

Sydney Opera House Policy

Title:	Public Interest Disclosures Policy
Policy Number:	SOH133
Effective Date:	29 May 2017
Authorisation:	Chief Executive Officer
Authorisation Date:	29 May 2017
Superseded Policy:	SOH133
Accountable Director:	Chief Executive Officer
Responsible Officer:	Executive Director, People & Government

1. CORE PROPOSITION

- 1.1 The Opera House 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 contravention within the Opera House.
- 1.2 In accordance with the *Public Interest Disclosures Act 1994* (the **PID Act**), this Policy establishes an internal reporting system for staff to make such disclosures without fear of reprisal. It sets out what should be disclosed, how to make a disclosure and how disclosures will be dealt with.

2. SCOPE

This Policy applies to all Sydney Opera House staff (including permanent, temporary and casual employees), contractors and persons otherwise engaged to undertake work on behalf of the Opera House.

3. WHAT SHOULD BE DISCLOSED

- 3.1 Staff should make a disclosure if they witness corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention within the Opera House. These terms are defined in the table below and are collectively referred to in this Policy as 'public interest disclosures'.

	Description and examples
Corrupt conduct	Corrupt conduct is the dishonest or biased exercise of official functions. This could include: <ul style="list-style-type: none"> the improper use of knowledge, power or position for personal gain or the advantage of others; acting dishonestly or unfairly or breaching public trust; forgery, theft or taking or offering bribes.
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: <ul style="list-style-type: none"> making a decision and/or taking action that is unlawful; failing to apply policies consistently; or unauthorised disclosure of confidential information.
Serious and substantial waste of public money	Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of public money. This could include not following competitive tendering processes for a large scale contract or purchase of unnecessary or inadequate goods.
Government information contravention	A government information contravention is a failure to properly fulfil functions under the <i>Government Information (Public Access) Act 2009 (GIPA Act)</i> . For example, this could include destroying, concealing or altering records to prevent them from being released.

- 3.2 Reports will not be considered to be public interest disclosures if they:
- mostly question the merits of government policy; or
 - are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.
- 3.3 Reports about wrongdoing that are not public interest disclosures will be dealt with according to other Opera House policies and procedures, such as the *Respectful Workplace Behaviour Policy* and *Resolving Workplace Grievances Policy* and *Procedures*.

False or misleading disclosures

- 3.4 Staff must not make false or misleading disclosures. It is criminal offence under the PID Act to wilfully make a false or misleading statement when making a public interest disclosure.

4. HOW TO MAKE A PUBLIC INTEREST DISCLOSURE

- 4.1 Public interest disclosures can be made either in writing or verbally. Staff are encouraged to make disclosures 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.
- 4.2 If a disclosure is made verbally, the person receiving the disclosure must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record.

Persons who can receive a disclosure within the Opera House

- 4.3 Staff can make a disclosure to a person holding one of the following positions:
- 1) a **Nominated Disclosures Officer**: The Opera House has appointed Nominated Disclosures Officers to receive disclosures made in accordance with this Policy.

The Nominated Disclosures Officers are those staff members who hold the positions of *General Counsel & Director of Risk*, *Head of Enterprise Risk & Program Management*, *Head of People & Development*, *Human Resources Business Partner* and *Financial Controller* within the Opera House. They are responsible for receiving, forwarding and/or dealing with these disclosures.
 - 2) The **Disclosures Coordinator**: The Opera House has also appointed the *Executive Director, People & Government* as the Disclosures Coordinator. They have an additional responsibility to ensure that disclosures within the Opera House are managed in accordance with the PID Act including:
 - assessing disclosures to ensure they meet all the requirements under the PID Act;
 - acknowledging and providing feedback to staff who make disclosures;
 - assessing the risk of reprisal and workplace conflict related to or likely to arise out of a disclosure, and developing strategies to manage any risk identified; and
 - providing statistical information on the Opera House's compliance to the NSW Ombudsman every 6 months.
 - 3) the **Chief Executive Officer**.

Persons who can receive a disclosure outside the Opera House

- 4.4 Staff may also elect to make a disclosure to a relevant external investigating authority such as:
- Independent Commission Against Corruption – for disclosures of corrupt conduct including fraud (www.icac.nsw.gov.au);
 - NSW Ombudsman – for disclosures of maladministration (www.ombo.nsw.gov.au);
 - Auditor-General of the NSW Audit Office – for disclosures of serious and substantial waste of public money (www.audit.nsw.gov.au);
 - NSW Information Commissioner – for disclosures of government information contravention (www.ipc.nsw.gov.au).
- 4.5 Disclosures about the Chief Executive Officer should be made to the relevant external investigative authority rather than a Nominated Disclosures Officer or the Disclosures Coordinator.
- 4.6 Staff should contact the relevant investigation authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this Policy.

- 4.7 Staff should be aware that it is very likely the investigating authority will discuss the case with the Opera House. The Opera House will make every effort to assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. The Opera House will also provide appropriate assistance and support to staff who make a disclosure to an investigating authority.
- 4.8 Public interest disclosures may, in limited circumstances, also be made to a Member of Parliament or a journalist. To attract the protections of the PID Act when making a public interest disclosure to a Member of Parliament or a journalist:
- (a) the person making the disclosure must have already made substantially the same disclosure to a Nominated Disclosure Officer, the Disclosures Coordinator, the Chief Executive Officer, or an investigating authority in accordance with the PID Act; and
 - (b) the Opera House or the investigating authority that received the disclosure 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 disclosure;
 - investigated the matter but not recommended any action as a result;
 - not told the person who made the disclosure, within six months of the disclosure being made, whether the matter will be investigated; and
 - (c) the person making the disclosure must be able to prove that they have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

Can a disclosure be anonymous?

- 4.9 There will be some situations where staff will not want to identify themselves when they make a disclosure. Although these disclosures will still be dealt with by the Opera House, it is best for staff to identify themselves. This allows the Opera House to provide staff with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations. If it is not known who made the disclosure, it is very difficult to prevent any reprisal action.

Maintaining confidentiality

- 4.10 The Opera House is committed to keeping the staff member's identity and the fact they have made a public interest disclosure, confidential. However, there may be situations where this may not be possible or appropriate. The Opera House will discuss with individuals whether it is possible to keep a disclosure confidential. If confidentiality cannot be maintained, a plan will be developed to support and protect the staff member from risk of reprisal and the staff member will be involved in developing this plan.

5. FEEDBACK TO STAFF WHO MAKE A PUBLIC INTEREST DISCLOSURE

- 5.1 Staff who make a disclosure will be kept informed about what is happening in response to their disclosure. When a disclosure is made, the staff member will be given:
- an acknowledgement that the disclosure has been received;
 - the timeframe for when they will receive further updates; and
 - the name and contact details of the people who will be handling the disclosure.
- 5.2 The acknowledgement letter and a copy of this Policy must be provided to the person who made the disclosure within 45 days after they have made a disclosure. All attempts will be made to provide this information within **5 working days**.
- 5.3 After a decision is made about how the disclosure will be dealt with, staff will be given:
- information about the action that will be taken in response to the disclosure;
 - information about the resources available within the Opera House to handle any concerns the staff member may have; and
 - information about external agencies and services that staff members can access for support.

This information will be given to the staff member within **10 working days** from the date a disclosure is made.

- 5.4 During any investigation, the staff member will be given:
- information on the ongoing nature of the investigation;
 - information about the progress of the investigation and reasons for any delay; and

- advice if their identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

5.5 At the end of any investigation, the staff member will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to the disclosure and any problem that was identified; and
- advice about whether the staff member who made the disclosure will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.

6. PROTECTION AGAINST REPRISALS

6.1 Some staff may have concerns that if they make a public interest disclosure their colleagues or managers will take detrimental action against them. The PID Act deters this kind of reaction by providing that the taking of detrimental action substantially in reprisal against the person making the public interest disclosure is:

- a criminal offence (punishable by imprisonment or a fine);
- grounds for disciplinary action; or
- grounds for the person who made the disclosure to sue those who take detrimental action for damages.

6.2 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; and
- disciplinary proceedings.

6.3 To receive these protections, the disclosure must be made in accordance with the PID Act. This means that the when making a disclosure staff must:

- a) honestly believe on reasonable grounds that the information shows or tends to show corrupt conduct, maladministration, serious and substantial waste of public money or a government information contravention; and
- b) make the disclosure to one or more of the following:
 - a Nominated Disclosures Officer;
 - the Disclosures Coordinator;
 - the Chief Executive Officer; or
 - one of the external investigating authorities as detailed in section 4.4 of this Policy.

7. RESPONDING TO REPRISALS

7.1 The Opera House will protect staff who make public interest disclosures from reprisals. When a disclosure is received, the Disclosures Coordinator will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who made the public interest disclosure, as well as strategies to deal with those risks.

7.2 Where a staff member believes that detrimental action has been or is being taken against them or someone else who has made a disclosure in reprisal for making a disclosure, staff should inform their supervisor/manager, the Disclosures Coordinator, a Nominated Disclosures Officer or the Chief Executive Officer immediately.

7.3 All supervisors/managers must report any suspicions they have that reprisal action against a staff member is occurring, or any reports that are made to them, to the Disclosures Coordinator or the Chief Executive Officer. If the Disclosures Coordinator becomes aware of reprisal action against a person who has made a disclosure, they will:

- ensure a senior and experienced member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal;
- give results of that investigation to the Chief Executive Officer for a decision;
- if it has been established that reprisal action is occurring against someone who has made a disclosure, take all steps possible to stop that activity and protect the member of staff who made the disclosure; and

- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

- 7.4 The Chief Executive Officer may issue specific directions to help protect staff against reprisals, including:
- issuing warnings to those alleged to have taken reprisal action against the member of staff who made the disclosure;
 - relocating the member of staff who made the disclosure or the subject officer within the workplace;
 - transferring the member of staff who made the disclosure or the staff member who is the subject of the allegation to another position for which they are qualified; or
 - granting the member of staff who made the disclosure or the subject officer leave of absence during the investigation of the disclosure.

These directions will only be issued if the staff member who made the disclosure agrees to it.

- 7.5 In the event a staff member has made a disclosure and feels that any reprisal action is not being dealt with effectively, they can contact the NSW Ombudsman for further information.

8. SUPPORT

Support for those making public interest disclosures

- 8.1 The Opera House will make sure that staff who have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process.

Support for the subject of the disclosure

- 8.2 The Opera House is committed to ensuring staff who are the subject of a public interest disclosure are treated fairly and reasonably. If a staff member is the subject of a disclosure, they will be:
- treated fairly and impartially;
 - told their rights and obligations under Opera House policies and procedures;
 - kept informed during any investigation;
 - given the opportunity to respond to any allegation made against them; and
 - told the result of any investigation.

9. RESPONSIBILITIES

Staff

- 9.1 All staff of the Opera House are encouraged to make public interest disclosures in accordance with this Policy.
- 9.2 All staff 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 a disclosure. Staff must not victimise or harass anyone who has made a disclosure.

Supervisors and Managers

- 9.3 Supervisors and managers are responsible for maintaining an environment that encourages staff to make disclosures and supports those that do. This includes:
- monitoring practices and procedures to reduce the risk of wrongdoing in their area;
 - ensuring staff are aware of and comply with this Policy;
 - setting and maintaining high standards of behaviour as set out in the Opera House *Code of Conduct*;
 - providing support and ensuring confidentiality (where appropriate) for all persons who make disclosures in accordance with this Policy; and
 - ensuring appropriate systems and strategies are in place in their area to minimise the risk of reprisal for any person who makes a disclosure.

Chief Executive Officer

- 9.4 The Chief Executive Officer is responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

10. REVIEW

- 10.1 This Policy will be reviewed every two years at a minimum. Reviews may also occur in response to changes to legislation and/or government or Opera House policies and procedures.

11. FURTHER INFORMATION AND RESOURCES

- 11.1 More information on public interest disclosures can be found on the NSW Ombudsman's website www.ombo.nsw.gov.au.

- 11.2 Contact details for external investigating authorities that staff can make a public interest disclosure to or seek advice from are listed below.

For disclosures about corrupt conduct

Independent Commission Against Corruption

Ph: (02) 8281 5999

Toll free: 1800 463 909

Tel. typewriter (TTY): (02) 8281 5773

Fax: (02) 9264 5364

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 21, 133 Castlereagh St
Sydney NSW 2000

For disclosures about maladministration

NSW Ombudsman

Ph: (02) 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Tel. typewriter (TTY): (02) 9264 8050

Fax: (02) 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24, 580 George St
Sydney NSW 2000

For disclosures about serious and substantial waste

Auditor-General of the NSW Audit Office

Ph: (02) 9275 7100

Fax: (02) 9275 7200

Email: mail@audit.nsw.gov.au

Web: www.audit.nsw.gov.au

Address: Level 15, 1 Margaret St
Sydney NSW 2000

For disclosures about breaches of the GIPA Act

Information Commissioner

Toll free: 1800 463 626

Fax: (02) 8114 3756

Email: oiinfo@oic.nsw.gov.au

Web: www.oic.nsw.gov.au

Address: Level 11, Castlereagh St
Sydney NSW 2000

For disclosures about police misconduct

Police Integrity Commission (PIC)

Ph: (02) 9321 6700

Toll free: 1800 657 079

Fax: (02) 9321 6799

Email: contactus@pic.nsw.gov.au

Web: www.pic.nsw.gov.au

Address: Level 3, 111 Elizabeth St
Sydney NSW 2000

12. SUPPORTING DOCUMENTS AND RELEVANT LEGISLATION

- Public Interest Disclosures Act 1994
- Access to Information (GIPA) Policy
- Resolving Workplace Grievances Policy
- Opera House Code of Conduct
- Gifts and Benefits Policy
- Procurement Policy
- Respectful Workplace Behaviour Policy

APPROVED



Chief Executive Officer

Date: 29 May 2017

Version control

Version	Date	Author	Approval	Details/comments
1.1	May 2017	Policy Officer	CEO	Revision to add General Counsel, Head of Legal, CRO, CFO, and Financial Controller as NDOs following further consultation
1.2	March 2022	Senior Policy Officer	CEO	Revision to reference the Respectful Workplace Behaviour and Resolving Workplace Grievances Policy and Procedures and to update titles of people who can receive a disclosure within the Opera House.

Public Interest Disclosures – Internal Report Form

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

Details of person making the disclosure <i>(You can make an anonymous report by leaving this section blank)</i>		
Name:		
Position:		
Business Unit:	Preferred method of contact <input type="checkbox"/> Telephone <input type="checkbox"/> Email	
Telephone:		
Email:		
Details of the disclosure		
Description: <ul style="list-style-type: none"> • <i>What happened?</i> • <i>Where did this happen?</i> • <i>When did this happen?</i> • <i>Is it still happening?</i> <i>[Attach additional pages if required]</i>		
How did you become aware of this?		
Name and position of people involved in the wrongdoing:	Name Position	
Attach any additional relevant information or indicate where supporting evidence may be found:	Supporting evidence	
		Attached <input type="checkbox"/>
		<input type="checkbox"/>
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 <i>(Do not sign if you want to make an anonymous report)</i>	_____ Date report submitted <i>(Must complete)</i>	