1. NSW Department of Trade and Investment’s Public Interest Disclosure – Internal Reporting Policy

The State Library is committed to the aims and objectives of the Public Interest Disclosures Act 1994 (PID Act) which provides protection for staff members reporting genuine concerns regarding corruption, maladministration, substantial waste of public money or government information contraventions.

The Library has adopted the NSW Department of Trade and Investment’s Public Interest Disclosure – Internal Reporting Policy, which has established reporting procedures for staff to make public interest disclosure in accordance with the requirements of the Act. This includes keeping their identity as confidential as possible, providing support and protection from detrimental action related to their making of the disclosure.

2. Statement of support to Whistleblowers

The Library recognises the value of transparency and accountability in its administrative and management practices and supports the making of disclosures that reveals improper conduct such as: corruption, maladministration, substantial waste of public money or government information contraventions, or conduct involving a substantial risk to public health and safety or the environment.

The Library does not tolerate improper conduct by its employees, officers, or members, nor the taking of reprisals against those who come forward to disclose such conduct.

3. Purpose of these procedures

The Library’s Whistleblower Protection Procedures complements the NSW Department of Trade and Investment’s Public Interest Disclosure – Internal Reporting Policy, and ensures transparency and accountability, and provides a framework to address bona fide concerns that individuals may have, while offering whistleblowers protection from victimisation, harassment or disciplinary proceedings.

Disclosures may be made by staff or members of the public.

It is intended to assist individuals who believe they have discovered maladministration or impropriety. It is not designed to question financial or business decisions taken by the Library. These procedures do not replace existing Library grievance or complaints procedures.

4. Definition of key terms

4.1 Whistleblower
An individual who has a genuine concern, and in good faith, undertakes a confidential disclosure of improper conduct by the staff at the Library.

4.2 Improper conduct

Improper conduct means corruption, maladministration, substantial waste of public money or government information contraventions, or conduct involving a substantial risk to public health and safety or the environment.

4.3 Corruption

Corruption is defined in the Independent Commission Against Corruption (ICAC) Act 1988. It can take many forms including taking or offering bribes, the dishonest use of influence, blackmail or fraud.

4.4 Maladministration

Maladministration is defined for the purposes of the Public Interest Disclosures Act 1994 as conduct which 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.

4.5 Substantial waste

Substantial waste refers to uneconomical, inefficient or ineffective use of resources, authorised or unauthorised, which results in a loss of public funds or resources.

4.6 Government information contravention

Government information contravention is defined for the purposes of the Public Interest Disclosures Act 1994 as conduct of any kind that constitutes a failure to exercise functions in accordance with any provision of the Government Information (Public Access) Act 2009.

This includes:
- Destroying, concealing or altering records to prevent them from being released, or
- Knowingly making decisions that are contrary to the legislation, or
- Directing another person to make a decision that is contrary to the legislation.

4.7 Detrimental action

Detrimental action includes actions causing injury, loss or damage, intimidation or harassment, discrimination, disadvantage or adverse treatment in relation to a person’s employment, career, profession, trade or business, including the taking of disciplinary action.

5 The Reporting Framework

5.1 Reporting under the Public Interest Disclosures Act 1994 (PID Act)

Public Interest Disclosures by staff:
• May be reported internally to the Director-General of NSW Trade and Investment, the Public Interest Disclosures Co-ordinator (for NSW Trade & Investment this is the Deputy Director General, Finance, Strategy & Operations), or the Deputy Directors-General, Executive Directors and Branch Heads listed as PID Receivers. The nominated Public Interest Disclosure Receiver at the Library is the State Librarian and Chief Executive.

• Protected disclosures may be reported externally to the Independent Commission Against Corruption (ICAC), Ombudsman, Auditor General or the Information Commissioner.

• The identity of staff members making a public interest disclosure will be treated as confidentially as possible in accordance with s22 of the PID Act.

• Within 5 working days of a public interest disclosure being received by the PID Co-ordinator an acknowledgement will be sent to the person making the disclosure, together with a copy of the PID Policy and Procedure.

• Staff members will be advised within six months of making a public interest disclosure of the action taken, or proposed to be taken, in regard to the disclosure.

• The department will protect staff against detrimental action related to their making of a public interest disclosure.

5.1.1 What disclosures are protected

Disclosures are protected under the *PID Act* if they are made:

- internally, in accordance with this policy; or
- externally, to one of the investigating authorities nominated in the Act.
- Show or tend to show corrupt conduct, maladministration, serious and substantial waste or a government information contravention by the Department or any of its staff or agents.
- Are made voluntarily.

Disclosures may also be made to journalists or members of Parliament, but are only protected under the *PID Act* in specified circumstances. These are; that substantially the same disclosure must have been previously made to NSW Trade & Investment or an investigating authority with the outcome being one or more of the following;

- No investigation was undertaken
- An investigation was undertaken but no action taken in regard to the matter
- An investigation was commenced but not completed within six months
- The person making the disclosure was not advised within six months whether the matter was to be investigated.

In addition, to be protected under the *PID Act* disclosures to journalists and Members of Parliament must be substantially true. It is insufficient that the person making the disclosure had *reasonable grounds* to believe the disclosure to be true.

The relevant investigating authorities nominated in the *PID Act* are:

- Independent Commission Against Corruption (ICAC) for matters involving corrupt conduct
- Ombudsman, for maladministration
- Auditor-General, for matters involving serious and substantial waste of public money.
• Information Commissioner, for matters involving government information contravention.

5.1.2 What disclosures are not protected

In addition to the qualifications in section 5.1.1 above concerning what disclosures are protected under the Act, a disclosure is not protected if it is made by a public official in the exercise of a duty or function imposed on that public official 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
• Are made solely or substantially with the motive of avoiding dismissal or other disciplinary actions.

It is an offence to wilfully make a false or misleading statement when making a disclosure. The penalties imposed for these offences may include fines and imprisonment.

5.2 Reporting under the Whistleblower Protection Procedures

5.2.1 Contact persons within the State Library of NSW

Disclosures of improper conduct or detrimental action by the Library or its staff may be made to the Library’s Public Interest Disclosure Receiver: the State Librarian and Chief Executive, State Library of NSW, Macquarie Street, Sydney NSW 2000. Telephone: (02) 9273 1663.

All correspondence, phone calls, and emails from internal or external whistleblowers will be referred to the Public Interest Disclosure Receiver.

Where an individual is contemplating making a disclosure is concerned about approaching the Public Interest Disclosure Receiver, he or she can contact the nominated whistleblower Welfare Manager and request a meeting in a discreet location away from the workplace.

The nominated Welfare Manager is the Human Resources Manager, State Library of NSW, Macquarie Street, Sydney NSW 2000. Telephone: (02) 9273 1430.

5.2.2 Alternative contact persons

A disclosure about improper conduct or detrimental action by the Library or its staff may be made directly to the Ombudsman:

NSW Ombudsman
Level 24, 580 George Street, Sydney NSW 2000
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Email: nswombo@ombo.nsw.gov.au

6 Roles and Responsibilities

6.1 Staff
Staff are encouraged to report known or suspected incidences of improper conduct or detrimental action in accordance with these procedures.

All staff of the Library has an important role to play to support those who have made a legitimate disclosure. They must refrain from any activity that is, or could be perceived to be, victimisation or harassment of a person who makes a disclosure. Furthermore, they should protect and maintain the confidentiality of a person they know or suspect to have made a disclosure, as well as the subject of any such disclosure.

6.2 Public Interest Disclosure Receiver

The Public Interest Disclosure Receiver will:

- Receive all disclosures directly or forwarded from the Welfare Manager or NSW Ombudsman
- Receive all phone calls, emails and letters from members of the public or staff seeking to make a disclosure
- Impartially assess each disclosure to determine if it is a public interest disclosure
- Refer all public interest disclosures to the Public Interest Disclosure Coordinator - Deputy Director General, Finance, Strategy and Operations, NSW Trade and Investment
- Appoint an investigator to carry out an investigation into the disclosed matter
- Be responsible for overseeing and coordinating the investigation
- Appoint a Welfare Manager to support the whistleblower and to protect him or her from any reprisals
- Advise the whistleblower of the progress of an investigation into the disclosed matter
- Establish and manage a confidential filing system
- Take all necessary steps to ensure the identity of the whistleblower and the identity of the person who is the subject of the disclosure are kept confidential
- Liaise with the President of the Library Council of NSW
- Provide a summary report to the Audit and Risk Committee on the findings of the investigation and any actions to remedy.

6.3 Investigator

The investigator will be responsible for carrying out an internal investigation into a disclosure matter. An investigator would be a consultant engaged for that purpose. The objectives of an investigation will be:

- To collate information relation to the disclosed matter as quickly as possible. This may involve taking steps to protect or preserve documents, materials and equipment.
- To consider the information collected and to draw conclusions objectively and impartially
- To maintain procedural fairness in the treatment of witnesses and the person who is the subject of the disclosure
- To make recommendations arising from the conclusions drawn, concerning remedial or other appropriate action.

6.4 Welfare Manager
The Welfare Manager is responsible for looking after the general welfare of the whistleblower. The Welfare Manager will:

- Examine the immediate welfare and protection needs of a whistleblower who has made a disclosure and seek to foster a supportive work environment, when the whistleblower is a staff member
- Advise the whistleblower of the legislative and administrative protections available to him or her, and assist him or her to understand the process and any likely consequences
- Listen and respond to any concerns of harassment, intimidation or victimization in reprisal for making the disclosure

7 Confidentiality

The Library will take all reasonable steps to protect the identity of the whistleblower. Maintaining confidentiality is crucial in ensuring reprisals are not made against a whistleblower.

The Library will not include the particulars in any report or recommendation that is likely to lead to the identification of the whistleblower. The Library will not include the particulars of the person who is the subject of the disclosure in an annual report.

All materials relevant to an investigation, such as tapes from interviews, will be stored securely.

The Library will not email documents relevant to a whistleblower matter and will ensure that all phone calls and meetings are conducted in private.

8 The Investigation

8.1 Terms of Reference of the Investigation

Before commencing the investigation, the Public Interest Disclosure Receiver will draw up the terms of reference and obtain authorisation for those terms by the President of the Library Council of NSW. The terms of reference will require the investigator to make regular reports to the Public Interest Disclosure Receiver, who in turn, is to keep the President of the Library Council of NSW, and the NSW Ombudsman where necessary, informed of general progress.

8.2 Investigation plan

The investigator will prepare an investigation plan for approval by the Public Interest Disclosure Receiver. The plan will list the issues to be substantiated and describe the avenue of inquiry.

At the commencement of the investigation, the whistleblower should:

- Be notified by the investigator that he or she has been appointed to conduct the investigation
- Be asked to clarify any matters, and
- Provide any additional material he or she may have.

The investigator will be sensitive to the whistleblower’s possible fear of reprisals and will make the whistleblower aware of the statutory protections provided to him or her.
8.3 Natural Justice

The principles of natural justice will be followed in any investigation of a public interest disclosure. The principles of natural justice concern procedural fairness and ensure a fair decision is reached by an objective decision-maker, and in particular the following will apply:

- The person who is the subject of the disclosure is entitled to know the allegations made against him or her, and must be given the opportunity to respond at an appropriate time.
- All relevant parties to the disclosed matter should be heard and all submissions be considered.
- A decision should not be made until all reasonable inquiries have been made.
- The investigator or any decision-maker should not have a personal or direct interest in the matter being investigated.
- All proceedings must be carried out fairly and without bias. Care should be taken to exclude perceived bias from the process.
- The investigator must be impartial in assessing the credibility of the whistleblower and any witnesses. Where appropriate, conclusions as to credibility should be included in the investigation report.

8.4 Conduct of the Investigation

The investigator will make contemporaneous notes of all discussions and phone calls, and all interviews with witnesses will be taped. All information gathered in an investigation will be stored securely. Interviews will be conducted in private and the investigator will take all reasonable steps to protect the identity of the whistleblower.

Where disclosure of the identity of the whistleblower cannot be avoided, due to the nature of the allegations, the investigator will warn the whistleblower and the Welfare Manager of this probability.

It is the discretion of the investigator to allow any witness to have legal or other representation or support during an interview. If a witness has a special need for legal representation or support, permission should be granted.

8.5 Referral of an Investigation to the Ombudsman

The Public Interest Disclosure Receiver will make a decision regarding the referral of an investigation to the Ombudsman where, on the advice of the investigator:

- The investigation is being obstructed by, for example, the non-cooperation of key witnesses, or
- The investigation has revealed conduct that may constitute a criminal offence.

8.6 Investigator’s Final Report

At the conclusion of the investigation, the investigator will submit a written report of the findings to the Public Interest Disclosure Receiver.

Where the investigator has found conduct disclosed by the whistleblower has occurred, recommendations made by the investigator will include:

- Steps to be taken by the Library to prevent the conduct from continuing or occurring in the future, and
• Any action that should be taken by the Library to remedy any harm or loss arising from the conduct. This may include bringing disciplinary proceedings against the person responsible for the conduct, and referring the matter to an appropriate authority for further consideration.

The report will be accompanied by:
• The transcript or other record of any oral evidence taken, including tape recordings, and,
• All documents, statements or other exhibits received and accepted as evidence during the course of the investigation.

Where the investigator’s report is to include any adverse comment against any person, that person will be given the opportunity to respond and his or her defence will be fairly included in the report.

The report will not disclose particulars likely to lead to the identification of the whistleblower.

9 Actions to be taken after an investigation

If the Public Interest Disclosure Receiver is satisfied that the investigation has found that the disclosed conduct has occurred, he or she will recommend to the President of the Library Council of NSW the action that must be taken to prevent the conduct from continuing or occurring in the future. The Public Interest Disclosure Receiver may also recommend that action be taken to remedy any harm or loss arising from the conduct. The Public Interest Disclosure Receiver will provide a written report to the President of the Library Council of NSW, the Public Interest Disclosure Coordinator and the whistleblower, setting out the findings of the investigation and any remedial steps to be taken.

10 Managing the Welfare of the Whistleblower

10.1 Commitment to protecting the Whistleblower

The Library is committed to the protection of genuine whistleblowers against detrimental action taken in reprisal for the making of public interest disclosures. The Public Interest Disclosure Receiver is responsible for ensuring whistleblowers are protected from direct and indirect detrimental action, and that the culture of the workplace is supportive of protected disclosures being made.

The Public Interest Disclosure Receiver will appoint a Welfare Manager to all whistleblowers who have made a protected disclosure.

10.2 Keeping the Whistleblower informed

The Public Interest Disclosure Receiver will ensure the whistleblower is kept informed of action taken in relation to his or her disclosure, and the timeframes that apply. The whistleblower will be informed of the objectives of an investigation, the steps taken by the Library to address any improper conduct that have found to have occurred. The whistleblower will be given reasons for decisions made by the Library in relation to a protected disclosure.

10.3 Occurrence of detrimental action
If a whistleblower reports an incident or harassment, discrimination or adverse treatment that would amount to detrimental action taken in reprisal for the making of the protected disclosure, the Welfare Manager will:

- Record details of the incident
- Advise the whistleblower of his or her rights under the legislative and administrative protections
- Advise the Public Interest Disclosure Receiver of the detrimental action.

The Public Interest Disclosures Act 1994 provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action in reprisal as a result of a public interest disclosure. Penalties for action taken in reprisal can include imprisonment and fines.

10.4 Whistleblowers implicated in improper conduct

Where the person who makes a disclosure is implicated in misconduct, the Library will handle the disclosure and protect the whistleblower from reprisals in accordance with the Public Interest Disclosures Act 1994, the Ombudsman’s guidelines and these procedures. The Library acknowledges that the act of whistle-blowing should not shield whistleblowers from the reasonable consequences flowing from any involvement in improper conduct. However, in some circumstances an admission may be a mitigating factor when considering disciplinary or other action.

The President of the Library Council of NSW will make the final decision on the advice of the Public Interest Disclosure Receiver as to whether disciplinary or other action will be taken against a whistleblower. Where disciplinary or other action relates to conduct that is the subject of the whistleblower’s disclosure, the disciplinary or other action will be taken after the disclosed matter has been appropriately dealt with.

In all cases where disciplinary or other action is being contemplated, the Public Interest Disclosure Receiver must be satisfied that it has been clearly demonstrated that:

- The intention to proceed with disciplinary action is not causally connected to the making of the disclosure (as opposed to the content of the disclosure or other available information)
- There are good and sufficient grounds that would fully justify action against any non-whistleblower in the same circumstances
- There are good and sufficient grounds that justify exercising any discretion to institute disciplinary or other action.

The Public Interest Disclosure Receiver will thoroughly document the process including recording the reasons why the disciplinary or other action is being taken, and the reasons why the action is not in retribution for the making of the disclosure. The Public Interest Disclosure Receiver will clearly advise the whistleblower of the proposed action to be taken, and of any mitigating factors that have been taken into account.

11 Management of the person against whom a disclosure has been made

The Library recognises that staff against whom disclosures are made must also be supported during the handling and investigation of the disclosures. The Library will
take all reasonable steps to ensure the confidentiality of the person who is the subject of the disclosure during the assessment and investigation process. Where investigations do not substantiate disclosures, the fact that the investigation has been carried out, the results of the investigation, and the identity of the person who is the subject of the disclosure, will remain confidential.

The Public Interest Disclosure Receiver will ensure that the person who is subject of any disclosure investigated is:

- Informed as to the substance of the allegations
- Given the opportunity to answer the allegations before a final decision is made
- Informed as to the substance of any adverse comment that may be included in any report arising from the investigation
- Has his or her defence set out fairly in any report.

Where the allegations in a disclosure have been investigated, and the person who is the subject of the disclosure is aware of the allegations or the fact of the investigation, the Public Interest Disclosure Receiver will formally advise the person who is the subject of the disclosure the outcome of the investigation.

The Library will give its full support to a person who is the subject of a disclosure where the allegations contained in a disclosure are clearly wrong or unsubstantiated. If the matter has been publicly disclosed, the State Librarian and Chief Executive of the Library will consider any request by that person to issue a statement of support setting out that the allegations were clearly wrong or unsubstantiated.

12 Review

These procedures will be reviewed annually to ensure they meet the objectives of the PID Act and the Ombudsman’s guidelines.

13 Document History and Version Control

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