal – for local government pecuniary interest contraventions

Other investigating authorities are:

- the Police Integrity Commission (PIC) — for police misconduct
- the PIC Inspector — for disclosures about the PIC or its staff
- the ICAC Inspector — for disclosures about the ICAC or its staff

You should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided in section 19 below.

You should be aware that it is very likely the investigating authority will discuss the case with Mosman Council. Council 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. Council will also provide appropriate support and assistance to public officials, 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 General Manager
- a person nominated in this policy
- an investigating authority in accordance with the PID Act

Also, Mosman Council or the 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 Mosman Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Mosman Council, contact the disclosures coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided in section 19 below.

## **11. The Investigation Process**

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All disclosures will be promptly and thoroughly assessed. Decisions as to the most appropriate action to be taken on the disclosure will also be made promptly. The basis for these decisions will be properly documented.

If an internal investigation is to be conducted, terms of reference will be drawn up in order to clarify the key issues to be investigated. An investigation plan will be developed to ensure all relevant questions are addressed, the scale of the investigation is in proportion to the seriousness of the allegation(s) and sufficient resources are allocated.

An internal investigation will be authorised by the General Manager and the Disclosure Coordinator and an appropriate investigator appointed.

Strict confidentiality and security will be maintained during the investigative process. All information obtained will be secured to prevent unauthorised access.

All relevant witnesses will be interviewed and documents examined. Contemporaneous notes of all discussions, phone calls and interviews will be made. Where possible, interviews will be taped.

A report will be prepared when an investigation is complete. This report will include:

- The allegations
- A statement of all relevant facts and the evidence relied upon in reaching any conclusions
- The conclusions reached and their basis
- Recommendations to address any wrongdoing identified and any other matters arising during the investigation

The principles of procedural fairness (natural justice) will be observed. In particular, where adverse comment about a person is to be included in a report, the person affected will be given an opportunity to comment beforehand and any comments will be considered before the report is finalised.

A flowchart of Mosman Council's Internal Reporting System is annexed to this policy.

## **12. Feedback to Public Officials who Report Wrongdoing**

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The individual who reports 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 acknowledgment letter and a copy of this policy within 45 days after you have made your report. Mosman Council will attempt to get this information to you within two working days from the date you make your report. This does not apply where you have made a disclosure in the performance of your day to day functions or under statutory or legal obligations.

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 Mosman Council 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

Behaviour of all people involved in the PID process needs to adhere to Council's Code of Conduct. A breach of the Code of Conduct could result in disciplinary action.

### **13. Protection Against Reprisals**

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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. It may also be a breach of the Council's Code of Conduct.

Mosman Council 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**

Mosman Council will act to protect those who report wrongdoing from reprisals.

When a report is received, Council will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff or councillor 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, or in the case of an allegation of reprisal by the General Manager, to the Mayor.

All supervisors must report any suspicions they have that reprisal action against public officials is occurring, or any reports that are made to them, to the disclosures coordinator or the General Manager, or in the case of an allegation of reprisal by the General Manager, to the Mayor.

If the Disclosures Coordinator becomes aware of or reasonably suspects that reprisal action is or has been taken against a person who has made a disclosure, they will ensure that the matter is reported under the Council's Code of Conduct and dealt with in accordance with the Council's Code of Conduct procedures.

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. If the allegation of reprisal action is about the General Manager, the Mayor may issue similar directions. These may include:

- issuing warnings to those alleged to have taken reprisal action against the individual who made the disclosure
- relocating the member of staff who made the disclosure or the subject officer of the allegations 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 public official who made the disclosure agrees to it. The Disclosures Coordinator will make it clear to other public officials that this action was taken in consultation with the public official 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, Chief Executive of the Office of Local Government, Commissioner of Police, Police Integrity Commission, Attorney General, or the ICAC – depending on the type of wrongdoing you reported. Contact details for all these investigating authorities are provided in section 19 below.

**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 defense of absolute privilege in defamation.

#### **14. Support for those Reporting Wrongdoing**

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Mosman Council will make sure that public officials 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.

All public officials who report wrongdoing will be supported, protected and their disclosures appropriately acted upon. No public official who reports wrongdoing through appropriate channels will suffer disciplinary action for having done so.

Officers of Mosman Council who can receive an internal public interest disclosure will also support those who report wrongdoing. They are responsible for initiating and coordinating support, particularly to those who are suffering any form of reprisal. Details for support officers appear in section 9 of this policy.

All supervisors must notify the Disclosures Coordinator if they believe a public official is suffering any detrimental action as a result of disclosing wrongdoing.

#### **15. Sanctions for Making False or Misleading Disclosures**

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It is important that all public officials are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. It may also be a breach of the Council's Code of Conduct and may result in disciplinary action. In the case of Councillors, such disciplinary action may be taken under the misconduct provisions of the LG Act and may include suspension or disqualification from civic office.

#### **16. Support for the Subject of a Report**

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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 practical and appropriate)
- 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 (where this is practical and appropriate)
  - Assess the disclosure impartially
  - Act fairly towards any person who is the subject of a disclosure
- All disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining the confidentiality of both the identity of the person making the disclosure and any person who is the subject of a disclosure (where this is practical and reasonable)
- Where investigations or other inquiries do not substantiate a disclosure, the fact the investigation/ inquiry has been carried out, where practical the results of the investigation/inquiry, and the identity of any person who is the subject of a disclosure will be kept confidential, unless they request otherwise
- A person who is the subject of an internal disclosure (whether a public interest disclosure under the Act or otherwise) which is investigated by or on behalf of a Council, has the right to be:
  - Informed as to the substance of the allegations
  - told their rights and obligations under Council's policies and procedures
  - Information 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
- Given reasonable opportunity to put their case (either orally or in writing) to the people carrying out the investigation for or on behalf of the Council before any final decision/determination/report or the like is made
- Where the allegations in a disclosure have been investigated by or on behalf of a Council, and the person who is the subject of any allegations is aware of the substance of the allegations, 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
- Where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person who is the subject of a disclosure is entitled to the support of the Council and its senior management (the nature of that support - ie what is reasonable and appropriate would depend on the circumstances of the case, eg it could include a public statement of support or a letter setting out the Council's views that the allegations were either clearly wrong or unsubstantiated)

## 17. Related/Further Information

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Staff can access advice and guidance about the PID Act from the General Manager, Mosman Council Disclosures Coordinator (Director Corporate Services/Public Officer on phone 9978 4003) and the NSW Ombudsman (for general advice on phone 9286 1000) or its website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

## 18. Review

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This policy will be reviewed every two years.

## 19. Resources

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

### **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](mailto:icac@icac.nsw.gov.au)  
 Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
 Address: Level 21, 133 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](mailto:nswombo@ombo.nsw.gov.au)  
 Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
 Address: Level 24, 580 George Street, Sydney NSW 2000

### **For disclosures about serious and substantial waste in local government agencies:**

Office of Local Government  
 Phone: 02 4428 4100  
 Tel. typewriter (TTY): 02 4428 4209  
 Facsimile: 02 4428 4199  
 Email: [dlq@dlq.nsw.gov.au](mailto:dlq@dlq.nsw.gov.au)  
 Web: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)  
 Address: 5 O'Keefe Avenue, Nowra NSW 2541

### **For disclosures about breaches of the GIPA Act:**

Information Commissioner  
 Information and Privacy Commission NSW  
 Toll free: 1800 472 679  
 Facsimile: 02 8114 3756  
 Email: [ipcinfo@ipc.nsw.gov.au](mailto:ipcinfo@ipc.nsw.gov.au)  
 Web: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)  
 Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

### **For disclosures about serious and substantial waste:**

### **For disclosures about police misconduct:**

Auditor-General of the NSW Audit Office  
 Phone: 02 9275 7100  
 Facsimile: 02 9275 7200  
 Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
 Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)  
 Address: Level 15, 1 Margaret Street, Sydney  
 NSW 2000

Police Integrity Commission (PIC)  
 Phone: 02 9321 6700  
 Toll free: 1800 657 079  
 Facsimile: 02 9321 6799  
 Email: [contactus@pic.nsw.gov.au](mailto:contactus@pic.nsw.gov.au)  
 Web: [www.pic.nsw.gov.au](http://www.pic.nsw.gov.au)  
 Address: Level 3, 111 Elizabeth Street, Sydney  
 NSW 2000

## 20. Legislation and References

- Mosman Council references and relevant Codes and Policies:
  - Code of Conduct and Procedures
  - Complaints Handling Policy
  - Work Health and Safety Corporate Practice
  - Prevention of Fraud and Corrupt Conduct Policy
  - Workplace Grievance Policy
  - Workplace Harassment Policy
  - Privacy Management Plan
  - Disciplinary Policy
  - Dismissal Policy
  - Investigations Policy
  - Employee Assistance Program
  - Code of Meeting Practice
- External references:
  - *Public Interest Disclosures Act 1994*
  - *Ombudsman Act 1974*
  - *Independent Commission Against Corruption Act 1988*
  - *Local Government Act 1993*
  - *Government Information (Public Access) Act 2009*
  - NSW Ombudsman public interest disclosures guidelines (practice notes)

## 21. Contact

Enquiries regarding the document should be directed to Council's Manager Governance on 9978 4000.

## 22. Amendments

Date	Amendment	Reference
28 March 1995	Adopted	PF/87
17 September 1996	Amendments as adopted by Council	PF/270
6 June 2005	Re-written and adopted by Council	CS/50
28 November 2005	To increase the number of nominated disclosure officers to include all senior managers.	GM/44 See Item 10
7 September 2010	Re-written to bring it into line with NSW Ombudsman's Public Interest Disclosures Guidelines 6 <sup>th</sup> Edition 2009	CS/46
2 August 2011	Re-written to ensure consistency with amendments to <i>Public Interest Disclosures Act 1994</i> and the NSW Ombudsman's Model Policy and Guidelines.	CS/39

<b>Date</b>	<b>Amendment</b>	<b>Reference</b>
20 August 2012	Updated to include amendments to <i>Public Interest Disclosures Act 1994</i> effective 1 November 2011	DLG General Circular / 11-31 – 17 October 2011
3 June 2014	Reviewed and updated for consistency with amendments to the <i>Public Interest Disclosures Act 1994</i> on 3 April 2013 and the Local Government Model Internal Reporting Policy released by NSW Ombudsman in July 2013	

**ANNEXURE - Flow Chart of the Internal Reporting System**

