

## 10.9 Policy (Review) - Protected Disclosures Policy

**POLICY NAME:** DRAFT REVIEW  
PROTECTED DISCLOSURES

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### TABLE OF CONTENTS

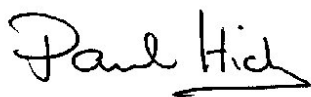
Commitment To An Ethical And Accountable Culture.....	1
Definitions.....	2
Application Of Policy.....	2
Policy.....	3
1. Purpose Of The Policy.....	3
2. Object Of The <b>Public Interest Disclosures Act 1994</b> .....	3
3. What Disclosures Are Protected?.....	3
4. Anonymous Reports.....	7
5. Sanctions For Making False Or Vexatious Allegations.....	8
6. To Whom And How Whistleblowing Concerns Can Be Directed Internally.....	8
7. To Whom, How And When Whistleblowing Concerns Can Be Directed Externally.....	11
8. Confidentiality.....	12
9. Commitment To Protect Whistleblowers.....	13
10. Assessment Of The Risk Of Reprisal.....	14
11. Procedures For Responding To Reprisals.....	14
12. The Rights Of Persons The Subject Of A Disclosure.....	15
13. The Investigative Process.....	16
14. Guarantee Of Feedback.....	16
15. Policy Review.....	17

**COMMITMENT TO AN ETHICAL AND ACCOUNTABLE CULTURE**

The Ballina Shire Council does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

The Ballina Shire Council is committed to the aims and objectives of the **Public Interest Disclosures Act 1994**. It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

The Ballina Shire 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.



**General Manager**

**DEFINITIONS**

In the Protected Disclosures Policy the following definitions apply:

<b>Council</b>	Ballina Shire Council
<b>DLG</b>	Department of Local Government
<b>The Ombudsman</b>	NSW Ombudsman
<b>ICAC</b>	Independent Commission Against Corruption
<b>Policy</b>	Protected Disclosures
<b>ICAC Act</b>	Independent Commission Against Corruption Act 1988
<b>The Act</b>	Public Interest Disclosures Act 1994
<b>GIPA Act</b>	Government Information (Public Access) Act 2009

**APPLICATION OF POLICY**

The Protected Disclosures Policy applies to:

- Council employees
- Councillors

As a minimum this policy should be read in conjunction with Council's:

- Code of Conduct
- Corruption Prevention and Fraud Control Policy
- Complaints Management Policy
- Interaction between Councillors and Staff Policy

The Protected Disclosures Policy has been prepared in reference to the following Acts and publications:

- Independent Commission Against Corruption Act 1988
- Public Interest Disclosures Act 1994
- Government Information (Public Access) Act 2009
- NSW Ombudsman - Public Interest Disclosures Guidelines.

## POLICY

### 1. Purpose of the policy

The purpose of the Protected Disclosures Policy is to provide a clear set of guidelines that ensure people are fully informed of their responsibilities in respect to Protected Disclosures and the actions that must be followed when a Protected Disclosure is made.

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

Protected disclosures can play an important role in organisational accountability by bringing wrongdoing to the attention of those who can effect change. The protection of whistleblowers is fundamental to the implementation of the **Public Interest Disclosures Act 1994** and the integrity of Council. Council wide commitment to protect and respect whistleblowers and properly deal with valid disclosures is essential.

This 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.

### 2. Object of the **Public Interest Disclosures Act 1994**

The **Public Interest Disclosures Act 1994** was proclaimed and commenced operation on 3 March 2011. The purpose of the Act 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. 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, and
- providing for those disclosures to be properly investigated and dealt with.

### 3. What disclosures are protected?

#### Who can make a protected disclosure?

Under the **Public Interest Disclosures Act 1994** public officials may make protected 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.

A public official may make a protected 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.

#### **About what can a protected disclosure be made?**

To be protected under the Act, a disclosure must 'show or tend to show' 'corrupt conduct' (s.10), 'maladministration' (s.11) or 'serious and substantial waste of public money' (s.12 and s.12B).

##### ***Corrupt conduct***

Corrupt conduct is defined in s.8 and 9 of the 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***

Maladministration is defined in the **Public Interest Disclosures Act 1994** 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 (s. 11).

The conduct covered by these terms includes:

- **contrary to law**, e.g.:
  - a decision or action contrary to law
  - a decision or action ultra vires (i.e. 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 (e.g. a decision or action not authorised by a delegation or acting under the direction of another)
  - unauthorised disclosure of confidential information
  - a decision or action induced or affected by fraud
- **unreasonable**, e.g.:
  - a decision or action inconsistent with adopted guidelines or policies or with a decision or action which involves similar facts or circumstances

- not justified by any evidence, or so unreasonable that no reasonable person could so decide or act (e.g. 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 that takes into account irrelevant considerations
  - serious delays in making a decision or taking action
  - failing to give notice of 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
- **unjust**, e.g.:
    - a decision or action not justified by any evidence or that is unreasonable
    - a partial, unfair, inequitable or unconscionable decision or action
- **oppressive**, e.g.:
    - an unconscionable decision or action
    - where the means used are not reasonably proportional to the ends to be achieved
    - an abuse of power, intimidation or harassment
- **improperly discriminatory**, e.g.:
    - 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
- **based wholly or partly on improper motives**, e.g.:
    - a decision or action for a purpose other than that for which a power was conferred (i.e. 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**

The term serious and substantial waste is not defined in the **Public Interest Disclosures Act 1994**. 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 public authorities.

**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, ie it may be improper or inappropriate (alternatively, this type of waste may constitute 'maladministration' as defined in the **Public Interest Disclosures Act 1994**).

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 (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.

**Disclosures must show or tend to show the conduct alleged?**

A disclosure must be more than a mere allegation made without substantiation. A disclosure must include evidence that if substantiated would amount to the alleged conduct, or at least tend to do so.

**What disclosures are not protected?**

Protection is not available for disclosures which:

- are made frivolously or vexatiously
- primarily question the merits of government policy (including any formal policy adopted by resolution of the governing body of a council, ie the elected councillors)
- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

**In what circumstances is a disclosure protected?**

Disclosures that show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money are protected under the Act if they are made:

- to a person or position nominated in this internal reporting policy, or
- to the general manager of Ballina Shire Council, or
- to the mayor (if the disclosure concerns or involves the general manager or a councillor)
- to one of the investigating authorities nominated in the Act.

**Further advice**

Staff who are contemplating making a protected disclosure can obtain further information about the requirements of the Act from one or more of the following:

- **Council's Protected Disclosures Coordinator**  
*Manager, Risk and Human Resources*
- **The NSW Ombudsman**  
*The Protected Disclosure Guidelines, 6th Edition, NSW Ombudsman*  
Available on website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)
- **Independent Commission Against Corruption (ICAC)**  
*ICAC does not provide legal advice and, if sufficient details about a matter are provided during an inquiry, the ICAC will register the inquiry as a complaint or protected disclosure as appropriate.*
- **The Department of Local Government (DLG)**  
*In relation to serious and substantial waste.*

**4. Anonymous reports**

The **Public Interest Disclosures Act 1994** does not refer to anonymous disclosures, or impose any obligation on a person to identify themselves in a disclosure.



It seems likely that anonymous disclosure 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.

#### **5. Sanctions for making false or vexatious allegations**

It is a criminal offence to wilfully make a false or misleading statement when making a disclosure (s.28 of the **Public Interest Disclosures Act 1994**).

While there are no criminal sanctions for making a disclosure frivolously or vexatiously, such a disclosure would not be protected under the Act. Such a decision can only be made by the relevant investigating authority or the general manager. The whistleblower will be given an opportunity to be heard (either in person or in writing) before such a decision is made final.

#### **6. To whom and how whistleblowing concerns can be directed internally**

##### **To whom should an internal disclosure be made?**

The people or positions within Council to whom internal disclosures can be made in accordance with the Act and this policy are:

- the disclosures coordinator (Manager Risk and Human Resources)
- the general manager
- the mayor

##### **How can disclosures be made?**

Disclosures can be made in writing or orally (although if made orally the recipient should make a comprehensive record of the disclosure and request that the whistleblower sign this record).

Where a person contemplating making a disclosure is concerned about being seen to approach the person to whom they are intending to disclose, they can request a meeting in a discreet location away from the workplace.

##### **Roles and responsibilities of staff of Ballina Shire Council**

All staff of Ballina Shire Council are encouraged to report known and suspected incidences of corrupt conduct, maladministration or serious and substantial was in accordance with this policy.

All staff of Ballina Shire Council also have an important role to play in supporting those who have made legitimate disclosures. They should protect and maintain the confidentiality of any person they know or suspect to have made disclosures. They must not in any way victimise or harass any person who has made a disclosure.

The following officers have additional and specific roles in relation to protected disclosures.

#### **Disclosures Coordinator**

The disclosures coordinator is responsible for receiving, forwarding and/or acting upon disclosures made in accordance with the policy. The disclosure coordinator 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
- 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), and
- support any person who has made a disclosure and protect them from victimisation, harassment or any other form of reprisal.

The disclosures 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
  - 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 Ballina Shire 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 a 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.

### **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 such circumstances, the general manager will:

- impartially assess each disclosure to determine:
  - whether the disclosure appears to be a protected 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, or
    - 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, and
- 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 protected 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 or the Director-General of the DLG).*
  - 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, or
    - 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 protected disclosure which involves a councillor may do so to the Mayor, the general manager, or an investigating authority (ie the Ombudsman, ICAC or Director-General of the DLG).

A councillor who wishes to make a protected disclosure which involves another councillor may do so to the Mayor, the general manager, or an investigating authority (ie the Ombudsman, ICAC or Director-General of the DLG).

If the Mayor wishes to make a protected disclosure they may do so to the general manager or an investigating authority (ie the Ombudsman, ICAC or Director-General of the DLG).

### **7. To whom, how and when whistleblowing concerns can be directed externally**

It is not a requirement under the Act that a whistleblower has to make an internal disclosure. A whistleblower can opt to make his or her disclosure to an investigating authority, either in the first instance or at any point afterwards.

### Investigating authorities

The investigating authorities named in the Act that are relevant to local government are:

- the Ombudsman — concerning maladministration
- the Independent Commission Against Corruption (ICAC) — concerning corrupt conduct
- The ICAC Inspector — concerning disclosures about the ICAC or its staff
- the Director-General of the Department of Local Government (DLG) — concerning serious and substantial waste in local government agencies

Contact the relevant investigating agency for advice on how to make a disclosure to that agency.

### Disclosures to members of Parliament or to journalists

In certain **very limited** circumstances, disclosures to an MP or a journalist may be protected.

The person making the disclosure to a journalist or an MP must have already made substantially the same disclosure to the general manager, to a person nominated in this internal reporting policy or to an investigating authority in accordance with the Act.

The council officer or investigating authority to whom the matter was originally disclosed must have:

- decided not to investigate the matter, or
- decided to investigate the matter but not completed the investigation within six months of the original disclosure, or
- investigated the matter but not recommended any action as a result, or
- failed to notify the person making the disclosure, within six months of the disclosure being made, of whether the matter is to be investigated.

The person making the disclosure to an MP or journalist must have reasonable grounds for believing that the disclosure is substantially true — **and the disclosure must be substantially true.**

## 8. Confidentiality

The **Public Interest Disclosures Act 1994** requires investigating authorities, councils and council officers to whom protected 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 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 confidentiality or the requirements of natural justice, effective investigation and public interest, this may be sought from the Ombudsman or another investigating authority. For further information see C 1.5. of the Ombudsman Guidelines: Protection of Whistleblowers Practical Alternatives to Confidentiality.*

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 whistleblowers themselves are mindful of the need for confidentiality.

Under the Government Information (Public Access) Act 2009, there is an overriding public interest against the disclosure of information relating to a protected disclosure within the meaning of the Act.

## **9. Commitment to protect whistleblowers**

The general manager and Ballina Shire Council are committed to protecting and respecting any member of staff who makes a bona fide disclosure, not just those who make disclosures covered by the **Public Interest Disclosures Act 1994**.

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

### **Protection against reprisals**

The **Public Interest Disclosures Act 1994** 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 proceedings.

In any such proceedings the whistleblower 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 against the whistleblower 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 allegations to the

attention of the Protected Disclosures Coordinator, 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, the ICAC or the Director-General of the DLG, as appropriate.

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.

#### **Protection against actions**

The **Public Interest Disclosures Act 1994** 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.

#### **10. Assessment of the risk of reprisal**

The Manager Risk and Human Resources will discuss with the whistleblower the likelihood of their identity becoming known and the possibility of any reprisal action.

An agreed approach to deal with either or both of these situations will be developed and documented at the time of the initial disclosure or at any time where it becomes necessary following the disclosure.

The whistleblower will be given advice about who to contact if they believe they, their colleagues or relatives are the subject of reprisal action. Advice will also be given about what level of information it will be necessary for them to provide.

#### **11. Procedures for responding to reprisals**

If it has been assessed that there is a high likelihood of reprisals against the whistleblower, an assessment may be made of their organisational position/work performance at the point in time of their reporting. This will provide a benchmark against which alleged reprisals can be measured.

Allegations of actions taken in reprisal for the making of a disclosure will be promptly and thoroughly investigated. Appropriate disciplinary or criminal action will be taken against anyone proven to have taken any action in reprisal for the making of a disclosure.

If it becomes necessary, consideration will be given to relocating the whistleblower within Ballina Shire Council, temporarily transferring him or her to an equivalent

position in another agency or council, or assisting him or her to obtain appropriate alternative employment. This will only be done with the agreement of the whistleblower and the general manager will make it clear to other staff that this action was taken at the whistleblower's request, with management support and that it is not a punishment.

## 12. The rights of persons 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 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, and
  - 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 whistleblower 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 protected 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
  - 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, and
  - 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 councilbefore 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, and
- 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 — i.e. 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).

### **13. The investigative process**

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/or disclosure coordinator and an appropriate investigator appointed.

Strict security will be maintained during the investigative process. All information obtained will be locked away 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, and
- 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.

### **14. Guarantee of feedback**

Any member of staff who makes a bona fide disclosure of wrongdoing is entitled to feedback. This feedback will include:

At the outset:

- acknowledgment of receipt of the disclosure
- the timeframe within which they will be advised of action to be taken, and
- the name and contact details of a person who will be able to advise them on what is happening.

After a decision is made as to how their disclosures will be dealt with:

- the action that will be taken on their disclosure, and
- likely timeframes for any investigation.

During the course of any investigation:

- the ongoing nature of the investigation
- progress and reasons for any delay, and
- advance warning if their identity is to be disclosed.

At the completion of the investigation:

- sufficient information to demonstrate that adequate and appropriate action was taken and/or is proposed in respect of their disclosure and any systemic issue brought to light, and
- advice as to whether s/he will be involved in any further matters, eg disciplinary or criminal proceedings.

### **15. Policy Review**

This policy will be reviewed at least every four years to ensure that it meets the objects of the legislation and facilitates the making of disclosures.