

Protected Disclosures Reporting Policy

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Commitment to an Ethical and Accountable Culture

Sydney Opera House Trust (SOHT) takes its obligations under the *Protected Disclosures Act 1994* (PD Act) seriously and is committed to ensuring that staff who disclose information about corrupt conduct, maladministration and serious and substantial waste are able to do so without fear of personal loss or harassment. In this regard, this policy is provided to publicise and enhance the internal reporting process and to ensure any disclosures are managed in accordance with the PD Act.

In accordance with the *Sydney Opera House Code of Conduct 2009*, Sydney Opera House expects all staff to act ethically and in an honest and professional manner in the performance of their duties, including lawful and responsible use of Sydney Opera House resources. The Code of Conduct requires all members of staff to report corrupt or criminal conduct immediately to an appropriate member of the management team, including where appropriate the Nominated Disclosure Officer or the Disclosure Coordinator. All staff are strongly encouraged to share the responsibility for ensuring the integrity of Sydney Opera House's administrative and management practices.

Sydney Opera House is committed to ensuring:

- that all staff are aware of how to make a protected disclosure using the internal reporting system;
- that genuine reports are investigated thoroughly and in accordance with the principles of procedural fairness;
- that staff who make a protected disclosure are supported and protected: and
- that organisational reform is identified and implemented as necessary following an investigation of a disclosure.

Should you require further information concerning this policy, please contact the Disclosure Coordinator.



Richard Evans
Chief Executive

1 Purpose

This policy provides information and guidance on Sydney Opera House's approach to the prevention of corruption, maladministration and substantial waste.

This policy explains how to make a disclosure of corruption, maladministration or serious and substantial waste, and how investigations into such disclosures are undertaken. It also outlines the obligations and duties of staff in preventing and avoiding corruption, maladministration and serious and substantial waste at Sydney Opera House.

2 Scope

This policy applies to all staff of Sydney Opera House, including contractors and agency staff. This policy encompasses information and standards provided in the NSW Ombudsman *Protected Disclosures Guidelines (6th Edition)*.

3 Types of issues covered by Protected Disclosures

Not all issues are appropriately raised as Protected Disclosures (see section 7.2 for information on issues that are protected under the PD Act). This policy aims to supplement normal communication channels between staff and managers as well as Sydney Opera House procedures for work related concerns or grievances.

Concerns or complaints relating to any of the issues below can be made to the nominated disclosure officer, disclosure coordinator or CEO. Please refer to this policy and the Protected Disclosures Reporting Procedures for detailed information if you are considering making a disclosure.

PROTECTED DISCLOSURE TOPICS	
Issue	Examples
Corruption	<ul style="list-style-type: none">• Taking or offering bribes• A person using their influence dishonestly• Blackmail• Fraud (incl. theft & forgery)• Official breach of trust
Maladministration	<ul style="list-style-type: none">• Decision or action contrary to law• Breaches of natural justice/procedural fairness• Unauthorised disclosure of confidential information• Decision or action inconsistent with adopted policies/guidelines• Partial, unfair or inequitable decision or action• Failing to apply the law or inconsistently applying law• Abuse of power• Conflict of interest• Misuse of public property, services or facilities
Serious and Substantial Waste	<ul style="list-style-type: none">• Misuse of public property• Purchase of unnecessary or inadequate goods• Remuneration of staff for skills they do not have, but are required to have under their conditions of employment

Note: Concerns or complaints that do not deal with issues of corruption, maladministration or serious and substantial waste (see examples in table above), should be dealt with according to Sydney Opera House policy and procedures for handling work related concerns and grievances (see *Work Related Concerns and Grievances Policy* and *Sydney Opera House Code of Conduct*).

4 Legislative Basis for Policy

The *Protected Disclosures Act 1994* (PD Act) commenced operation on 1 March 1995. The purpose of the Act is to ensure that staff who wish to make disclosures under the legislation receive protection from reprisals, and that 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.

5 Statement of Principles

- 5.1.1 Sydney Opera House does not tolerate any form of corrupt conduct, maladministration or serious and substantial waste of public money.
- 5.1.2 Sydney Opera House is committed to the aims and objectives of the *Protected Disclosures Act 1994*. We recognise and value the importance of contributions of staff to enhance administrative and management practices and strongly support disclosures being made by staff which disclose corrupt conduct, maladministration or serious and substantial waste of public money.
- 5.1.3 While Sydney Opera House recognises opportunities for reporting outside the organisation are legal and valid, Sydney Opera House is committed to developing and maintaining a system of internal reporting wherever possible, providing management with an opportunity to remediate a problem in the first instance.
- 5.1.4 In accordance with its Charter, the Sydney Opera House Trust Risk Management Committee will review significant cases of employee conflicts of interest, misconduct or fraud where appropriate. The Committee also reviews internal and external audit reports to monitor compliance with legislation, including the PD Act and corruption control and review follow up activities where appropriate.
- 5.1.5 Sydney Opera House will respond to internal disclosures in a way that will protect the identity of the whistleblower, wherever possible and appropriate.
- 5.1.6 Internal reporting procedures will be developed to ensure protection for staff who make such disclosures against reprisals.
- 5.1.7 This policy and the Protected Disclosures Reporting Procedures are subject to regular review at least every two years to ensure they meet the objects of the legislation and facilitate the making of disclosures.
- 5.1.8 This policy and the Protected Disclosures Reporting Procedures will be communicated to staff (including contractors and agency staff) and policy will be published on the Sydney Opera House website.

6 Disclosures protected and not protected under the Act

6.1 Who can make a protected disclosure?

- 6.1.1 Under the PD Act 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 (and are within the jurisdiction of at least one investigating authority).
- 6.1.2 A public official may make a protected disclosure about a NSW agency even if that person has never been or is no longer employed by that agency.

6.2 When a disclosure is protected

- 6.2.1 To be protected under the PD Act, a disclosure must be voluntary, '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).
- 6.2.2 A disclosure must be more than a mere allegation made without substantiation. A disclosure must include evidence that if substantiated would amount to alleged conduct, or at least tend to do so.
- Evidence should be **known, material** (relevant and significant to) and **clear** (demonstrates a clear implication to support the claim). Evidence based solely on hearsay or an unfounded suspicion would not qualify.
- 6.2.3 Disclosures that show or tend to show corrupt conduct, maladministration, or serious and substantial waste of public money are protected under the PD Act if they are made:
- To a person or position nominated in the internal reporting process outlined in this policy (i.e. the disclosure coordinator or nominated disclosure officer); or
 - To the CEO of the Sydney Opera House; or
 - To one of the investigating authorities nominated in the PD Act.

6.3 Disclosures not protected

- 6.3.1 **Protection is not available for disclosures which:**
- Are '**made**' frivolously – for example, as a joke, in order to ridicule etc.;
 - Are '**made**' vexatiously – with an intention to cause annoyance, harass others and based only on hearsay;
 - Are **false and/or misleading** – i.e. the disclosure includes intentionally false statements or is intended to mislead or attempt to mislead the investigator;
 - Primarily question the merits of government policy – for example, a personal disagreement with public sector procedures or management decisions; or
 - Are made solely or substantially with the **motive** of avoiding dismissal or other disciplinary action – for example, in retaliation for performance review outcomes.

6.4 Anonymous reports

The PD Act does not refer to anonymous disclosures, or impose any obligation on a person to identify themselves in a disclosure.

It seems likely that anonymous disclosures can be protected under the PD 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 providing 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.

6.5 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 PD Act).

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 CEO. The whistleblower will be given an opportunity to be heard (either in person or in writing) before such a decision is made final.

7 Practices & Procedures

Practices and procedures for making a Protected Disclosure apply as outlined in the ***Protected Disclosures Reporting Procedures***.

8 Definitions

8.1 Corrupt Conduct

Corrupt conduct is defined under the *Independent Commission Against Corruption Act (ICAC Act)*, sections 8 and 9. Corrupt Conduct includes 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.

In terms of the *ICAC Act*, it is not corrupt conduct unless it involves or could involve a criminal offence, a disciplinary offence, or reasonable grounds to dismiss a public official.

8.2 Maladministration

Maladministration is defined in the *Protected 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 (s. 11).

Please see ***Protected Disclosures Reporting Procedures, Appendix 1*** for a full explanation of definitions, including key concepts and examples of 'corrupt conduct', 'maladministration' and 'substantial waste of public money'.

8.3 Serious and Substantial Waste

This term is not formally defined in the *Protected Disclosures Act*. The following working definition is provided by the Auditor-General:

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

9 Accountabilities

This policy places responsibilities upon staff at all levels within Sydney Opera House.

9.1.1 Staff

All staff of Sydney Opera House are encouraged to report known or suspected incidences of corrupt conduct, maladministration or serious and substantial waste in accordance with this policy.

All staff of Sydney Opera House 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.

9.1.2 Managers

Managers are responsible for:

- ensuring staff are aware of and comply with this policy and regularly reinforcing the principles and procedures outlined in the policy
- setting and maintaining high standards of behaviour as per the Sydney Opera House Code of Conduct;
- ensuring support for all persons who make disclosures in relation to this policy;
- monitoring department practices and procedures to reduce the risk of corrupt conduct, maladministration or serious and substantial waste in their area

9.1.3 Trust Risk Management Committee

In accordance with its Charter, the Trust Risk Management Committee is responsible for reviewing significant cases of employee conflicts of interest, misconduct and fraud where appropriate, and seeking assurance from management on compliance with relevant legislation, regulations, policies internal and external audits with respect to the PD Act and corruption control and monitoring appropriate follow up activities arising from such audits.

9.1.4 Accountabilities for Nominated Disclosure Officer, Disclosure Coordinator and CEO are outlined in the *Protected Disclosures Reporting Procedures, Appendix 2*.

10 References

Sydney Opera House *Protected Disclosures Reporting Procedures*
Protected Disclosures Act 1994
NSW Ombudsman *Protected Disclosures Guidelines (5th Edition)*
Sydney Opera House *Code of Conduct*
Sydney Opera House *Receiving Gifts and Benefits Policy*
Sydney Opera House *Giving Corporate Gifts Policy*
Sydney Opera House *Giving Corporate Donations Policy*
Sydney Opera House Risk Management Committee Charter

APPROVED



Chief Executive

Date: 1 November 2009