

# PEOPLE, CULTURE AND LEARNING

## HUMAN RESOURCES

### Ethics and Code of Conduct

#### HR 8.5 Public Interest Disclosure

## 1 Purpose and Scope

This policy outlines Taronga's commitment to the objectives of the Public Interest Disclosure Act 1994.

Taronga does not tolerate corrupt conduct, maladministration, serious and substantial waste of public resources and/or money or government information contraventions

The purpose of this policy is to establish an internal reporting system to report such conduct and also enable employees to disclose information discreetly and confidentially to a Disclosure Coordinator or a nominated Disclosure Officer.

This policy is designed to compliment related Taronga policies and procedures as well as the standard reporting channels between employees, supervisors and managers. Employees are encouraged to continue to raise appropriate matters at any time with their supervisors but, in addition, are provided with a mechanism to make Public Interest disclosures in accordance with this policy.

All Taronga employees are "public officials". This policy covers public interest disclosures made by "public officials"

Taronga is committed to carrying out its function in accordance with the aims and objectives of the Public Interest Disclosures Act (1994) (Previously known as the Protected Disclosure Act 1994). Taronga aims to encourage and facilitate disclosure - in the public interest - of corrupt conduct, maladministration, serious or substantial waste of Taronga resources and/or breaches of the Government Information (Public Access) Act known as the (GIPA Act). This should be achieved by:

- providing a mechanism for employees to make disclosures;
- protecting employees who make disclosures from any detrimental action that may otherwise be inflicted on them because of disclosures;
- ensuring disclosures are properly investigated, where an investigation is warranted;
- ensuring employees have access to an avenue for making internal Public Interest Disclosures via Taronga's Nominated Officers or Coordinators; and
- ensuring every effort is made to maintain confidentiality regarding details of the disclosure or the employee making the disclosure, unless it is unreasonable or not possible to do so.

## 2 Policy and Practices

### 2.1 Public Interest Disclosures

Disclosures are protected under the Public Interest Disclosures Act if they are;

- made in accordance with this internal reporting policy; or
- are made to one of the investigating authorities nominated in the Act;
- show or tend to show corrupt conduct, maladministration, serious and substantial waste of public money or breaches of the GIPA Act by Taronga or employees; and
- are made voluntarily.

Examples of conduct that may be disclosed are as follows:

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- any breach of internal policy and/or procedure, particularly for personal gain;
- fraud or other criminal behaviour;
- non-compliance with laws and legislation relevant to position or organisation;
- misuse or mismanagement of public money and resources;
- practices that compromise the health and safety of employees, contractors, visitors or volunteers or the environment; and
- attempts to conceal any of the above.

The following disclosure is **not** covered by the Act if:

- it was made frivolously or vexatiously;
- it was made primarily to avoid dismissal or disciplinary action;
- was not made voluntarily;
- it contains intentionally false statements or is intended to mislead or attempt to mislead the recipient; and
- it questions the merits of government policy.

## 2.2 Nominated Disclosure Officers

Nominated Disclosure Officers are elected by Taronga to provide an alternative to employees' immediate supervisors, in instances where employees are not comfortable disclosing information to their direct supervisor. Disclosure Officers are accessible to all employees, are able to facilitate discreet and confidential enquiries or discussion from employees, and have adequate authority and expertise to properly deal with disclosures;

The persons or positions to whom internal disclosures can be made in accordance with the Internal Reporting System are:

The Disclosure Coordinator, Director, Corporate Services and Governance

Nominated Disclosure Officers are:

- All Directors, ie members of the Executive Team;
- Executive Director and Chief Executive ; and
- Manager, Human Resources.

## 2.3 Nominated Disclosure Officers

Disclosures may be directed to the Executive Director and Chief Executive, rather than by way of internal reporting system established under this Policy. The Executive Director and Chief Executive will impartially assess each disclosure to determine:

- whether the disclosure appears to be Public Interest disclosure within the meaning of the Act;
- the appropriate action to be taken in relation to the disclosure for example:
- receive reports from the Disclosure Coordinator on the finding of any investigation and any

recommendations for remedial action, and determine what action should be taken.

## 2.4 Supervisors and Line Managers

Supervisors and line managers also have some responsibilities relating to PIDs. Most importantly, they should refer staff wanting to make a report to a Nominated Disclosure Officer so that any reports can be classified as a PID if appropriate. Supervisors and line managers may also assist the PID Coordinator to protect reports and alert the PID Coordinator or the Executive Director and Chief Executive if they believe reprisals are occurring.

## 2.5 Making a Disclosure Internally

An employee making a disclosure should discuss the details of the disclosure with the Disclosure Coordinator or Nominated Disclosure Officer (NDO). In instances where an employee/s is contemplating making a disclosure are concerned about publicly approaching the Disclosure Coordinator or NDO they can ring the relevant officer and request a meeting in a discreet location away from the workplace.

Initially, an oral disclosure is acceptable providing there is sufficient information. The Disclosure Officer will then put the disclosure in writing which must then be signed by the employee. A written, signed disclosure will ensure that the employee is entitled to protection under the Act should this become necessary.

The employee making the disclosure should understand that some information may need to be disclosed in certain circumstances. These circumstances may include:

- where the employee who made the disclosure consents in writing to the disclosure of this information;
- where it is essential that the information be disclosed to the employee who is subject to the disclosure; or
- the Disclosure Officer is of the opinion that the disclosure of information is necessary in order to investigate the matter effectively.

## 2.6 Protection Against Detrimental Action

The Public Interest Disclosure Act makes it an offence to take detrimental action against an employee for making a Public Interest disclosure. Any employee who believes that detrimental action is being taken against them substantially or in reprisal for the making of an internal disclosure in accordance with this Policy should immediately bring the allegations to the attention of a Nominated Disclosure Officer, or the Executive Director and Chief Executive.

If an employee who made an internal disclosure feels that such reprisals are not being effectively dealt with, they should contact ICAC.

If an external disclosure was made to an investigating authority, that body will either deal with the allegation or provide advice and guidance to the person concerned.

## 2.7 Taking Action on a Disclosure

Taronga will decide what action is then required based on the information provided in the disclosure. Action can include the following:

- no action or a decision to decline to take action;
- informal investigation;
- a full or formal investigation by or on behalf of the organisation;

- prosecution or disciplinary action;
- referral to an investigating or reviewing authority as appropriate for investigation or other action, or
- referral to the police (if a criminal matter) or ICAC (if the manner concerns corrupt conduct).

Where investigations or other enquiries do not substantiate disclosures, the fact the investigation/inquiry has been carried out, the results of the investigation/inquiry and the identity of the persons subject of the disclosures will be kept confidential unless the persons subject of the disclosure requests otherwise

### 2.8 Rights of Person/s Subject to Disclosures

The person/s subject of the disclosures (whether Public Interest disclosures under the Act or otherwise) which are investigated by or on behalf of an authority, have the right to:

- be informed as to the substance of the allegations;
- be informed as to the substance of any adverse comment that may be included in a report/memorandum/letter or the like arising out of any such investigation; and
- be given a reasonable opportunity to put their case (either orally or in writing) to the persons carrying out the investigations for or on behalf of the authority, before any decision/determination/report/memorandum/letter is made or finalised;

Where the allegations in a disclosure have been investigated by or on behalf of an authority, and the person subject of the allegations is aware of the substance of the allegations, the substance of any adverse comment, or the fact of the investigation, he or she should be formally advised as to the outcome of the investigation, regardless of the outcome; and

Where the allegations contained in a disclosure are clearly wrong or unsubstantiated, the person who is the subject of the disclosure is entitled to the support of the authority and its senior management (the nature of the support that would be reasonable and appropriate would depend on the circumstance of the case, but could include a public statement of support or a letter setting out the authority's views under the allegations were either clearly wrong or unsubstantiated).

### 2.9 Notification on Action

The Disclosure Coordinator will ensure the employee making the disclosure is notified within 6 months of the disclosure being made of any action or proposed action being taken by Taronga in respect of the disclosure.

The notification provided to the person who made the disclosure should contain sufficient information to demonstrate that adequate and appropriate action was taken or is proposed to be taken, in respect of the disclosure. This should include a statement of the reasons for the decision made on or action taken in response to the disclosure.

The notification should include sufficient information to enable the person who made the disclosure to make an assessment as to whether the circumstances in section 19 (3)9(a)-(c) of the Act (relating to the disclosures to members of Parliament and journalists) apply, i.e. whether:

- a decision was made not to investigate the matter; or
- a decision was made to investigate the matter, but the investigation was not completed within 6 months of the original decision being made; or
- a decision was made to investigate the matter, but the investigation has not been completed within 6 months of the original decision being made; or
- the matter was investigated but no recommendation was made for the taking of any action in respect of the matter; or

- without such information it would be difficult for the person to be able to properly assess whether it is appropriate or warranted to make a disclosure to an MP or journalist.

### 2.10 Documentation Associated with Public Interest Disclosures

Any documentation associated with a Public Interest disclosure whether it be in paper, electronic or recorded format shall be dealt with in accordance with Taronga's procedure for Filing/Handling/Storage Associated with Public Interest Disclosures or External Investigations (Appendix II).

These procedures ensure that all such records remain confidential and that they are stored securely and access to them is limited to the individuals nominated in the procedures. The procedures also state that any access to the records is documented.

### 2.11 Making a Disclosure Externally

There are external avenues available for making a Public Interest Disclosure under the Act (other than by means of internal reporting system established under this Policy for the purposes of the Act). These are listed as follows:

- NSW Ombudsman;
- Independent Commission Against Corruption (ICAC), for matter involving corrupt conduct; or
- Auditor-General, for matters involving serious or substantial waste of money in agencies. See

Appendix I for further information and contact details.

### 2.12 Confidentiality

The Act requires investigating authorities, public authorities and public officials to whom Public Interest Disclosures are made or referred, not to disclose information that might identify or tend to identify the person who made the disclosures. The exceptions to the confidential requirement are where:

- the person consents in writing to the disclosure of that 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 that matter effectively; or
- disclosure is otherwise in the public interest.

Decisions about natural justice, effective investigation and public interest will be made by the Disclosure Coordinator and/or the Executive Director and Chief Executive. In all cases the person who made the disclosure will be consulted before such a decision is made.

### 2.13 Freedom of Information Exemption

Under the Freedom of Information Act 1989, a document is exempt from release if it contains matter the disclosures of which would disclose matters relating to a Public Interest Disclosure.

## 3 Responsibility and Accountability

### 3.1 Employees

Employees are responsible for:

- complying with this policy;
- reporting known or suspected incidences or corrupt conduct, maladministration, serious and substantial waste or breaches of the GIPA Act in accordance with this policy;
- protecting and maintaining the confidentiality of the identity of any person they know or suspect has made a disclosure; and
- abstaining from any activity that is, or could be perceived as being, victimisation or harassment of the employee that has made the disclosure.

### 3.2 Nominated Disclosure Officer

The Nominated Disclosure Officers are responsible for:

- ensuring disclosures are assessed impartially and employees who have made the disclosure are treated fairly;
- reduce in writing and date any disclosures received orally (and have the person making the disclosure sign the document);
- disclosures are investigated discreetly;
- ensuring that where an investigation does not substantiate a disclosure, the details and subject of the disclosure is kept confidential unless the person specifies otherwise;
- forward disclosures to the Disclosure Coordinator for assessment;
- explaining to the person who made the disclosure what will happen in relation to the information that was brought forward; and
- supporting any person who has made a disclosure and protect them from victimisation, harassment or any other form of detrimental action.

### 3.3 Disclosure Coordinator

The Disclosure Coordinator has a pivotal position in the internal reporting system and acts as a clearing house for disclosures. The Disclosure Coordinator is responsible for:

- providing an alternate internal reporting channel to the Nominated Disclosure Officers;
- impartially assessing each disclosure to determine whether the disclosure appears to be a Public Interest Disclosure within the meaning of the Act and what action needs to be taken in relation to the disclosure;
- being responsible for carrying out or coordinating any internal investigation arising out of a disclosure;
- reporting to the Executive Director and Chief Executive and/or Chairman of the Board on the finding of any investigation and recommend remedial action;
- taking all necessary and reasonable steps to ensure that the identity of person who make disclosures, and the persons subject of the disclosures are kept confidential;

- supporting the person who make disclosures and actively protect them from victimisation, harassment or any other form of reprisal;
- reporting actual or suspected corrupt conduct in a timely manner to enable compliance with the ICAC Act; and
- ensuring that documentation associated with any disclosure is maintained in a proper and secure manner

### 3.4 Principal Officer (Executive Director and Chief Executive)

The Principal Officer is responsible for:

- taking all necessary and reasonable steps to ensure that the identity of persons who make disclosures, and the person subject of disclosures are kept confidential;
- having the primary responsibility for protecting employees who make disclosures, or provide information to any internal or external investigation of a disclosure from victimisation, harassment or any other form of reprisal;
- implementing organisational reform identified as necessary following investigation of a disclosure; and
- reporting criminal offences to the police and actual or suspected corrupt conduct to ICAC (under s.11 of the ICAC Act).

## 4 References

- HR 4.3 Workplace Grievance Policy.
- ICAC Act 1988.
- Public Interest Disclosures Act 1994.
- Ombudsman Act 1974
- Privacy and Personal Information Protection Act 1998
- Public Finance and Audit Act 1983
- Protected Disclosures Guidelines, 6<sup>th</sup> edition, NSW Ombudsman.
- Thinking About Blowing the Whistle? How to Make a Public Interest Disclosure.

## 5 Definitions

### 5.1 Public Interest Disclosure

In accordance with the Public Interest Disclosure Act, Public Interest Disclosure refers to the reporting any allegations of corrupt conduct, maladministration, waste of resources or public money and/or breaches of the GIPA Act by any employee of an organisation.

### 5.2 Detrimental Action

Detrimental action includes the dismissal or undertaking of disciplinary action against an employee. It also

includes any action that:

- causes injury, damage or loss to an employee;
- intimidates or harasses an employee; or
- discriminates or disadvantages employment with the Taronga.

### 5.3 Corrupt Conduct

Corrupt conduct is broadly defined in the Independent Commission Against Corruption (ICAC) Act as conduct that includes 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 partial or honest exercise of official functions by a public official, also comes within the definition.

Corrupt conduct can take many forms and can include taking or offering bribes, public officials dishonestly using influence, blackmail, fraud, forgery, revenue evasion, tax evasion and/or embezzlement.

### 5.4 Maladministration

Maladministration is defined by the Public Interest Disclosures 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.

### 5.5 Serious or substantial waste

Serious and substantial waste is not defined in the Public Interest Disclosures Act. The Auditor-General provides the following working definition:

Serious and substantial waste refers to the uneconomical, inefficient, or ineffective use of resources, authorised or unauthorised, which results in a loss/waste of public funds or resources. In addressing any complaint of serious and substantial waste regard will be had, to the nature and materiality of the waste.

Waste can take on many forms, for example:

- misappropriation or misuse of public property;
- the purchase of unnecessary or inadequate goods and services;
- too many personnel being employed in a particular area, incurring costs which might otherwise have been avoided;
- employees being remunerated for skills that they do not have, but are required to have under the terms and conditions of their employment; and
- programs not achieving their objectives and therefore the cost being clearly ineffective and inefficient.

Waste can result from such things as:

- the absence of appropriate safeguards to prevent theft or misuse of public property;
- purchasing procedures and practices which fail to ensure that goods and services are necessary and adequate for their intended purpose; and
- purchasing practices where the lowest price is not obtained for comparable goods and services.

### 5.6 Breaches of the GIPA Act

Breaches of the GIPA Act that could be classified as wrong doing suitable for a PID relate to the management of public records. Examples of such breaches include:

- Intentionally overlooking or not releasing documents that are clearly covered by an application from a member of the public to access those documents
- Destroying, concealing or altering records to prevent them being released
- Knowingly making a decision that is contrary to the GIPA Act, including directing someone else to do something contrary to the Act

## 6 Version Control

Version Control	Date Effective	Drafted by	Approved By	Amendment
2.0	March 05	HR	CEO	
3.0	April 2012	HR	CEO	
4.0	Feb 2016	HR	CEO	

## 7 Approval

Cameron Kerr

Executive Director and Chief Executive

## 8 Appendices

- Appendix 1 Contact details for further information
- Appendix 2 Procedures for Filing/Handling/Storage of Records Associated with Public Interest Disclosures