



Sydney Olympic Park Authority Policy

Policy Name	Protected Disclosures Policy
Policy No.	POL01/13
Department File No.	F03/2
Business Unit	Commercial & Corporate
Office Responsible	General Manager, Commercial & Corporate
Approving Officer	Chief Executive Officer
Date of Approval	

Version	Date
1	13 January 2003
2	June 2007
2.1	May 2011

PROTECTED DISCLOSURES POLICY

Introduction

This policy document advises employees of the Sydney Olympic Park Authority (the Authority) of their rights and responsibilities under the Protected Disclosures Act (1994) ("the Act") and explains the Authority's internal reporting system relating to that Act.

The Act aims to encourage and facilitate the disclosure of public offences (in the public interest) of corrupt conduct, maladministration or serious and substantial waste in the public sector.

The Act achieves this by:

- enhancing established procedures for making disclosures
- protecting public officials from reprisals that might otherwise be taken against them for making a disclosure; and
- providing for disclosures to be properly investigated and dealt with.

The Act

The Protected Disclosures Act 1994 offers protection to public officials who make disclosures, which concern corrupt conduct, maladministration and serious or substantial waste of public money.

Disclosures may be made to an investigating authority (Independent Commission Against Corruption, Ombudsman, Auditor General), to the Principal Officer of the Public Authority, the Chief Executive Officer Sydney Olympic Park Authority, nominated disclosure officers or to the Authority's Disclosure Co-ordinator where there exists a recognised internal reporting system. In certain limited circumstances disclosures can be made to a Journalist or Member of Parliament. Conditions applying to these disclosures are addressed later in this policy.

The Authority's Policy

The Authority is committed to the aims and objectives of the Act and will take all reasonable steps to provide protection and support to staff who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

Definitions

Three key concepts in the internal reporting system are "corrupt conduct", "maladministration" and "serious and substantial waste of public money".

Corruption or corrupt conduct has many definitions. The key premise to corrupt conduct is misuse of public office involving a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official. It involves improper acts or omissions, improper use of influence or position and/or improper use of information. It involves the dishonest or biased use of power or position resulting in one person being advantaged over another.

More specific definitions and examples of corrupt conduct can be obtained from the Independent Commission against Corruption (ICAC) Act 1988.

Maladministration involves action or inaction of a serious nature that is contrary to law or unreasonable, unjust, oppressive or improperly discriminatory.

Serious and substantial waste refers to uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss/wastage of public funds/resources.

What Disclosures are Protected?

Disclosures are protected under the law if they:

(a) are made:

- in accordance with this Internal Reporting Policy; or
- to the Chief Executive Officer of the Authority; 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 Authority or any of its staff; and

(c) are made voluntarily.

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 willfully make a false or misleading statement when making a disclosure.

What Protection is Available?

The protected Disclosures Act makes it a criminal offence to take "detrimental action" in reprisal against a person who makes a protected disclosure. 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.

In the first instance, public officials who allege that they have been subjected to "detrimental action" should pursue this through the Authority's internal reporting procedures. Where complainants do not wish to pursue the matter internally, they can take the matter up with the investigating authority whose jurisdiction covers the subject of the complaint.

The Protected Disclosures Act also protects a person against liability for action which may otherwise be available against the person making the disclosure, e.g. defamation, breach of secrecy or confidentiality.

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. (Breach by a disclosure officer may also constitute a breach of discipline). The exceptions to the confidential requirements are where:

- the person consents in writing to the disclosure of the 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.

In all cases the person who made the disclosure will be consulted before such a decision is made.

THE INTERNAL REPORTING SYSTEM

Need for an Internal Reporting System

The Authority has established an internal reporting system to facilitate the making of disclosures by staff about corrupt conduct, maladministration and serious and substantial waste of money.

The reporting system:

- encourages staff to make disclosures internal to the authority, as an alternative to external disclosures to one of the investigating authorities nominated in the Act;
- provides an alternative reporting channel for internal disclosures which could otherwise only be made under the Act to the Chief Executive Officer;
- ensures that disclosures by staff are properly and appropriately assessed, dealt with and acted upon; and
- ensures that the protection of the Act is fully available to staff at all levels in the organisation;
- ensure support is provided to a disclosing officer via confidential treatment of the information and that no reprisal action is taken.

To Whom to make a Protected Disclosure

Protected disclosures should generally be made in writing to:

- the Chief Executive Officer;
- the Disclosures Co-Ordinator, General Manager, Commercial & Corporate, (Mr Nick Hubble, telephone 9714 7426);
- the officer's supervisor; or
- alternatively to an investigating authority, i.e. the Independent Commission Against Corruption, the Auditor General or the NSW Ombudsman.

The Disclosure Co-ordinator

The Disclosure Co-ordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures as well as providing support to the person making the disclosure.

The Disclosure Co-ordinator provides an alternative internal reporting channel to the Chief Executive Officer and impartially assesses each disclosure to determine:

1. whether the disclosure appears to be a protected disclosure within the meaning of the Act; and
2. the appropriate confidential action to be taken in relation to the disclosure, for example:
 - a) no action;
 - b) the identification of an appropriate person to take responsibility for dealing with the disclosure;
 - c) the need for preliminary or informal investigation;
 - d) the commencement of a formal investigation;
 - e) the arrangement of prosecution or disciplinary action;
 - f) referral to an investigating authority for investigation or other appropriate action; or
 - g) referral to the police (if a criminal matter) or the ICAC (if the matter concerns corrupt conduct).

The Investigative Process in The Sydney Olympic Park Authority

Where a protected disclosure is made to a supervisor, or to the disclosure Co-ordinator, the following process will apply:

- 1) A written record of the disclosure will be agreed with the officer making the disclosure.
- 2) The person to whom the disclosure is made will report the details of it to the Disclosure Co-ordinator who will inform the Chief Executive Officer of the circumstances of the disclosure.
- 3) The Chief Executive Officer and Disclosure Co-ordinator will determine how the matter is to be investigated.
- 4) Except where it is impossible to otherwise, only the person to whom the disclosure is made, the disclosure Co-ordinator and the Chief Executive Officer will be aware of the identity of the person making the disclosure. Should this not be possible, full discussion will be held with the person making the disclosure.
- 5) A confidential report on the investigation into the matters revealed by the disclosure will be prepared by the person doing the investigation and submitted to the Chief Executive Officer as quickly as possible.
The Disclosure Co-ordinator will be responsible for keeping the person who made the disclosure informed as to the stage reached with the investigation.
- 6) The result of the investigation will be made known to the person who made the disclosure as quickly as possible and within the six months required by the Protected Disclosures Act.

Making Disclosures about other Agencies

Public officials who make disclosures about corruption, maladministration or serious and substantial waste of public money by an agency other than the one they work for will be able to receive the protections of the Act if they make that disclosure to:

- a) their own protected disclosures coordinator, or
- b) the nominated person in the agency to which the disclosure relates (this could be the CEO and/or another officer, depending on the internal reporting procedure established by that agency).

Receipt of Disclosures about other Agencies

If a protected disclosures coordinator receives a disclosure about another public authority, they must refer the disclosure to the CEO of the public authority that the disclosure is about, or to an investigating authority (i.e ICAC, Audit Office, PIC, Ombudsman or the Director-General of the Department of Premier and Cabinet).

Precautions Concerning External Disclosures

If a person chooses to make a disclosure to an external investigating authority, it should be made in writing and declared as a disclosure made under the Protected Disclosures Act in order to obtain the protection of that Act.

A Disclosure to a Journalist or a Member of Parliament

A disclosure can be made to journalists or Members of Parliament if and only if the person has already made substantially the same disclosure to the Chief Executive Officer, Sydney Olympic Park Authority, the Independent Commission Against Corruption, the Ombudsman or the Auditor General and the body to whom the disclosure has been made decides:

- not to investigate the matter; or
- fails to notify the person within six (6) months of the disclosure being made as to whether or not the matter is to be investigated; or
- investigates the matter but does not complete the investigation within six (6) months; or
- investigates the matter but does not recommend the taking of any action in respect of the matter.

Standards

Within the Authority it must clearly be understood that fraud and corruption will not be tolerated and that perpetrators will face disciplinary action.

Our standards are set out in the Authority documents:

- Code of Conduct
- Fraud and Corruption Prevention

Additional external documents:

- Independent Commission Against Corruption Act
- Guidelines for Reporting of Possible Corruption to ICAC
- Protected Disclosure Guidelines

Are each useful reference documents and are held by:

- Manager, Records & Corporate Information Services

who will make them available to you upon request.

Further Information

Further information may be obtained from:

- The Disclosures Co-ordinator, General Manager, Commercial & Corporate, telephone 9714 7426;
- The NSW Ombudsman; and
- The Independent Commission Against Corruption.

Brian Newman
Chief Executive Officer