



# PUBLIC INTEREST DISCLOSURES INTERNAL REPORTING POLICY

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(Public Interest Disclosures Act 1994)

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# INTERNAL REPORTING POLICY

## *PUBLIC INTEREST DISCLOSURES ACT 1994*

### 1. Support for persons who make disclosures

The New England Joint Organisation does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

The New England Joint Organisation (the organisation) is committed to the aims and objectives of the Public Interest Disclosures Act. The organisation recognises the value and importance of contributions of members to enhance administrative and management practices and strongly supports disclosures being made by members who disclose corrupt conduct, maladministration, or serious substantial waste of public money.

The New England Joint Organisation will take all reasonable steps to provide protection to members who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

### 2. Purpose of the policy

To be protected by the Act, a disclosure must be made by a board member to:

- an investigating authority;
- the Chairperson; or
- to the Executive Officer/Public Officer of the New England Joint Organisation in accordance with the Internal Reporting System established under this Policy for the purposes of the *Public Interest Disclosures Act*.

This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by New England Joint Organisation and members. The system enables such internal disclosures to be made to the Executive Officer/Public Officer, or the Chairperson, as an alternative to the Executive Officer/Public Officer.

This policy is designed to complement normal communication channels between the Executive Officer/Public Officer and board members. Board Members are encouraged to continue to raise appropriate matters at any time with the Executive Officer/Public Officer, but as an alternative have the option of making a protected disclosure in accordance with this policy.

### 3. Object of the Act

The *Public Interest Disclosures Act 1994* commenced operation on 1 March 1995. The purpose of the Act is to ensure that public officials 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 persons from reprisals that might otherwise be inflicted on them because of these disclosures; and
- providing for those disclosures to be properly investigated and dealt with.

## 4. Definitions

Three key concepts in the internal reporting system are “*corrupt conduct*”, “*maladministration*” and “*serious and substantial waste of public money*”. Definitions of these concepts are outlined below.

### (1) *Corrupt conduct*

“*Corrupt conduct*” is defined in the *Independent Commission Against Corruption Act 1988* (section 8 and 9). 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, i.e. taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, election bribery and illegal gambling are some examples.

### (2) *Maladministration*

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

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

### (3) *Serious and substantial waste*

The term “*serious and substantial waste*” is not defined in the *Public Interest Disclosures Act*. The Auditor-General provides 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.*

#### **Types:**

##### **Absolute:**

*serious and substantial waste might be regarded in absolute terms where the waste is regarded as significant, for example \$500,000.*

##### **Systemic:**

*the waste indicates a pattern which results from a system weakness within the public authority.*

##### **Material:**

*the serious and substantial waste is/was material in terms of the public authority’s expenditure or a particular item of expenditure or is/was material to such an extent so as to effect a public authority’s capacity to perform its primary functions.*

##### **Materials By Nature Not Amount:**

*the serious and substantial waste may not be material in financial terms but may be significant by nature. That is it may be improper or inappropriate [alternatively, this type of waste may constitute “maladministration” as defined in the Public Interest Disclosures Act].*

Waste can take many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- personnel being remunerated for skills that they do not have, but are required to have under the terms and 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 purposes; and
- purchasing practices where the lowest price is not obtained for comparable goods or services without adequate and appropriate justification.

## 5. What disclosures are protected under the Act

(1) What disclosures are protected?

Disclosures are protected under the Act if they:

- (a) are made:
- in accordance with this Internal Reporting Policy; or
  - to the Executive Officer/Public Officer; or
  - to one of the investigating authorities nominated in the Act: AND
- (b) show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money by the New England Joint Organisation or any of its members; AND
- (c) are made voluntarily.

(2) What disclosures are not protected?

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

Protection is also not available for disclosures which:

- are made frivolously or vexatiously;
- primarily question the merits of government policy; or

- are made solely or substantially with the motive of avoiding dismissal or other disciplinary action.

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

## 6. Reporting under the internal reporting system

The persons or positions to whom internal disclosures can be made in accordance with the Internal Reporting System (as shown on the attached diagram) are:

- The Executive Officer/Public Officer, New England Joint Organisation, C/- Inverell Shire Council, 144 Otho Street, Inverell T: 02 67288 206.
- the Chairperson (if the disclosure concerns or involves the Executive Officer/Public Officer).

Where persons contemplating making a disclosure are concerned about publicly approaching the Executive Officer/Public Officer or Chairperson, they can contact the relevant official and request a meeting in a discreet location away from the workplace.

Notes:

- (1) A board member who wishes to make a protected disclosure which involves another board member may do so to the Chairperson, the Executive Officer/Public Officer, or an investigating authority (ie the ICAC, Ombudsman).
- (2) If the Chairperson wishes to make a protected disclosure he or she may do so to the Executive Officer/Public Officer or an investigating authority (ie the ICAC or Ombudsman).
- (3) The Office of Local Government is not an investigating authority under the Act, however, the ICAC, the Ombudsman or a Joint Organisation may refer a protected disclosure to the Office of Local Government for investigation, and in such a circumstance any protection conferred under the Act is maintained.

## 7. Roles and responsibilities

This Internal Reporting Policy places responsibilities upon people at all levels within the New England Joint Organisation.

- (1) Board Members

Board Members are encouraged to report known or suspected incidents of corrupt conduct, maladministration or serious and substantial waste in accordance with this Policy.

Board Members of the New England Joint Organisation have an important role to play in supporting those who have made legitimate disclosures. They must abstain from any activity that is or could be perceived to be victimisation or harassment of persons who make protected disclosures. Further, they should protect/maintain the confidentiality of persons they know or suspect to have made disclosures.

- (2) The Executive Officer/Public Officer

The Executive Officer/Public Officer is responsible for receiving, and or acting upon disclosures in accordance with the Policy, the Executive Officer/Public Officer will:

- a) clearly explain to the person making disclosures what will happen in relation to the information received;
- b) when requested, make arrangements to ensure that disclosures can be made privately and discreetly (if necessary away from the workplace);

- c) reduce to writing and date any disclosures received orally (and have the person making the disclosure sign the document);
- d) impartially assess each disclosure to determine:
  - I. whether the disclosure appears to be a protected disclosure within the meaning of the Act;
  - II. the appropriate action to be taken in relation to the disclosure, for example:
    - no action/decline;
    - the appropriate person to take responsibility for dealing with the disclosure;
    - preliminary or information investigation;
    - formal investigation;
    - prosecution or disciplinary action;
    - referral to an investigating authority for investigation or other appropriate action; or
    - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
    - At the discretion of the person(s) conducting the investigation, that the person who is the subject of the investigation be advised that a disclosure has been received
- e) receive reports on the findings of any investigation and any recommendations for remedial action, and determine what action should be taken;
- f) take all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the persons the subject of disclosures, are kept confidential;
- g) have primary responsibility for protecting the person who makes a disclosure, or provides information to any internal or external investigation of a disclosure, from victimisation, harassment or any other form of reprisal;
- h) be responsible for implementing organisational reform identified as necessary following investigation of a disclosure; and
- i) report criminal offences to the Police and actual or suspected corrupt conduct to ICAC (under s.11 of the *ICAC Act*).

(3) The Chairperson

The Chairperson may receive internal disclosures from any board member concerning the Executive Officer/Public Officer or a board member. The Chairperson will:

- (a) impartially assess each disclosure made to him/her about the Executive Officer/Public Officer or a board member to determine:
  - I. whether the disclosure appears to be a protected disclosure within the meaning of the Act;

Note: In making this assessment the Chairperson may seek guidance from: the Executive Officer/Public Officer (if appropriate); an investigating authority (ie the ICAC, or Ombudsman); or the Office of Local Government.

- II. the appropriate course of action to be taken in relation to the disclosure (in consultation with the Executive Officer/Public Officer, if appropriate), for example:
  - no action/decline;
  - the appropriate person to take responsibility for dealing with the disclosure;
  - preliminary or informal investigation;



- formal investigation;
  - prosecution or disciplinary action;
  - referral to an investigating authority for investigation or other appropriate action; or
  - referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct);
- (b) refer disclosures to the Executive Officer/Public Officer (if appropriate) for appropriate action if they concern the Organisation's administration, within the day to day responsibilities of the Executive Officer/Public Officer;
- (c) protect/maintain the confidentiality of:
- I. the identity of person who make disclosures (unless any of the criteria in section 22 of the Act apply); and
  - II. the identity of persons the subject of the disclosures (unless disclosure is required to enable the allegations to be investigated or otherwise appropriately dealt with).

## 8. Alternative avenues for disclosures

Alternative avenues available to board members for making a protected disclosure under the Act (other than by means of the internal reporting system created under this Policy), are as follows:

- to one of the investigating authorities under the act (eg. the ICAC and Ombudsman).

Notes:

- (1) While the Act includes the Auditor General as an external investigating authority, the Auditor General's jurisdiction relates to State Government authorities and not to local councils.
- (2) The Office of Local Government is not an investigating authority under the Act, however, the ICAC, the Ombudsman or a Joint Organisation may refer a protected disclosure to the Office of Local Government for investigation, and in such a circumstance any protection conferred under the Act is maintained.

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

- 1) the person making the disclosure to a journalist or member of Parliament must have already made substantially the same disclosure through the internal reporting system, or to the Executive Officer/Public Officer or an investigating authority in accordance with the Act;
- 2) the information provided in the disclosure is substantially true; and
- 3) the investigating authority, public authority or officer to whom the matter was originally referred has:
  - I. decided not to investigate the matter; or
  - II. decided to investigate the matter but not completed the investigation within 6 months of the original disclosure; or
  - III. investigated the matter but not recommended any action in respect of the matter; or
  - IV. failed to notify the person making the disclosure, within 6 months of the disclosure, of whether the matter is to be investigated.

## 9. Rights of persons the subject of disclosures

The right of persons the subject of disclosures will also be protected. In this regard:

- 1) the confidentiality of the identity of person the subject of disclosures will be protected/maintained (where this is possible and reasonable);
- 2) disclosures will be assessed and acted on impartially, fairly and reasonably;
- 3) responsible officials who receive disclosures in accordance with this Policy are obliged to:
  - protect/maintain the confidentiality of the identity of persons the subject of the disclosures;
  - assess disclosures impartially; and
  - act fairly to persons the subject of disclosures;
- 4) disclosures will be investigated as discreetly as possible, with a strong emphasis on maintaining confidentiality both as to the identity of persons making protected disclosures and the persons the subject of disclosures.
- 5) where investigations or other enquiries do not substantiate disclosures, the fact the investigation/enquiry has been carried out, the results of the investigation/enquiry, and the identity of persons the subject of the disclosures will be kept confidential, unless the persons the subject of the disclosures request otherwise;
- 6) the persons the subject of disclosures (whether protected disclosures under the Act or otherwise) which are investigated by or on behalf of a council, have the right to -
  - be informed as to the substance of the allegations;
  - be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
  - be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigation for or on behalf of the council,

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

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

## 10. Protection available under the Act

### (1) Protection against reprisals

The Act provides protection by imposing penalties on a person who takes "*detrimental action*" against another person substantially in reprisal for a protected disclosure. Penalties can be imposed by means of fines and imprisonment. "*Detrimental action*" means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; or
- disciplinary proceeding.

Any board member who believes that “*detrimental action*” is being taken against them substantially in reprisal for the making of an internal disclosure to the Executive Officer/Public Officer or in accordance with this Policy should immediately bring the allegations to the attention of the Executive Officer/Public Officer or Chairperson (as appropriate).

If a board member who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact the ICAC, or the Investigations and Review Branch of the Office of Local Government.

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

## (2) Protection against actions, etc

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

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

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

## (3) Confidentiality

The Act requires investigating authorities, public authorities and public officials to whom protected disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirements 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 a person whom the information provided by the disclosure may concern; or
- the investigating authority, public authority, officer or public official 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 Executive Officer/Public Officer. In all cases the person who made the disclosure will be consulted before such a decision is made.

Note: If guidance is needed in relation to the requirements of natural justice, effective investigation and public interest, this may be sought from an investigating authority or the Office of Local Government.

(4) Access to Information exemption

Under the *Government Information (Public Access) Act 2009*, a document is exempt from release if it contains matter the disclosure of which would disclose matters relating to a protected disclosure within the meaning of the Act.

## 11. Notification of action taken or proposed

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

If a disclosure is made in accordance with this Policy, the Executive Officer/Public Officer is responsible for the 6 month notification to the person who made the disclosure, unless this responsibility has been retained by or allocated to another officer by the Executive Officer/Public Officer.

If a disclosure is made to the Chairperson under this Policy, the Chairperson is responsible for such notification to the person who made the disclosure, unless he or she directs the Executive Officer/Public Officer or another nominated office to assume this responsibility.

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

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

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

Without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an MP or journalist.

## MODEL INTERNAL REPORTING SYSTEM - NEJO

