

Policy - Adoption - Fraud and Corruption Internal Reporting Policy

File No: S121629.035

Summary

Under Section 6D of the Public Interest Disclosures Act 1994 (PID Act), the City of Sydney (the City) is required to have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures (PIDs) and the City must have regard to the Ombudsman's guidelines (including any model policy) when formulating this policy. The City's Fraud and Corruption Internal Reporting Policy was developed to meet these requirements and is now due for review.

The new Fraud and Corruption Internal Reporting Policy has been prepared to align with the NSW Ombudsman's 2014 Model Internal Reporting Policy and to also incorporate key elements of new Commonwealth 'whistleblower' legislation.

The Fraud and Corruption Internal Reporting Policy was endorsed by the Executive on 19 February 2020 and the Audit Risk and Compliance Committee on 5 March 2020.

Recommendation

It is resolved that Council adopt the draft Fraud and Corruption Internal Reporting Policy, as shown at Attachment A to the subject report.

Attachments

Attachment A. Fraud and Corruption Internal Reporting Policy

Background

1. Under Section 6D of the Public Interest Disclosures Act 1994 (PID Act), the City is required to have a policy that provides for its procedures for receiving, assessing and dealing with public interest disclosures (PIDs) and the City must have regard to the Ombudsman's guidelines (including any model policy) when formulating this policy. The City's Fraud and Corruption Internal Reporting Policy was developed to meet these requirements and is now due for review.
2. Following a recent review, the new Fraud and Corruption Internal Reporting Policy has been prepared to align with the NSW Ombudsman's 2014 Model Internal Reporting Policy and to also incorporate key elements of new Commonwealth 'whistleblower' legislation.
3. The purpose of this policy is to ensure that there is consistency and transparency in the management of public interest disclosures, and to promote awareness of the protections available to councillors and employees who report wrongdoing. In particular, the policy documents the City's internal reporting system which enables councillors and employees to report wrongdoing without fear of reprisal. It sets out what can be reported, who to report wrongdoing to at the City and how reports of wrongdoing will be dealt with.
4. This review has been undertaken in conjunction with the preparation of a new internal Fraud and Corruption Control Plan. The Fraud and Corruption Control Plan underpins the City's commitment to fraud and corruption control. It details the City's intended action in implementing and monitoring fraud and corruption prevention, detection and response initiatives.

Commonwealth 'whistleblower' legislation

5. The Commonwealth Treasury Laws Amendment (Enhancing Whistle-blower Protections) Act 2019 introduced strengthened whistleblower protections in the Corporations Act 2001 and a range of other Commonwealth financial industry legislation. These new provisions apply not only to companies but also to any entity that is a 'trading or financial corporation' within the meaning of the Constitution. The NSW Ombudsman has advised that this may include a number of councils including the City.
6. Whilst the new legislation is primarily focussed on the finance industry, the NSW Ombudsman has raised concerns with the NSW Government about the concurrent application of the Commonwealth legislation to some NSW entities. Currently all NSW public authorities will continue to be subject to the PID Act, however, the NSW Ombudsman has advised that they may also be subject to the Commonwealth legislation and should update their policies to minimise the risk of 'inadvertent non-compliance' under this new regime until this matter is further clarified.

7. The NSW Ombudsman has advised that the principal area of risk for public authorities under the new Commonwealth whistleblower protections relates to the maintenance of confidentiality when reporting PIDs to external bodies. The general prohibition against the disclosure of the identity of a whistleblower under the Commonwealth legislation takes precedence over the reporting provisions under the NSW PID Act. The NSW Ombudsman's office has advised that there is a review of the PID Act under way, which should ensure that there is consistency between state and federal legislation. In the interim, the Policy addresses both jurisdictions and the City will work with stakeholders to resolve any issues that arise due to inconsistencies in NSW and Commonwealth legislation.

Key Implications

8. As noted above, the Policy has been reformatted to reflect the NSW Ombudsman's Model Internal Reporting Policy. The key changes to the content of the Policy are as set out below.
9. The revised policy provides that the City should endeavour to gain specific consent from an internal reporter prior to reporting to an investigating authority under the requirements of the PID Act and if that consent is not provided, the report to the investigating authority should not disclose the identity of the internal reporter. Further advice will be sought should this matter arise in practice.
10. Definitions of the five categories of serious misconduct, as established by the PID Act, are included in the section on 'What should be reported?' rather than as an appendix.
11. The revised policy refers to employees rather than staff and the definition of employee has been extended to include trainees and students on work placements, to reflect current City policy.
12. The policy now contains a detailed section on the roles and responsibilities of employees and councillors and, in particular the roles of key positions such as the CEO, the Disclosures Coordinator and Disclosures Officers.

Organisational Impact

13. The policy and the new Fraud and Corruption Control Plan will be the subject of staff communications and training following adoption and Governance staff will work across the organisation to ensure the policy and plan are being appropriately implemented.

Strategic Alignment - Sustainable Sydney 2030 Vision

14. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This policy is aligned with the following strategic directions and objectives:
 - (a) Direction 10 - Implementation through Effective Governance and Partnerships - The City's Fraud and Corruption Internal Reporting Policy addresses the requirements of the Public Interest Disclosures Act 1994 to have a policy that provides for the City's procedures for receiving, assessing and dealing with public interest disclosures.

Relevant Legislation

15. Corporations Act 2001 (Cth)
16. Government Information (Public Access) Act 2009 (NSW)
17. Independent Commission Against Corruption Act 1988 (NSW)
18. Local Government Act 1993 (NSW)
19. Public Interest Disclosures Act 1994 (NSW)
20. Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth)

Public Consultation

21. No public consultation is required in relation to this policy.
22. The policy was presented to the Audit Risk and Compliance Committee on 5 March 2020, with one minor change (the addition of Governance contact details) requested by that Committee. That change has been incorporated into the draft Policy.

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