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Public Interest Disclosures

Purpose

State Archives and Records Authority NSW and Sydney Living Museums is committed to promoting a culture of integrity and ethical behaviour by encouraging and supporting staff who come forward with disclosures relating to corrupt conduct, maladministration, serious and substantial waste of public money or government information in contravention.

In accordance with the *Public Interest Disclosures Act 1994* this policy establishes the internal reporting system for staff to make such disclosures and how disclosures are dealt with.

Background

A public interest disclosure is an allegation of corruption, maladministration, serious and substantial waste or breach of the *Government Information (Public Access) Act 2009* (GIPA) made by a public official and about a public official. The *Public Interest Disclosures Act 1994* (the Act) provides legal protection against reprisals that may be taken against public officials who make public interest disclosures. PP22/53

Public authorities are required to have a policy concerning how it will receive, assess and deal with public interest disclosures. This policy is based on the model internal reporting policy and the guidelines that the NSW Ombudsman has issued in relation to the Act.

This policy is designed to complement normal SARA and SLM communication channels. Workers are encouraged to raise matters of concern at any time with their supervisors, but also have the option of making a report about a public interest issue in accordance with this policy and the Act.

Scope

This policy applies to public interest disclosures made by public officials employed or in the service of the Organisation. Public officials include: SARA/SLM workers (ongoing, temporary and casual employees, contractors, consultants and volunteers,), Trustees, members of Trust Committees, Board Members and Directors of the Foundation for the Historic Houses Trust of New South Wales.

This policy also applies to public interest disclosures about SARA and SLM or any SARA and SLM officers.

The internal reporting system set out in this policy is not intended to be used for grievances (see the *Grievance Handling Policy*).

POLICY

1. What should be disclosed?

Staff should make a disclosure if they honestly believe, on reasonable grounds, that a public official has engaged, is engaged or proposes to engage in corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention within The Organisation. These terms are defined below and are collectively referred to in this Policy as 'public interest disclosures'.

1.1 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 member of public influencing or trying to influence a public official to use 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.

1.2 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.

This could include:

- making a decision and/or taking action that is unlawful;
- failing to apply policies consistently
- unauthorised disclosure of confidential information.

For more information about maladministration, see the [NSW Ombudsman's guideline](#) on what can be reported.

1.3 Serious and substantial waste of public money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money.

This could include:

- not following a competitive tendering process for a large scale contract;
- purchase of unnecessary or inadequate goods.

For more information about maladministration, see the [NSW Ombudsman's guideline](#) on what can be reported.

1.4 Government information contravention

A government information contravention is a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009 (GIPA Act)*.

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 maladministration, see the [NSW Ombudsman's guideline](#) on what can be reported.

1.5 Other wrong doings

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, you should report all activities or incidents that constitute a breach of legislative, policy, regulatory etc. provisions through the internal reporting processes, such as Grievance Handling Policy.

For example, these could include:

- suspected criminal acts
- child protection reportable conduct, and/or
- practices that endanger the health or safety of staff or the public.

Even if these reports are not dealt with as PIDs, SARA/SLM recognises such reports may raise important issues. We will respond to all reports and make every attempt to protect the worker making the report from reprisal.

1.6 False or misleading disclosures

It is important that all employees are aware that it is a criminal offence under the PID Act to wilfully make any false statement or to mislead or attempt to mislead when reporting wrongdoing.

2. How to make a Public Interest Disclosure

Public interest disclosures can be made in writing or verbally to an appropriate person or agency. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation. A template for making a written disclosure is provided at **Appendix A** to this Policy

If a report is made verbally, the person receiving the report must make a comprehensive, accurate record of the disclosure and ask the person making the disclosure to sign it. You will be provided with a copy of this signed record.

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

3. Who can receive a Public Interest Disclosure within SARA/SLM?

You are encouraged to report general wrongdoing to your supervisor. However the Act requires that for a report to be a public interest disclosure it must be made to a public official in accordance with the organisation's disclosure procedures. For SARA/SLM this means this policy and procedure.

Any supervisor who receives a report that they believe may be a public interest disclosure must refer the employee making the report to one of the positions:

- Principal Officer
- Disclosure Coordinator
- Disclosure Officers

These are the only roles within SARA/SLM authorised to receive a public interest disclosure:

Principal Officer: Adam Lindsay, Chief Executive Officer

email: Adam.Lindsay@records.nsw.gov.au

phone: 02 8239 2283

Disclosure Coordinator: Kathryn Natoli, Director, Director Strategy & External Relations

email: Kathryn.natoli@records.nsw.gov.au

mobile: 0439 798 413

Disclosure Officers: Danielle Toga, Chief Operating Officer

email: Danielle.toga@slm.nsw.gov.au

phone: 8239 2260

Ellena Foster Constable, A/Head of Governance

email: governance@records.nsw.gov.au

mobile: 0404151933

Disclosures about the Chief Executive Officer should be made to the relevant external investigation authority rather than to the Disclosure Officer or the Disclosure Coordinator.

4. Who can receive a Public Interest Disclosure report outside of SARA/SLM

Staff are encouraged to report wrongdoing within the SARA/SLM, but internal reporting is not your only option. You can also make a public interest disclosure to:

- An investigating Government authority.
- A Member of Parliament or a journalist, but only in the limited circumstances outlined below.

4.1 Investigating authorities

The Act lists a number of investigating authorities in NSW that can receive reports of wrongdoing and the type of wrongdoing each authority can deal with.

The relevant investigating authorities for SARA/SLM are:

- the Independent Commission Against Corruption (ICAC) — for disclosures about corrupt conduct
- the NSW Ombudsman — for disclosures about maladministration

- the NSW Auditor-General — for disclosures about serious and substantial waste
- the NSW Information Commissioner — for disclosures about a breach of the GIPA Act

You should contact the relevant investigation authority for advice about how to make a disclosure to them.

You should be aware that the investigating authority may discuss any such reports with The Organisation. SARA/SLM will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and that there is a satisfactory outcome. SARA/SLM will also provide appropriate support and assistance to workers who report wrongdoing to an investigating authority, if SARA/SLM is made aware that this has occurred.

4.2 Members of Parliament or journalists

To have the protections of the Act, public officials reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- SARA/SLM Chief Executive Officer, Disclosure Coordinator or Disclosure Officers
- an investigating authority.

Also, the investigating authority that received your initial 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 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.

4.3 Other external reporting

Reports of wrongdoing to a person or authority that is not listed above, or making a report to an MP or journalist without following the steps outlined above, will not be protected under the Act. This may mean you will be in breach of legal obligations or the Code of Conduct by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside of the Organisation, contact the SARA/SLM Disclosure Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit (see section 14 for contact details).

5. Assessment of reports

All reports will be promptly and thoroughly assessed to determine what action will be taken to deal with the report and whether or not the report will be treated as a PID.

The Disclosure Coordinator is responsible for assessing reports, in consultation with the Chief Executive Officer where appropriate. All reports will be assessed on the information available to the Disclosure Coordinator at the time. It is up to the Disclosure Coordinator to decide whether an investigation should be carried out and how that investigation should be carried out. In assessing a report the Disclosure Coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report.

6. Feedback to reporters

Public officials who report wrongdoing will be told what is happening in response to their report.

6.1 Acknowledgement

When you make a report, you will be contacted to confirm that your report has been received and to advise:

- the timeframe within which you will receive further updates
- the name and contact details of the people who can tell you what is happening or handle any concerns you may have.

After a decision is made about how your report will be dealt with, you will be sent an acknowledgment letter, providing:

- information about the action that will be taken in response to your report
- the likely timeframes for any investigation or other action
- information about the internal and external resources or services available that you can access for support.

The Assessor will provide this information to you within 10 working days from the date you make your report. You will also be advised if we decide to treat your report as a PID and provide you with a copy of this policy at that time, as required by the Act.

Please note, if you make a report which meets the requirements of the Act but the report was made under a statutory or legal obligation or incidental to the performance of your day to day functions, you will not receive an acknowledgement letter or a copy of this policy.

6.2 Progress updates

While your report is being dealt with, such as by investigation or making other enquiries, you will be given:

- information about the progress of the investigation or other enquiries and reasons for any delay
- advice of any decision not to proceed with the matter
- advice if your identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this beforehand.

6.3 Feedback

Once the matter has been finalised 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 are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.

7. Maintaining confidentiality

Where possible and appropriate SARA/SLM will take steps to keep your identity and the fact you have reported wrongdoing, confidential.

A person to whom a PID is made or referred to is not to disclose information that might identify or tend to identify the person who has made the disclosure unless:

- the reporter consents in writing to the disclosure of that information, or it is generally known that the reporter has made the disclosure (otherwise than by making the PID) as a result of the person having voluntarily identified themselves as the person who made it, 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 Chief Executive Officer is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

If it becomes necessary to disclose your identity in accordance with this section and you will be informed in advance and in consultation with you, develop a plan to support and protect you from reprisal.

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. Any person involved in the investigation or handling of a report, including witnesses, must also maintain confidentiality and not disclose information about the process or allegations to any person that is not responsible for handling the report.

Any person who breaches these confidentiality obligations may be subject to action for misconduct.

8. Managing the risk of reprisal and workplace conflict

When a worker reports wrongdoing, SARA/SLM will undertake a risk assessment to identify the risks to the reporter of detrimental action in reprisal, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, SARA/SLM may:

- consider relocating a worker who is the subject of the allegation within the current workplace or transferring them to another position for which they are qualified;
- grant the reporter or the worker who is the subject of the allegation leave of absence during the investigation of the disclosure.

These courses of action are not punishment and will only be taken in consultation with the reporter.

9. Protection against reprisals

SARA/SLM will not tolerate any reprisal against workers who report wrongdoing or are believed to have reported wrongdoing.

The Act provides protection for persons who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a PID, even if they did not.

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 person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also misconduct which is likely to result in disciplinary action under the Code of Conduct.

It is important to note however that the protection provided by the Act does not protect workers from disciplinary or other management action where SARA/SLM has reasonable grounds to take such action.

9.1 Responding to allegations of reprisal

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosure Coordinator or the Chief Executive Officer immediately.

Supervisors must notify the Disclosure Coordinator or the Chief Executive Officer if they suspect that reprisal against a worker because of a report is occurring or has occurred, or if any such allegations are made to them.

If SARA/SLM becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, SARA/SLM will:

- assess the report of reprisal to decide whether it should be treated as a PID and whether the matter warrants investigation or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced member of staff
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any evidence of an offence under section 20 of the Act to the ICAC or NSW Police.

If you allege reprisal, you will be kept informed of the progress and outcome of any investigation or other action taken in response to the allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively, contact the Ombudsman or the ICAC (depending on the type of wrongdoing you reported).

9.2 Protection against legal action

If you make a PID in accordance with the Act, you will not be subject to any liability, and no action, claim or demand can be taken against you for having made the public interest disclosure. You will not have breached any confidentiality or secrecy obligations and you will have the defence of absolute privilege in defamation.

10. Support for those reporting wrongdoing

SARA/SLM will seek to ensure that workers who have reported wrongdoing, regardless of whether their report is treated as a PID, are provided with access to any professional support they may need as a result of the reporting process – such as stress management or counselling services.

Access to support may also be available for other workers involved in the internal reporting process where appropriate. Reporters and other workers involved in the process can discuss their support options with the Disclosures Coordinator.

11. Sanctions for making false or misleading statements

Under the Act it is a criminal offence to wilfully make a false or misleading statement when reporting wrongdoing. SARA/SLM will not support workers who wilfully make false or misleading reports. Such conduct may also be a breach of the Code of Conduct and result in action for misconduct.

12. The rights of persons the subject of a report

SARA/SLM is committed to ensuring persons who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time you will be:

- advised of the details of the allegation;
- advised of your rights and obligations under the relevant related policies and procedures;
- kept informed about the progress of any investigation;
- given a reasonable opportunity to respond to any allegation made against you;
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you.

Where the reported allegations against a public official are clearly wrong, or have been investigated and unsubstantiated, the person that was the subject of the allegations will be supported by The Organisation. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed by that person.

13. Reporting

The Disclosure Coordinator is responsible for ensuring that SARA/SLM complies with agency reporting obligations set out in the Act. This includes:

- Six monthly reports (provided within 30 days of both 30 June and 31 December) to the Ombudsman. The reports are to be completed through the NSW Ombudsman online PID reporting tool;
- SARA and SLM's annual report will include the PID information specified in the Public Interest Disclosure Regulation 2011.

Roles and responsibilities

Chief Executive Officer: is responsible for maintaining the internal reporting system and workplace reporting culture, and ensuring The Organisation complies with the Act. The Chief Executive Officer will:

- assess reports received by or referred to him/her, determine whether or not the report should be treated as a public interest disclosure, and decide how the report will be dealt with
- ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- make decisions following any investigation or appoint an appropriate decision-maker
- take appropriate action where wrongdoing is substantiated or systemic problems are identified

- refer actual or suspected corrupt conduct to the ICAC
- refer any evidence of a reprisal offence under section 20 of the Act to the NSW Police or the ICAC.

Disclosure Coordinator: The Disclosure Coordinator has a central role in The Organisation's internal reporting system. The Coordinator is the primary point of contact for reporters and will:

- assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with
- coordinate the response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- where required, provide or coordinate support to workers involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report
- ensure SARA/SLM complies with the Act
- ensure SARA/SLM complies with PID reporting requirements
- ensure full and accurate records of the PID are made and captured in Content Manager, SARA/SLM's recordkeeping system, and that appropriate security has been applied to maintain confidentiality.

Disclosure Officer: Disclosure officer are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist workers to make reports. Disclosure officers will:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure workers can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out a preliminary assessment and forward reports to the Disclosure Coordinator or Chief Executive Officer for full assessment.

Supervisors and Managers: Supervisors and Managers should be aware of this policy and are responsible for creating a local work environment where workers are comfortable about reporting wrongdoing. They will:

- encourage workers to report known or suspected wrongdoing and support them when they do
- identify reports which could be public interest disclosures, and assist the worker to make the report to an officer authorised to receive public interest disclosures under this policy
- implement local management strategies, in consultation with the Disclosure Coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the Disclosure Coordinator or Chief Executive Officer immediately if they believe a worker is being subjected to reprisal as a result of reporting wrongdoing.

Workers: All workers are obliged to:

- report all known or suspected wrongdoing and support those who have made reports
- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any worker or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of persons who are the subject of reports.

Workers must not:

- victimise or harass anyone who has made a report, or
- make false or misleading reports of wrongdoing.

Legislation

- *Government Information (Public Access) Act 2009*
- *Independent Commission Against Corruption Act 1988*
- *Historic Houses Act 1980*

- *Ombudsman Act 1974*
- *Privacy and Personal Information Act 1998*
- *Public Finance and Audit Act 1983*
- *Public Interest Disclosures Act 1994*
- *Public Interest Disclosure Regulation 2011*
- *State Records Act 1988*

Related policies

- Code of Conduct
- Code of Conduct: SLM Trustees and SARA Board
- Gifts and Benefits
- Grievance Handling

Other related documents

- NSW Ombudsman Public Interest Disclosure Guidelines
- NSW Ombudsman Model internal reporting policy - State government

Definitions

- Corrupt conduct is defined in the *Independent Commission Against Corruption Act 1988* (s.7, 8 & 9). Corrupt conduct includes the dishonest or partial exercise of official functions by a public official. It also includes conduct such as taking or offering bribes, public officials dishonestly using influence, blackmail, fraud and election bribery.
- Maladministration is defined in the Act as 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.
- Chief Executive Officer means the Chief Executive Officer of the Historic Houses Trust of New South Wales and the State Archives and Records Authority of NSW
- SLM is the trading name of the NSW Statutory Authority Historic Houses Trust of New South Wales
- SARA is the abbreviation of State Archives and Records Authority NSW
- Public official means an individual who is an employee of, or otherwise in the service of, a public authority, as defined in section 4A of the Act.
- Public authority means any public authority whose conduct or activities may be investigated by an investigating authority (such as ICAC, the Ombudsman, the Auditor-General, the Information Commissioner), as defined in section 4 of the Act.

Superseded documents

- This policy replaces the Protected Disclosures & Procedures component of DP04: Corruption Prevention Policy and Procedures including Protected Disclosures Policy and Procedures.

Revision history

Version	Date issued	Notes	By
1.0	22/3/2022	New Policy for SARA Executive Agency	Head of Governance

Review date

The next review date is February 2023

Internal Contact

Head of Governance
governance@records.nsw.gov.au

Investigating authorities

The contact details for external PID investigating authorities are as follows:

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

Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh Street, Sydney NSW 2000

For disclosures about serious and substantial waste:

Auditor-General of the NSW Audit Office

Phone: 02 9275 7100

Facsimile: 02 9275 7200

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret 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

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about breaches of the GIPA Act:

Information Commissioner

Toll free: 1800 472 679

Facsimile: 02 8114 3756

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

Appendix A: Public Interests Disclosures – Internal Report Form

To be completed and submitted to a Nominated Disclosures officer or the Disclosures Coordinator

Details of the person making the disclosure (you can make an anonymous reporting by leaving this section blank)		
Name:		
Position:		
Business Unit:		Preferred method of contact
Telephone:		☐ Telephone
Email		☐ Email
Details of the disclosure		
Description: • <i>What happened?</i> • <i>Where did this happen?</i> • <i>When did this happen?</i> • <i>Is it still happening?</i> (Attach additional pages if required)		
How did you become aware of this?		
Name and position of people involved in the wrong doing:	Name	Position
Attach any additional relevant information or indicate where supporting evidence may be found	Supporting Evidence	Attached
Name and position of other people who may have additional information	Name	Position
Statement		
I honestly believe that the above information shows or tends to show wrongdoing		
Signature of reporter (Do not sign if you want to make an anonymous report)		Date report submitted (must complete)

Appendix B: Public Interests Disclosures – Internal Report Process

