Thinking about blowing the whistle?

How to make a protected disclosure

If you become aware that something is seriously wrong in the way a public official has acted or is acting, or a public sector agency has acted or is functioning, it is in the public interest and the agency’s interest that you tell someone who can do something about it. In NSW, an Act called the Protected Disclosures Act sets up a scheme by which people who work in the NSW public sector, for example, in a department or a local council, can come forward with important information. This brochure provides guidance on how to do this.

BEFORE YOU MAKE A DISCLOSURE

ASK YOURSELF  Is the disclosure covered by the Act?

The Protected Disclosures Act is designed to deal with disclosures about serious matters about public administration, in particular:

- corruption, or
- maladministration (which must be conduct of a serious nature), or
- serious and substantial waste of public money.

Your council’s internal reporting policy should contain information to explain what these terms mean. You could also look under ‘protected disclosures’ on the NSW Ombudsman’s web site:

www.ombo.nsw.gov.au

A disclosure is not covered by the Act if:

- it was made frivolously or vexatiously,
- it was made primarily to avoid dismissal or disciplinary action,
- it contains intentionally false statements or is intended to mislead or attempt to mislead the recipient (these are offences under the Act),
- it questions the merits of government policy.

Making your disclosure in accordance with the scheme in the Protected Disclosures Act gives you the best chance of helping the council concerned to remedy the situation.

The scheme encourages all those involved to focus on the issues (not the people) involved.

In the spirit of the Act, the council should take reasonable action to protect you from reprisals.

REMEMBER  The best protection is confidentiality—discretion is essential

- Seek advice from the NSW Ombudsman or from the person responsible for dealing with protected disclosures in your council. Be discreet when you are doing so. You may also wish to seek legal advice from a lawyer or approach an appropriate support group.

- Be careful in deciding who you make your disclosure to and how you make it. To be protected under the Protected Disclosures Act your disclosure must be made to specific people (see ‘How to make a protected disclosure’).

- Don’t telegraph your intentions. For example, threatening to make a disclosure may backfire. If you provide your information discreetly, the council will be better able to focus on the issues rather than on you.

- Don’t tell anyone you are thinking about making a protected disclosure.

ASK YOURSELF  Do I have evidence to back up my allegations?

It is important that the information you provide is clear, accurate and factual. If you have documents to support your allegations, try to make them available. This will help Council focus on the real issues and fix real problems.

Avoid speculation or emotive language: it is likely to divert attention from the real issues.
I want to report something about the council where I work:

- Council’s Policy for the disclosure of corrupt conduct, maladministration or serious and substantial waste of public money by Council staff and/or Councillors.
- Disclosures can be made to the Disclosure Co-ordinator Executive Officer, a Director, the General Manager or the Mayor (if it concerns the General Manager).
- The Policy can be found on Council’s website under codes, policies & reports/policies and on the front page of the Intranet including other information on the subject.

I want to report something about another agency:

- You can only make a disclosure to the head of that agency or to the watchdog bodies below.

If you don’t want to report something internally, you can report it to:

- **CORRUPTION**
  
  Independent Commission Against Corruption
  Tel: 8281 5999 or 1800 463 909 (toll free)
  Fax: 9264 5364
  GPO Box 500
  Sydney NSW 2001
  Email: icac@icac.nsw.gov.au

- **MALADMINISTRATION**
  
  NSW Ombudsman
  Tel: 9286 1000 or 1800 451 524 (toll free)
  Fax: 9283 2911
  Level 24, 580 George Street
  Sydney NSW 2000
  Email: nswombo@ombo.nsw.gov.au

- **SERIOUS AND SUBSTANTIAL WASTE**
  
  Director-General of the Department of Local Government
  Tel: 4428 4100
  Fax: 4428 4199
  5 O’Keefe Ave
  NOWRA NSW 2541
  Email: dlg@dlg.nsw.gov.au

- **corruption or serious misconduct by A POLICE OFFICER**
  
  Police Integrity Commission
  Tel: 9321 6700 or 1800 657 079 (toll free)
  Fax: 9321 6799
  GPO Box 3880
  Sydney NSW 2000
  Email: contactus@pic.nsw.gov.au
What if my allegations cannot be investigated without my identity being guessed or revealed?

The person to whom you make the disclosure:

- should alert you before your identity, or information that may tend to identify you, is revealed as part of the investigation; and
- should take all reasonable steps to protect you against any reprisals in the workplace.

What does the Act do for me?

**PROTECTION FROM DETERIMENTAL ACTION**

The Act makes it an offence to take detrimental action against you substantially in reprisal for you making a Protected Disclosure. It is not in the public interest for whistleblowers to suffer as a result of coming forward.

Detrimental action is action such as dismissing you or taking disciplinary action against you and also includes any action:

- that causes you injury, damage or loss;
- that intimidates or harasses you; or
- that discriminates against or disadvantages you in your employment.

The agency about which you make a Protected Disclosure should take reasonable action to protect you against detrimental action. The government and watchdog bodies expect this.

The agency also has obligations under the common law and occupational health and safety legislation to make sure that you do not suffer as a result of coming forward.

**What if someone takes detrimental action against me?**

- Complain to the person to whom you made the disclosure or to the person who is responsible for dealing with protected disclosures in your council.

- If they do not help you or do not take your complaint seriously, complain to the Department of Local Government, NSW Ombudsman or the Independent Commission Against Corruption. However, be aware that these bodies cannot prosecute anyone for taking detrimental action against you. As with other criminal prosecutions, this is a matter for the police, although you may be able to bring a private action yourself. In this regard Council suggests you seek your own legal advice.

**CONFIDENTIALITY**

A person to whom you make a Protected Disclosure should keep the information that might identify you confidential unless:

- you consent in writing for your information to be revealed;
- natural justice requires the information to be revealed;
- it is necessary to disclose information identifying you in order to investigate the matter; or
- it is in the public interest to reveal the information.
The Act provides that you do not incur any liability for making a protected disclosure. The Act provides a legal defence to any action taken against you for defamation or breach of confidence.

However, the Act will not protect you if you break the law in other ways, for example, if you break into someone’s office to obtain evidence to support your allegations.

When will I be told what’s happened to my disclosure?

- The person or agency to whom you made the disclosure must tell you within six months what action they have taken or propose to take.
- If you do not hear from them within six months, contact them and ask them what is happening. If you do not get a response you can complain to the NSW Ombudsman.

What if I’m not happy with the response?

- You can complain to the NSW Ombudsman or the Independent Commission Against Corruption about the way your protected disclosure was handled.
- If:
  - it has been decided that your allegations will not be investigated;
  - the investigation was not completed within six months;
  - no recommendations were made for action to be taken despite an investigation; or
  - you were not notified within six months of whether or not the matter was to be investigated;
  - you can make a disclosure to a member of Parliament or a journalist.

  Caution: Make sure you seek advice before you do this. To obtain protection for a disclosure to a Member of Parliament or a journalist, you must be able to prove that the disclosure is substantially true.

Where do I go for further information?

**WITHIN COUNCIL**

- The Disclosure Co-ordinator – Executive Officer on 9911-9986.
- The Mayor on 0401 713 898.
- The Acting General Manager on 0412 255 149.

**NSW OMBUDSMAN**

- You can also contact the Ombudsman on:
  - Tel: 9286 1000 or 1800 451 524 (toll free) Email: nswombo@ombo.nsw.gov.au
To all Councillors and Staff at Burwood Council:

Burwood Council:

- does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money;
- is committed to the aims and objectives of the Protected Disclosures Act 1994;
- recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff or Councillors which disclose corrupt conduct, maladministration or serious and substantial waste of public money; and
- 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.

Stephen Blackadder
Acting General Manager