

Adoption - Public Interest Disclosure Policy

File No: S121629.035

Summary

A new Public Interest Disclosures Act 2022 (NSW) commenced on 1 October 2023. The City of Sydney is required to have a public interest disclosure policy under section 42 of the Public Interest Disclosures Act 2022 that supports public officials who report suspected serious wrongdoing and specifies our procedures for receiving, assessing and dealing with public interest disclosures (PIDs).

The draft Public Interest Disclosure Policy is based on the NSW Ombudsman's recently released model policy.

This report seeks Council approval of the draft Public Interest Disclosure Policy and rescission of the previous policy dealing with public interest disclosures.

Recommendation

It is resolved that:

- (A) Council adopt the draft Public Interest Disclosure Policy, as shown at Attachment A to the subject report;
- (B) Council rescind the Internal Reporting Policy – Corrupt Conduct and Serious Wrongdoing, as shown at Attachment B to the subject report; and
- (C) authority be delegated to the Chief Executive Officer to make amendments to the Public Interest Disclosure Policy in order to update the contact information from time to time in Annexure A, correct any minor drafting errors and to finalise design and accessible formats for publication.

Attachments

Attachment A. Draft Public Interest Disclosure Policy

Attachment B. Internal Reporting Policy – Corrupt Conduct and Serious Wrongdoing

Background

1. The new Public Interest Disclosures Act 2022 (NSW) (PID Act) commenced on 1 October 2023. The City of Sydney is required to have a public interest disclosure policy under the PID Act. This will replace the current Internal Reporting Policy – Corrupt Conduct and Serious Wrongdoing, which was made under the previous legislation.
2. The draft Public Interest Disclosure Policy (PID Policy) is based on the NSW Ombudsman’s model public interest disclosure policy in accordance with section 45 of the PID Act.
3. Council approval of the draft Public Interest Disclosure Policy is sought at the first available Council meeting following the release of the NSW Ombudsman’s model public interest disclosure policy.

An overview of the new PID Act

4. The PID Act provides a framework to support a ‘speak up’ culture that encourages public officials to report wrongdoing by:
 - protecting those who speak up from detriment;
 - taking active steps to maintain confidentiality of reports; and
 - imposing duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

Protections for whistleblowers include:

- protections from detrimental action;
 - protections from civil and criminal liability for making a disclosure; and
 - the protection of information that may identify the maker of a PID.
5. The new legislation protects a broader range of people, including those who make PIDs, investigators involved in the investigation of PIDs, as well as witnesses in investigations, all of whom could be at risk of detrimental action.
 6. Public officials will have multiple pathways to report serious wrongdoing. This includes reporting to a nominated disclosure officer, their manager and integrity agencies. The new PID Act has increased the number of required disclosure officers.
 7. Public officials at the City of Sydney include:
 - Councillors, Council committee members and members of wholly advisory committees.
 - City of Sydney workers including all City of Sydney employees including permanent (whether full-time or part time), temporary and casual employees and apprentices, together with agency contractors (labour hire), work experience students and volunteers.

- Any person providing services or exercising functions on behalf of the City of Sydney, including contractors and subcontractors.
 - Any employee, partner or officer of an entity that provides services, under contract, subcontract or other arrangement, on behalf of the City of Sydney or exercises City of Sydney functions, and are involved in providing those services or exercising those functions.
8. The PID Act outlines what agencies are expected to do with a report when it is received and how it must be dealt with, including processes for maintaining confidentiality, welfare support mechanisms and procedures for assessing the risk of detrimental action.

Key Implications

Disclosure officers and managers

9. The number of disclosure officers has been significantly widened under the new PID Act to also include the most senior ongoing employee who ordinarily works at a permanently maintained work site where more than one employee works. The purpose of this is to ensure all public officials have access to someone who is appropriately authorised and trained to receive public interest disclosures.
10. Governance staff have consulted with the NSW Ombudsman and City of Sydney managers and prepared an updated disclosure officer list to meet the requirements of the new PID Act, which is attached to the PID Policy as Annexure A. Detailed contact information will be provided on a separately maintained list on the City of Sydney's intranet to ensure accuracy of information can be maintained in a timely manner. Governance staff will review and update this list on a regular basis for currency and coordinate the distribution of hard copy work site disclosure officer lists and guidance on our PID Policy.
11. Managers have obligations under the PID Act including receiving and passing on public interest disclosures from staff they supervise. At the City of Sydney, managers are advised to pass on reports they receive to the disclosure coordinator, Director Legal & Governance.

Contractors providing services on behalf of the City of Sydney

12. The new expanded definition of public official includes any person providing services or exercising functions on behalf of the City of Sydney, including contractors and subcontractors.

Awareness and training

13. All public officials associated with the City of Sydney must be made aware of:
- how to make a voluntary public interest disclosure;
 - our public interest disclosure policy; and
 - the fact a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another act or law.

14. Section 48 of the PID Act requires all disclosure officers and managers to be trained. This training must be provided within a reasonable time after they become associated with the City of Sydney and no later than the day that is the later of:
 - 6 months after the commencement of the PID Act (1 April 2024); or
 - the day that is 3 months after the person commences in the relevant role.
15. Arrangements are being made for this training to take place within the required timeframes.

Strategic Alignment - Sustainable Sydney 2030-2050 Continuing the Vision

16. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. 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 direction and objective:
 - (a) Direction 1 - Responsible governance and stewardship - The City's Public Interest Disclosure Policy addresses the requirements of the Public Interest Disclosures Act 2022 to have a policy that provides for the City's procedures for receiving, assessing and dealing with public interest disclosures.

Organisational Impact

17. The policy will be the subject of staff communications and training following adoption, the contact details for disclosure officers will be displayed across work sites and Governance staff will continue to work across the organisation to ensure the policy is being appropriately implemented.

Relevant Legislation

18. Public Interest Disclosures Act 2022 (NSW).

Public Consultation

19. Governance staff consulted with the NSW Ombudsman on the development and implementation of this policy. No public consultation is required in relation to this policy.

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