

# Policy

## Internal Reporting (Protected Disclosures)

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## **Internal Reporting (Protected Disclosures)**

### **Purpose and context of the policy**

The purpose of the Public Interest Disclosures Act (PID) Act 1994 is:

To encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector; and

To ensure that any public official who wishes to make a disclosure receives legal protection from reprisals, and that the matters raised in any disclosure are properly investigated.

The context of this policy is to:

Establish an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration or serious and substantial waste of public money by Tweed Shire Council, members of Council staff and Councillors. This enables protected disclosures to be made to the Disclosure Coordinator, a nominated Disclosures Officer, the Mayor, or the General Manager.

Complement the normal means of communication between managers and members of Council staff. (Members of Council staff are encouraged to continue to raise appropriate matters at any time with their managers but they also have the right to make protected disclosures in accordance with this policy.)

Ensure that Council will take all reasonable steps to protect any Councillor or member of Council staff or Council contractor who makes a disclosure from any detrimental action in reprisal for making that disclosure.

### **Organisational commitment**

Tweed Shire Council, as an ethical Council, is committed to acting in accordance with the spirit and letter of the PID Act by:

- creating a climate of trust, where staff are comfortable and confident about reporting wrongdoing.
- encouraging staff to come forward if they have witnessed what they consider to be wrongdoing within the organisation.
- keeping the identity of the staff member disclosing wrongdoing confidential, wherever possible and appropriate.
- protecting staff who make disclosures from any adverse action motivated by their report.
- dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it.

- keeping staff who make reports informed of their progress and the outcome.
- encouraging staff to report wrongdoing within the organisation, but respecting any decision to disclose wrongdoing outside the organisation – provided that disclosure outside the organisation is made in accordance with the provisions of the PID Act.
- ensuring managers and supervisors understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing.
- providing adequate resources, both financial and human, to:
  - encourage reports of wrongdoing.
  - protect and support those who make them.
  - provide training for key personnel.
  - investigate allegations.
  - properly manage any workplace issues that the allegations identify or create.
  - correct any problem that is identified.
- reassess / review the policy each year to ensure it is still relevant and effective.

### **Roles and responsibilities of staff**

This policy will apply to:

- Members of Council staff and Councillors.
- permanent employees, whether full-time or part-time.
- temporary or casual employees.
- Consultants.
- individual contractors working for the organisation.

The policy may also apply to other people who perform public official functions and their conduct and activities could be investigated by an investigating authority. This can include volunteers and those contracted to work for the organisation.

Staff are encouraged to report known and suspected wrongdoing within the organisation. It is noted that this policy is just one of several relating to grievances and complaints, and provided with links and relevant information for the other policies.

Staff are also encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality. They must not victimise or harass anyone who has made a disclosure.

## What should be reported?

Members of Council staff should report any wrongdoing they see within Council. Reports about the four categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, and government information contravention – will be dealt with under the PID Act as protected disclosures and according to this policy.

### a. Corrupt conduct

Corrupt conduct is the dishonest or partial exercise of official functions by a public official.

For example, this could include:

- the improper use of knowledge, power or position for personal gain or the advantage of others.
- acting dishonestly or unfairly, or breaching public trust.
- a member of the public influencing or trying to influence a public official to use their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the NSW Ombudsman's guideline on what can be reported ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

### b. 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.

For example, this could include:

- making a decision and/or taking action that is unlawful.
- refusing to grant someone a licence for reasons that are not related to the merits of their application.

For more information about maladministration, see the NSW Ombudsman's guideline on what can be reported ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

### c. 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 resources.

For example, this could include:

- not following a competitive tendering process for a large scale contract.
- having bad or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see the NSW Ombudsman's guideline on what can be reported ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

#### d. Government information contravention

A government information contravention is a failure to properly fulfil functions under the Government Information (Public Access) Act 2009 (GIPA Act).

For example, this could include:

- destroying, concealing or altering records to prevent them from being released.
- knowingly making decisions that are contrary to the legislation.
- directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the NSW Ombudsman's guideline on what can be reported ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

#### e. Other wrongdoing

Although reports about the previous four categories of conduct can attract the specific protections of the PID Act, members of Council staff should report all activities or incidents that they believe are wrong.

For example, these could include:

- harassment or unlawful discrimination.
- reprisal action against a person who has reported wrongdoing.
- practices that endanger the health or safety of staff or the public.

These types of issues should be reported to a supervisor, in line with Council's Code of Conduct and Complaints Handling policies.

Even if these reports are not dealt with as protected disclosures, Council will consider each matter and make every attempt to protect the staff member making the report from any form of reprisal.

#### **When will a report be protected?**

Council will support any staff who report wrongdoing. For a report to be considered a protected disclosure, it has to meet all of the requirements under the PID Act. These requirements are:



- The person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing.
- The report has to be made to one or more of the following:
  - a position nominated in this policy – refer section 9 (b) & (c).
  - the General Manager.
  - one of the investigating authorities nominated in the PID Act – refer section 10.

Reports by staff will not be considered to be protected disclosures if they:

- mostly question the merits of council policy.
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

### **How to make a report**

Members of Council staff can report wrongdoing in writing or verbally. Council staff is encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report must make a comprehensive record of the disclosure and ask the person making the disclosure to sign this record. The staff member should keep a copy of this record.

If a Council staff member is concerned about being seen making a report, request to meet in a discreet location away from the workplace.

### **Can a report be anonymous?**

There will be some situations where the staff member may not want to identify themselves when they make a report. Although these reports will still be dealt with by Council, it is best if the staff member identifies themselves. This allows Council to provide the staff member with any necessary protection and support, as well as feedback about the outcome of any investigation into the allegations.

It is important to realise that an anonymous disclosure may not prevent the staff member from being identified. If Council's Disclosure Officers do not know who made the report, it is very difficult for Council to prevent any reprisal action.

### **Maintaining confidentiality**

Council realises many staff will want their report to remain confidential. This can help to prevent any action being taken against staff for reporting wrongdoing.

Council is committed to keeping the identity of the staff member, and the fact the staff member has reported wrongdoing, confidential. However there may be situations where this may not be possible or appropriate. Council's Disclosures Officer will discuss with the staff member whether it is possible to keep their report confidential.

If confidentiality cannot be maintained, Council will develop a plan to support and protect the staff member from risks of reprisal. The staff member will be involved in developing this plan. If the staff member reports wrongdoing, they should only discuss their report with those dealing with it.

This will include the Disclosures Coordinator and the General Manager.

### **Who can receive a report within the Tweed Shire Council?**

Council staff are encouraged to report general wrongdoing to their supervisor. However the PID Act requires that – for a report to be a protected disclosure – it must be made to a public official in accordance with the organisation's disclosure procedures. For Council, this means this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a protected disclosure must refer the staff member making the report to one of the positions listed below. The broader responsibilities of these positions will be outlined in the procedure supporting this policy.

The following positions are the only staff within Council who can receive a protected disclosure.

#### **General Manager**

Wrongdoing can be reported directly to General Manager. The General Manager is responsible for:

- deciding if a report is a protected disclosure.
- determining what needs to be done next, including referring it to other authorities.
- deciding what needs to be done to correct any problem that has been identified.

The General Manager may be contacted on (02) 6670 2400.

#### **The Mayor**

If a Councillor or a member of Council staff is making a report about the General Manager, the report should be made to the Mayor.

The Mayor must make sure there are systems in place in Council to support and protect staff who report wrongdoing.

They are also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption.

The Mayor may be contacted on (02) 6670 2400.

### Disclosures Coordinator

The Disclosures Coordinator has a central role in dealing with reports made by staff. They receive them, assess them, and refer them to the people within Council who can deal with them appropriately.

The Disclosures Coordinator (Manager Corporate Governance) may be contacted on (02) 6670 2400.

### Disclosures Officer

The Disclosures Officer will work with the Disclosures Coordinator, and is responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy.

Council's Disclosure Officer (Corporate Compliance Officer) may be contacted on (02) 6670 2400.

## **Who can receive a report outside of the Tweed Shire Council**

Members of Council staff are encouraged to report wrongdoing within Council, but internal reporting is not their only option. The guidance following provides details as to how a report can still be a protected disclosure.

Members of Council staff can choose to make their report to an investigating authority, initially or at any stage after an initial report to Council. If the report is about the General Manager or the Mayor the staff member should consider making it to an investigating authority.

In limited circumstances members of Council staff can also choose to make a report to a Member of Parliament or a journalist.

#### a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that staff can report wrongdoing to and the categories of wrongdoing each authority can deal with.

These authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct.
- the Ombudsman — for maladministration.
- the Division of Local Government, Department of Premier and Cabinet — for serious and substantial waste in local government agencies.
- the Information Commissioner — for disclosures about a government information contravention.

The staff member should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided in section 18 of this policy.

The staff member should be aware that it is very likely the investigating authority will discuss the case with Council. Council 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. Council will also provide appropriate support and assistance to staff who report wrongdoing to an investigating authority.

b. Members of Parliament or journalists

To have the protections of the PID Act, staff reporting wrongdoing to a Member of Parliament (MP) or a journalist must have already made substantially the same report to one of the following:

- the General Manager.
- a person nominated in this policy.
- an investigating authority in accordance with the PID Act.

Also, Council or an investigating authority that received the report 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 report.
- investigated the matter but not recommended any action as a result.
- not told the person who made the report, within six months of the report being made, whether the matter will be investigated.

Most importantly – to be protected under the PID Act – if a member of Council staff reports wrongdoing to an MP or a journalist they will need to 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.

If members of Council staff report wrongdoing to a person or an organisation that is not listed above, they will not be protected under the PID Act. This may mean they will be in breach of legal obligations or Council Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Council, contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit, whose contact details are provided at the end of this policy.

### **Feedback to staff who report wrongdoing**

Council Staff who report wrongdoing will be advised what is happening in response to their report.

When members of Council staff make a report, they will be given:

- an acknowledgement that the disclosure has been received.
- the timeframe for when they will receive further updates.
- the name and contact details of the people who can advise them what is happening.

This information will be given to the member of Council staff within two working days of making their report.

After a decision is made about how the report will be dealt with, Council staff will be given:

- information about the action that will be taken in response to their report.
- likely timeframes for any investigation.
- information about the resources available within Council to handle any concerns Council staff may have.
- information about external agencies and services Council staff can access for support.

This information will be given to Council staff within 10 working days from the date they make their report.

During any investigation, Council staff will be provided:

- information on the ongoing nature of the investigation.
- information about the progress of the investigation and reasons for any delay.
- advice if the identity of Council Staff needs to be disclosed for the purposes of investigating the matter, and an opportunity to discuss this advice.

At the end of any investigation, Council staff will have been provided:

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

### **Protection against reprisals**

The PID Act provides protection for people reporting wrongdoing by imposing penalties on anyone who takes detrimental action substantially in reprisal for them making the protected disclosure.

Council will not tolerate any reprisal action against staff who report wrongdoing. The criminal penalties that can be imposed include imprisonment or fines. Detrimental action is also misconduct that justifies disciplinary action. Council staff who take detrimental action against someone who has made a disclosure can also be required to pay damages for any loss suffered by that person.

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.

a. Responding to reprisals

Council will act to protect staff who report wrongdoing from reprisals.

When a report is received, Council will ensure that a thorough risk assessment is conducted. This will identify any risks to the member of staff who reported the wrongdoing, as well as strategies to deal with those risks.

If a member of Council staff believes that detrimental action has been or is being taken against them or someone else who has reported wrongdoing in reprisal for making a report, they should tell their supervisor, the Disclosures Coordinator or the General Manager immediately.

All supervisors 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 General Manager.

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 Council staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal.
- give the results of that investigation to the General Manager for a decision.
- give the results of that investigation to the Mayor for a decision if the allegation of reprisal action is about the General Manager.
- 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 Council staff who made the disclosure.
- take appropriate disciplinary or criminal action against anyone proven to have taken or threatened any action in reprisal for making a disclosure.

If members of Council staff report reprisal action, they will be kept informed of the progress of any investigation and the outcome.

The General Manager may issue specific directions to help protect 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 staff member who is the subject of the allegation, within the current 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.
- 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 taken if the member of staff who made the disclosure agrees to it. The [disclosures coordinator] will make it clear to other staff that this action was taken in consultation with the staff member and with management support – and it is not a punishment.

If the member of Council staff has reported wrongdoing and feel that any reprisal action is not being dealt with effectively, the member may contact the Ombudsman or the ICAC – depending on the type of wrongdoing the member of Council staff reported. Contact details for all these investigating authorities are included in section 18 of this policy.

#### b. Protection against legal action

If members of Council staff make a disclosure in accordance with the PID Act, they will not be subject to any liability and no action, claim or demand can be taken against members of Council staff for making the disclosure. Members of Council staff will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.

#### **Support for those reporting wrongdoing**

Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a protected disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management, counselling services, legal or career advice.

All supervisors must notify the Disclosures Coordinator if they believe a staff member is suffering any detrimental action as a result of disclosing wrongdoing.

#### **Sanctions for making false or misleading disclosures**

It is important that all members of Council staff are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing.

### **Support for the subject person of a report**

Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. If a member of Council staff is the subject of a report, they will be:

- treated fairly and impartially.
- told their rights and obligations under Council policies, protocols and procedures.
- kept informed during any investigation.
- given the opportunity to respond to any allegation made against the member of Council staff.
- told the result of any investigation.

### **Review**

This policy will be reviewed by Council every twelve/eighteen months. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

### **More information**

More information around protected disclosures is available on the Council intranet. Staff can also access advice and guidance from the Council's Disclosures Coordinator and the NSW Ombudsman's website at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).



## Resources

The contact details for external investigating authorities that members of Council staff can make a protected disclosure to or seek advice from are listed below.

### **For disclosures about corrupt conduct:**

Independent Commission Against Corruption (ICAC)  
Phone: 02 8281 5999  
Toll free: 1800 463 909  
Tel. typewriter (TTY): 02 8281 5773  
Facsimile: 02 9264 5364  
Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)  
Web: [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)  
Address: Level 21, 133 Castlereagh Street,  
Sydney NSW 2000

### **For disclosures about maladministration:**

NSW Ombudsman  
Phone: 02 9286 1000  
Toll free (outside Sydney metro): 1800 451 524  
Tel. typewriter (TTY): 02 9264 8050  
Facsimile: 02 9283 2911  
Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)  
Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)  
Address: Level 24, 580 George Street,  
Sydney NSW 2000

### **For disclosures about serious and substantial waste:**

Auditor-General of the NSW Audit Office  
Phone: 02 9275 7100  
Facsimile: 02 9275 7200  
Email: [mail@audit.nsw.gov.au](mailto:mail@audit.nsw.gov.au)  
Web: [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au)  
Address: Level 15, 1 Margaret Street,  
Sydney NSW 2000

### **For disclosures about serious and substantial waste in local government agencies:**

Division of Local Government in the Department of Premier and Cabinet  
Phone: 02 4428 4100  
Tel. typewriter (TTY): 02 4428 4209  
Facsimile: 02 4428 4199  
Email: [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au)  
Web: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au)  
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

### **For disclosures about police misconduct:**

Police Integrity Commission (PIC)  
Phone: 02 9321 6700  
Toll free: 1800 657 079  
Facsimile: 02 9321 6799  
Email: [contactus@pic.nsw.gov.au](mailto:contactus@pic.nsw.gov.au)  
Web: [www.pic.nsw.gov.au](http://www.pic.nsw.gov.au)  
Address: Level 3, 111 Elizabeth Street,  
Sydney NSW 2000

### **For disclosures about breaches of the GIPA Act:**

Information Commissioner  
Toll free: 1800 463 626  
Facsimile: 02 8114 3756  
Email: [oiinfo@oic.nsw.gov.au](mailto:oiinfo@oic.nsw.gov.au)  
Web: [www.oic.nsw.gov.au](http://www.oic.nsw.gov.au)  
Address: Level 11, 1 Castlereagh Street,  
Sydney NSW 2000