

PUBLIC INTEREST DISCLOSURES - REPORTING

Objective

To establish a process to allow staff and Councillors to voluntarily disclose matters of serious wrongdoing within Gilgandra Shire Council (Council) in the strictest confidence.

Scope

This policy will apply to, and for the benefit of, all public officials in NSW.

You are a public official for the purposes of this policy if you are:

- Council Staff and Councillors
- Full-time and part-time Permanent Employees
- Temporary and Casual Employees
- Consultants, or
- Contractors working for Council.

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

Policy

Council take reports of serious wrongdoing seriously. Council is committed to building a 'speak up' culture where public officials are encouraged to report any conduct that they reasonably believe involves wrongdoing.

The integrity of Council relies upon our staff, volunteers, consultants, contractors and subcontractors speaking up when they become aware of wrongdoing. Any decision to disclose serious wrongdoing outside of Council will be respected, provided that disclosure is made in accordance with the provisions of the *Public Disclosures Act 2022* (NSW) (the Act).

In accordance with s26(1) of the Act, a disclosure is protected under the Act if the maker of the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing.

What is Serious Wrongdoing?

Serious wrongdoing is defined the Act as:

1. Corrupt conduct – such as a public official accepting a bribe.
2. Serious maladministration – such as Council failing to comply with proper recruitment processes when hiring staff.
3. Government information contravention – such as destroying, hiding or changing records to prevent them from being released under a Government Information Public

Access application.

4. A local government pecuniary interest contravention – such as a senior Council staff member recommending a family member for a Council contract and not declaring the relationship as a conflict of interest.
5. A privacy contravention – such as unlawfully accessing a person's personal information e.g. staff HR file.
6. Serious and substantial waste of public money – such as a Council having no regard to the amount of money spent to complete a project during the tender process.

When Will a Report be a Public Interest Disclosure (PID)?

There are three types of PIDs in the Act. These are:

1. *Voluntary PID*: This is a PID where a report has been made by the public official because they decided, of their own accord, to come forward and disclose what they know.
2. *Mandatory PID*: This is a PID where the public official has made a report about serious wrongdoing because they have a legal obligation to make that report, or because making that report is an ordinary aspect of their role or function in an agency.
3. *Witness PID*: This is a PID where a person discloses information during an investigation of serious wrongdoing following a request or requirement of the investigator.

This policy mostly relates to making a voluntary PID and how Council will deal with voluntary PIDs. People who make a mandatory PID or a witness PID are still entitled to protection and will be mentioned within this policy.

You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines 'Dealing with mandatory PIDs' and 'Dealing with witness PIDs'.

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


- Mostly question the merits of government policy, including the policy of the governing body of the Council, or
- Are made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

Other Wrongdoing

Although reports about the previous six categories of conduct can attract the specific protections of the Act, you should report all activities or incidents that you believe are wrong.

For example, these could include:

- Harassment or unlawful discrimination
- Detrimental 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 policies and procedures.

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

When Will a Report be Protected?

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

- The person of the disclosure honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing; and
- The report has to be made to one or more of the following:
 - The General Manager
 - The Mayor
 - The Director Growth and Liveability - Disclosure Coordinator
 - A Manager, or
 - One of the integrity agencies nominated in the Act

How to Make a Report

You can report serious wrongdoing or wrongdoing in writing or verbally. You are 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 is required to keep a copy of this record.

If you are concerned about being seen making a report, ask to meet in a discreet location away from the workplace.

Can a Report be Anonymous?

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

It is important to note that an anonymous disclosure may not prevent you from being identified. If Council does not know who made the report, it may be very difficult for Council to prevent any detrimental action from occurring.

Who Can I Make a Voluntary PID To?

a) Making a Report to a Public Official who Works for Council

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

General Manager

You can report wrongdoing directly to the General Manager.

The General Manager is responsible for:

- Fostering a workplace culture where reporting is encouraged
- Receiving disclosures from public officials
- Ensuring there is a system in place for assessing disclosures
- Ensuring Council complies with this policy and the Act
- Ensuring that Council has appropriate systems for:
 - Overseeing internal compliance with the Act
 - Supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
 - Implementing corrective action if serious wrongdoing is found to have occurred
 - Complying with reporting obligations regarding allegations or findings of detrimental action, and
 - Complying with yearly reporting obligations to the NSW Ombudsman.

Mayor

If you are making a report about the general manager, you should make your report to the Mayor.

The Mayor is responsible for:

- Fostering a workplace culture where reporting is encouraged
- Receiving disclosures from public officials
- Ensuring there is a system in place for assessing disclosures
- Ensuring Council complies with this policy and the Act
- Ensuring that Council has appropriate systems for:
 - Overseeing internal compliance with the Act
 - Supporting public officials who make voluntary PIDs, including by minimising the risk of detrimental action
 - Implementing corrective action if serious wrongdoing is found to have occurred
 - Complying with reporting obligations regarding allegations or findings of detrimental action, and
 - Complying with yearly reporting obligations to the NSW Ombudsman.

Disclosure Coordinator

Council's Disclosure Coordinator is the Director Growth and Liveability and is responsible for:

- Receiving reports from public officials
- Receiving reports when they are passed on to them by managers
- Ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant), and
- Ensuring that any verbal reports that have been received are recorded in writing

Managers

The responsibilities of managers include:

- Receiving reports from persons that report to them or that they supervise, and
- Passing on reports they receive to a disclosure officer

b) Making a Report Outside of Council

You can also make your report to a public official in another agency (meaning an agency you do not work for) or an integrity agency. These include:

- The head of another agency — this means the head of any public service agency
- An integrity agency — a list of integrity agencies is located at Annexure A of this policy
- A disclosure officer for another agency — ways to contact disclosure officers for other agencies is located in an agency's PID policy which can be found on their public website
- A Minister or a member of a Minister's staff but the report *must be made in writing*.

If you choose to make a disclosure outside of Council, it is possible that your disclosure will be referred back to Council so that appropriate action can be taken.

You should be aware that it is very likely the integrity agency will discuss the case with Council. Council will make every effort to assist and cooperate with the integrity agency 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 serious wrongdoing or wrongdoing to an integrity agency.

c) Members of Parliament or Journalists

Disclosures to MPs or journalists are different to other reports. You can only disclose a report of wrongdoing as a voluntary PID to an MP or journalist in the following circumstances:

- You must have first made substantially the same disclosure (described here as a 'previous disclosure') to someone who can receive disclosures
- The previous disclosure must be substantially true
- You did not make the previous disclosure anonymously
- You did not give a written waiver of your right to receive information relating to your previous disclosure
- You did not receive the following from Council:
 - Notification that Council will not investigate the serious wrongdoing and will also not refer the previous disclosure to another agency, or
 - The following information at the end of the investigation period:
 - Notice of Council's decision to investigate the serious wrongdoing
 - A description of the results of an investigation into the serious wrongdoing, and
 - Details of proposed or recommended corrective action as a result of the previous disclosure or investigation.

Investigation period means:

- After six months from the previous disclosure being made, or
- After 12 months if you applied for an internal review of the agency's decision within six months of making the disclosure.

If all the above requirements are met, your disclosure to an MP or journalist may be a voluntary PID. If you report wrongdoing to a person or an organisation that is not listed above, you will not be protected under the Act. This may mean you will be in breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about reporting wrongdoing outside Council, please contact the NSW Ombudsman.

Protections

a) How is the Maker of a Voluntary PID Protected

When you make a voluntary PID you receive special protections under the Act.

Council is committed to taking all reasonable steps to protect you from detriment as a result of having made a PID. Council is also committed to maintaining your confidentiality as much as possible while the PID is being dealt with.

Council will not tolerate any type of detrimental action being taken against you because you have made a report, might make a report or are believed to have made a report.

The maker of a voluntary PID is protected in the following ways:

1. Protection from detrimental action

- A person cannot take detrimental action against another person because they have made a voluntary PID or are considering making a PID. Detrimental action includes bullying, harassment, intimidation or dismissal.
- It is a criminal offence for someone to take detrimental action against a person because they have made or may make a voluntary PID. It is punishable by a maximum penalty of 200 penalty units or imprisonment for five years or both.
- A person may seek compensation where unlawful detrimental action has been taken against them.
- A person can apply for a court order (injunction) where detrimental action is threatened or has occurred (for example, an order to prevent dismissal or to require reinstatement).

Note that a person who makes a PID can still be subject to reasonable management action (such as ordinary performance reviews and performance management). Provided such action is not taken because of the PID, it is not detrimental action under the Act.

2. Immunity from civil and criminal liability
3. Confidentiality
4. Protection from liability for own past conduct

For more information on the ways that Council will protect a maker of a voluntary PID, please see Council's Public Interest Disclosure Procedure.

b) Protections for People who Make Mandatory and Witness PIDs

Protections for makers of mandatory and witness PIDs are detailed in the table below:

| Protection | Mandatory PID | Witness PID |
|---|---------------|-------------|
| Detrimental action — It is an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made, may have made or may make a PID. | ✓ | ✓ |
| Right to compensation — A person can initiate proceedings and seek compensation for injury, damage or loss suffered as a result of detrimental action being taken against them. | ✓ | ✓ |
| Ability to seek injunction — An injunction can be sought to prevent the commission or possible commission of a detrimental action offence against a person. For example, an order to prevent dismissal or to require reinstatement. | ✓ | ✓ |
| Immunity from civil and criminal liability — a person will not incur civil or criminal liability if the person breaches a duty of confidentiality while making a disclosure. This means that legal action cannot be taken against a person for: <ul style="list-style-type: none"> • breaching a duty of secrecy or confidentiality, or • breaching another restriction on disclosure. | ✓ | ✓ |



Reporting Detrimental Action

If you experience adverse treatment or detrimental action, such as bullying or harassment, you should report this immediately. You can report any experience of adverse treatment or detrimental action directly to Council or to an integrity agency. A list of integrity agencies is located at Annexure A of this policy.

How Council Will Deal with Voluntary PIDs

Public officials who report serious wrongdoing or wrongdoing will be told what is happening in response to their report. For further information, please see Council's Public Disclosure Procedure.

Sanctions for Making False or Misleading Disclosures

It is important that all staff are aware that it is a criminal offence under the Act to willfully make a false or misleading statement when reporting serious wrongdoing.

Support for the Subject of a Report

Council is committed to ensuring staff who are the subject of a report of wrongdoing are treated fairly and reasonably. For further information, please see Council's Public Disclosure Procedure.

Review and Dispute Resolution

a) Internal Review

People who make voluntary PIDs can seek internal review of the following decisions made by Council:

- That Council is not required to deal with the report as a voluntary PID
- To stop dealing with the report because Council decided it was not a voluntary PID
- To not investigate the serious wrongdoing and not refer the report to another agency, or
- To cease investigating the serious wrongdoing without either completing the investigation or referring the report to another agency for investigation

Council will ensure internal reviews are conducted in compliance with the Act.

b) Voluntary Dispute Resolution

If a dispute arises between Council and a person who has made a report which is, or may be, a voluntary PID, we may request the NSW Ombudsman to conciliate the dispute. Conciliation is a voluntary process and will only be suitable for disputes where Council and the maker of the report are willing to resolve the dispute.

Relevant Legislation

Public Interest Disclosures Act 2022 (NSW)

Associated Documents

- Council's Code of Conduct (available on Council's Intranet – C&BS documents)
- Council's Statement of Business Ethics (available on Council's Intranet – C&BS documents)
- Guidelines from the NSW Ombudsman (available at www.ombo.nsw.gov.au)
- Council's Employee Grievances Policy (available on Council's website)
- Council's Grievance Handling Procedure (available on Council's intranet – C&BS – Documents)
- Public Interest Disclosure Procedure (available on Council's Intranet – C&BS documents)

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| Responsible Officer: | Executive Leader Transformational Change | | |
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| Version: | 4 | Review Date: | February (annually) |

ANNEXURE A – LIST OF INTEGRITY AGENCIES

| Integrity agency | What they investigate | Contact information |
|---|---|---|
| The NSW Ombudsman | Most kinds of serious maladministration by most agencies and public officials (but not NSW Police, judicial officers or MPs) | Telephone: 1800 451 524 between 9am to 3pm Monday to Friday Writing: Level 24, 580 George Street, Sydney NSW 2000 Email: info@ombo.nsw.gov.au |
| The Auditor-General | Serious and substantial waste of public money by auditable agencies | Telephone: 02 9275 7100 Writing: GPO Box 12, Sydney NSW 2001 Email: governance@audit.nsw.gov.au |
| Independent Commission Against Corruption | Corrupt conduct | Telephone: 02 8281 5999 or toll free on 1800 463 909 (callers outside Sydney) between 9am and 3pm, Monday to Friday Writing: GPO Box 500, Sydney NSW 2001 or faxing 02 9264 5364 Email: icac@icac.nsw.gov.au |
| The Inspector of the Independent Commission Against Corruption | Serious maladministration by the ICAC or the ICAC officers | Telephone: 02 9228 3023 Writing: PO Box 5341, Sydney NSW 2001 Email: oiicac_executive@oiicac.nsw.gov.au |
| The Law Enforcement Conduct Commission | Serious maladministration by the NSW Police Force or the NSW Crime Commission | Telephone: 02 9321 6700 or 1800 657 079 Writing: GPO Box 3880, Sydney NSW 2001 Email: contactus@lecc.nsw.gov.au |
| The Inspector of the Law Enforcement Conduct Commission | Serious maladministration by the LECC and LECC officers | Telephone: 02 9228 3023 Writing: GPO Box 5341, Sydney NSW 2001 Email: olecc_executive@olecc.nsw.gov.au |
| Office of the Local Government | Local government pecuniary interest contraventions | Email: olg@olg.nsw.gov.au |
| The Privacy Commissioner | Privacy contraventions | Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au |
| The Information Commissioner | Government information contraventions | Telephone: 1800 472 679 Writing: GPO Box 7011, Sydney NSW 2001 Email: ipcinfo@ipc.nsw.gov.au |