



Whistleblowing Policy

(K-GOVPOL005)
(Policy Type – Council)

1 Aim

The Ombudsman in updating the Public Interest Disclosures guidelines recommended it is good policy to have in place a Whistleblowing Policy.

Council in adopting a Whistleblowing Policy aims to ensure councillors and staff, as public officers, are aware of the requirements and supported in, the making of a protected disclosure in respect to corrupt behaviour or improper conduct.

2 Policy Statement

The Kentish Council is committed to ensuring its councillors and employees who may be aware of possible wrongdoing within the Council, feel supported in speaking up. The purpose of the Whistleblowing Policy is to:

- encourage disclosures of misconduct,
- help deter misconduct,
- ensure those who disclose misconduct can do so safely, securely and in the knowledge, they will be protected and supported,
- ensure any disclosures are dealt with appropriately and in a timely manner, and
- provide transparency around the Council's processes for receiving, handling and investigating disclosures.

3 Policy Detail

Purpose	Description
Public Interest Disclosures Act 2002	<p>The purpose of the Act is to:</p> <ul style="list-style-type: none">• encourage and facilitate disclosure of improper conduct by public bodies and public officials,• protect persons making a disclosure from reprisals,• provide for matters disclosed to be properly investigated and dealt with, and• provide all parties involved in those disclosures with fair and natural justice.
What is a disclosure?	<p>Disclosures are complaints about serious or improper conduct by a public officer. Improper conduct also relates to any detrimental or retaliatory action (reprisal) by a public officer or public body against someone who makes a protected disclosure under the Act.</p>



	<p>A disclosure is automatically protected if it complies with Part 2 of the Act, and:</p> <ul style="list-style-type: none"> • is made by a public officer or a contractor, • is made to the correct entity, • is related to the conduct of a public officer or a public body, • is made by a discloser who believes that the public officer or public body has engaged, is engaging or proposes to engage in improper conduct, • is related to conduct that could fall within the definition of improper conduct. <p>There is a low threshold for what constitutes a protected disclosure. This is to encourage public officers to report concerns about wrongdoing, and for the discloser to be protected under the Act. If the criteria is met, Council must notify the discloser that their disclosure is a ‘protected disclosure’.</p> <p>If it is determined that the conduct disclosed is not serious or significant, Council may deal with the disclosure using existing internal policies or procedures.</p> <p>A determination of whether a protected disclosure is a public interest disclosure must be determined within 45 days of receipt.</p> <p>In assessing the disclosure there must be evidence or an indication that evidence can be found to show or demonstrate the existence of improper conduct – a mere allegation is not enough.</p> <p>The improper conduct must be considered serious or significant and factor in such considerations as to whether it demonstrates a course of conduct; the seniority of the person; and the harm or potential harm associated with the conduct or misconduct.</p> <p>Anonymous disclosures may also be made, if the person receiving the disclosure is satisfied the disclosure is being made by a public officer or contractor.</p>
<p>What is Improper Conduct</p>	<p>Under the <i>Public Interest Disclosures Act 2002</i> Improper Conduct means:</p> <ul style="list-style-type: none"> (a) conduct that constitutes an illegal or unlawful activity; or (b) corrupt conduct; or (c) conduct that constitutes maladministration; or (d) conduct that constitutes professional misconduct; or (e) conduct that constitutes a waste of public resources; or (f) conduct that constitutes a danger to public health or safety or to both public health and safety; or



	<p>(g) conduct that constitutes a danger to the environment; or</p> <p>(h) misconduct, including breaches of applicable codes of conduct; or</p> <p>(i) conduct that constitutes detrimental action against a person who makes a public interest disclosure under this Act.</p> <p>that is serious or significant as determined in accordance with guidelines issued by the Ombudsman.</p>										
<p>How to make a disclosure</p>	<p>The following table details to who a disclosure can be made to:</p> <table border="1" data-bbox="472 607 1417 1245"> <thead> <tr> <th data-bbox="472 607 943 696">Public Body or Public Officer to which the disclosure relates</th> <th data-bbox="949 607 1417 696">Where and to whom the disclosure can be made</th> </tr> </thead> <tbody> <tr> <td data-bbox="472 705 943 864">A councillor or employee of the Kentish Council</td> <td data-bbox="949 705 1417 864"> <ul style="list-style-type: none"> • Kentish Council • Integrity Commission • Ombudsman’s Office </td> </tr> <tr> <td data-bbox="472 873 943 987">The Principal Officer (General Manager) or the Kentish Council as the entity</td> <td data-bbox="949 873 1417 987"> <ul style="list-style-type: none"> • Integrity Commission • Ombudsman’s Office </td> </tr> <tr> <td data-bbox="472 996 943 1077">A councillor of the Kentish Council</td> <td data-bbox="949 996 1417 1077"> <ul style="list-style-type: none"> • Ombudsman’s Office </td> </tr> <tr> <td data-bbox="472 1086 943 1245">In any other case, including if the disclosure is about a public body as opposed to an individual public officer</td> <td data-bbox="949 1086 1417 1245"> <ul style="list-style-type: none"> • Integrity Commission • Ombudsman’s Office </td> </tr> </tbody> </table> <p>A disclosure must be made to the correct entity. Generally, a disclosure about a Council employee is to be made to the General Manager as the Principal Officer, but this is not always the case. A disclosure about a Councillor or the General Manager is to be made to the Ombudsman.</p> <p>A public body cannot investigate itself; only its employees. Therefore, disclosures relating to Council (as the entity) should be submitted to the Ombudsman or Integrity Commission. Contractors (and volunteers also) may make disclosures about a public body directly to the Ombudsman or the Integrity Commission.</p> <p>A disclosure that relates to a public officer, may be reported to another public officer, but it is recommended that it be disclosed directly to the Principal Officer (General Manager) or a Public Interest Disclosure (PID) Officer. Disclosures can be made verbally or in writing, and delivered to the Kentish Council, 69 High Street, Sheffield or emailed to council@kentish.tas.gov.au.</p>	Public Body or Public Officer to which the disclosure relates	Where and to whom the disclosure can be made	A councillor or employee of the Kentish Council	<ul style="list-style-type: none"> • Kentish Council • Integrity Commission • Ombudsman’s Office 	The Principal Officer (General Manager) or the Kentish Council as the entity	<ul style="list-style-type: none"> • Integrity Commission • Ombudsman’s Office 	A councillor of the Kentish Council	<ul style="list-style-type: none"> • Ombudsman’s Office 	In any other case, including if the disclosure is about a public body as opposed to an individual public officer	<ul style="list-style-type: none"> • Integrity Commission • Ombudsman’s Office
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	<p>If a public officer receives a disclosure, they are to refer the disclosure to the Principal Officer (General Manager) or a PID Officer for assessment.</p> <p>Contractors may only make disclosures about a public body, so they must contact the Ombudsman or the Integrity Commission.</p> <p>A member of the public can make disclosures if it is in the public interest to do so. These must be reported to the Ombudsman or the Integrity Commission who will undertake the assessment.</p>
<p>Disclosure Guidelines</p>	<p>Council has adopted a Public Interest Disclosure Policy.</p> <p>The Policy is underpinned by the Public Interest Disclosure Procedures which outlines matters relating to public interest disclosure. An “Assessment of Disclosure Form” is provided as attachment 1 within the Procedures document to assist in the process.</p>
<p>Assessment of Disclosure</p>	<p>The General Manager or a PID Officer will assess the disclosure to determine if its disclosure is protected and if it is a public interest disclosure. If it is determined that it is not a public interest disclosure, the Ombudsman will review the decision.</p>
<p>Investigation</p>	<p>If it is determined that the protected disclosure is a public interest disclosure, Council must, under the Act, investigate the matter. Exceptions to this are detailed in section 64 and include scenarios where, for example:</p> <ul style="list-style-type: none"> • the discloser knew for more than a year about the improper conduct and did not adequately explain the delay in making the disclosure, and • the content of the disclosure has already been adequately dealt with by the Ombudsman or other relevant bodies. <p>If it determined not to investigate, the Ombudsman and the discloser are to be provided with the reasons for the decision within 14 days. The Ombudsman is required to review the decision by the Council not to investigate a matter.</p> <p>If an investigation finds improper or corrupt conduct has occurred, Council:</p> <ul style="list-style-type: none"> • must take all reasonable steps to prevent the conduct from continuing or reoccurring in the future, and • may take action to remedy any harm or loss arising from the conduct. <p>The Ombudsman and the discloser must be notified of the findings of the investigation. If the investigation finds improper conduct has occurred, the Ombudsman and the discloser must be informed of the action taken in response.</p>



Referrals	Council may refer a protected disclosure to the Integrity Commission if it is considered the disclosure relates to misconduct as defined in the <i>Integrity Commission Act 2009</i> . If conduct appears criminal in nature, Council may contact/refer the matter to Tasmania Police or the Ombudsman.
Reprisals / Detrimental Action	<p>Under the Act, it is an offence to take reprisal action against someone who has made a protected disclosure. This is considered to be detrimental action. The fear of reprisals is a significant deterrent to disclosers coming forward with information. Protections are offered to disclosers under the Act for detrimental action that includes:</p> <ul style="list-style-type: none"> • 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, and • threats of detrimental action. <p>This applies also if a protected disclosure does not meet the higher threshold test of being a public interest disclosure insofar as the protections of making a disclosure will still apply.</p> <p>Blowing the whistle does not exempt a person from disciplinary action, as not all disciplinary action will necessarily represent reprisal action.</p> <p>If a whistle-blower believes that someone has taken detrimental action against them for making a disclosure, they can make a further disclosure about this to the appropriate authority. Detrimental action itself is considered to be improper conduct, and the process for making and assessing the disclosure is the same.</p> <p>It is an offence to take reprisal action. A person can be fined up to 240 penalty units and/or imprisoned for up to two years for taking detrimental action against a person in reprisal for them having made a disclosure.</p> <p>Persons subject to reprisals also may undertake civil action, including:</p> <ul style="list-style-type: none"> • seeking damages in court, • seeking an order that the person who took the detrimental action remedy that action, and • seek an injunction to stop the detrimental action
Penalties for false disclosures	Under section 87 of the Act, a person must not knowingly provide false information, intending that it be acted on as a disclosed



	<p>matter, to a public body, or knowingly provide false information to a person conducting an investigation under the Act.</p> <p>Penalties of up to 240 penalty units or imprisonment for up to two years, or both, may apply</p>
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4 Associated Documents and References

4.1 Local Government Act 1993 Reference

Nil

4.2 Other Legislation Reference

Public Interest Disclosures Act 2002

Integrity Commission Act 2009

4.3 Strategic Plan Reference

Area	1	Governance and Organisational Development
Program	1.2	Governance
Objective	1.2	To provide consistent, accountable, transparent and effective governance of the Council

4.4 Other Associated Documents

Public Interest Disclosure Policy

Public Interest Disclosure Model Guidelines

APPROVED BY COUNCIL: 18 July 2023 Minute: 12.1

EFFECTIVE DATE: 18 July 2023

ADMINISTERED BY: Manager Corporate & Business Services

This policy will be reviewed periodically to ensure its relevance in terms of community needs and expectations and Council goals, targets, budget and statutory requirements.