

# Wagga Wagga City Council

## PUBLIC INTEREST DISCLOSURES POLICY

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## PROTECTED PUBLIC INTEREST DISCLOSURES POLICY

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## **PART 1: INTRODUCTION**

The Wagga Wagga City Council (Council) does not tolerate corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the Government Information (Public Access) Act 2009 (GIPA Act) or Local Government Pecuniary Interest contravention and acknowledges the reporting of suspected wrongdoing by staff, Councillors and Council engaged persons (including contractors and volunteers) as being vital to the integrity of the public sector.

Council is committed to the aims and objectives of the Public Interest Disclosures Act 1994 (the PID Act). It recognises the value and importance of contributions of staff, Councillors and other Council engaged persons to enhance administrative and management practices and strongly supports disclosures being made by those individuals which disclose corrupt conduct, maladministration, the serious and substantial waste of public money, contravention GIPA Act or Local Government Pecuniary Interest contravention.

Council will take all reasonable steps to provide protection to staff, Councillors and Council engaged persons who make such disclosures from any detrimental action in reprisal for the making of the disclosure.

### **1.1 Policy Objectives**

This Policy establishes an internal reporting system for the reporting of disclosures of corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the GIPA Act or Local Government Pecuniary Interest contravention by the Council, its staff and Councillors. The system enables such internal disclosures to be made to the General Manager, the Disclosure Coordinator, Nominated Disclosure Officers, or the Mayor as an alternative to the General Manager.

### **1.2 Scope of Policy**

This Policy covers complaints and reports made under the PID Act such as corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the GIPA Act or Local Government Pecuniary Interest contravention.

This policy applies to:

- Councillors and Council staff (including permanent employees whether full-time or part-time, temporary or casual employees); and
- Other persons engaged by Council (including consultants, individual contractors working for Council, employees of contractors providing services to Council and volunteers)

- Other people who perform Council official functions whose conduct and activities could be investigated by another investigating authority

Whilst the predominance of this Policy refers to staff, (given that they are best placed to bring to light serious problems within the management and operations of an organisation), the scope, principles and reporting processes contained within this Policy also apply to Councillors and other persons engaged by Council.

This Policy is designed to complement normal communication channels between managers/supervisors and staff/councillors/contractors/consultants and volunteers.

Staff are encouraged to continue to raise appropriate matters at any time with their supervisors but as an alternative have the option of making a public interest disclosure in accordance with this Policy.

This Policy does not cover complaints regarding breaches of Council's adopted Code of Conduct unless they involve corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the GIPA Act or Local Government Pecuniary Interest contravention. Procedures for reporting other breaches of the Code of Conduct are covered under section 11 of Council's Code of Conduct.

## 1.3 Legislative Context

The PID Act has the purpose of ensuring that public officials who wish to make disclosures under the legislation receive protection from reprisals, and that the matters raised in the disclosures are properly investigated.

The Act aims to encourage and facilitate the disclosure - in the public interest - of corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the GIPA Act or Local Government Pecuniary Interest contravention. This is achieved by:

- enhancing and augmenting established procedures for making disclosures concerning such matters,
- protecting persons from reprisals that might otherwise be inflicted on them because of these disclosures, and
- providing for those disclosures to be properly investigated and dealt with.

## 1.4 Relevant legislation and documents:

- Public Interest Disclosures Act 1994
- Local Government Act 1993
- Workplace Health and Safety Act 2011
- Government Information (Public Access) (GIPA) Act 2009
- Independent Commission Against Corruption Act 1988
- Ombudsman Act 1974

## **1.5 Related Documents**

- Code of Conduct
- Administrative Procedures for the Code of Conduct
- Complaints Handling Framework and Policy
- Conflicts of Interest Policy
- Internal Audit Policy
- Gifts & Benefits Policy
- Fraud and Corruption Prevention Framework and Policy
- Good Governance Framework

## **PART 2: RESPONSIBILITIES**

Council has a responsibility to establish and maintain a working environment that encourages staff and councillors to report wrongdoing and supports them when they do. This includes keeping the identity of reporters confidential where practical and appropriate, and taking steps to protect reporters from reprisal and manage workplace conflict.

Council will assess all reports of wrongdoing it receives from staff and councillors and deal with them appropriately. Once wrongdoing has been reported, Council takes 'ownership' of the matter. This means consideration is given to whether a report should be investigated, and if so, how it should be investigated and by whom. Council will deal with all reports of wrongdoing fairly and reasonably, and respect the rights of any person the subject of a report.

Council must report on our obligations under the PID Act and statistical information about public interest disclosures in our annual report and to the NSW Ombudsman every six months.

To ensure Council complies with the PID Act and deals with all reports of wrongdoing properly, all staff and councillors with roles outlined below and elsewhere in this Policy will receive training on their responsibilities.

### **2.1 Staff, Councillors and Council engaged persons**

Staff, Councillors and Council engaged persons are encouraged to report known or suspected incidences of corrupt conduct, maladministration, the serious and substantial waste of public money, contravention of the GIPA Act or Local Government Pecuniary Interest contravention in accordance with this Policy.

All staff, Councillors and Council engaged persons have an important role in contributing to a workplace where known or suspected wrongdoing is reported and dealt with appropriately. All Council staff and Councillors are obliged to:

- report all known or suspected wrongdoing and support those who have made reports of wrongdoing

- if requested, assist those dealing with the report, including supplying information on request, cooperating with any investigation and maintaining confidentiality
- treat any staff member or person dealing with a report of wrongdoing with courtesy and respect
- respect the rights of any person the subject of reports

Staff and Councillors must not:

- make false or misleading reports of wrongdoing
- victimise or harass anyone who has made or is suspected to have made a report

Additionally, the behaviour of all Council staff and Councillors involved in the internal reporting process must adhere to Council's Code of Conduct. A breach of the code could result in disciplinary action.

## 2.2 General Manager

The General Manager has ultimate responsibility for maintaining the internal reporting system and workplace reporting culture, and ensuring Council complies with the PID Act. The General Manager can receive reports from staff and Councillors and has a responsibility to:

- assess reports received by or referred to them, to determine whether or not the report should be treated as a public interest disclosure, and to decide how the report will be dealt with
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted Administrative Procedures for Code of Conduct Procedures
- ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- make decisions following any investigation or appoint an appropriate decision-maker
- take appropriate remedial action where wrongdoing is substantiated or systemic problems are identified
- refer actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC)
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC

## 2.3 Disclosure Coordinator

The Disclosures Coordinator has a central role in Council's internal reporting system. The Disclosures Coordinator can receive and assess reports, and is the primary point of contact in Council for the reporter. The Disclosures Coordinator has a responsibility to:

- assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with (either under delegation or in consultation with the General Manager)
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted Administrative Procedures for the Code of Conduct
- coordinate Council's response to a report
- acknowledge reports and provide updates and feedback to the reporter
- assess whether it is possible and appropriate to keep the reporter's identity confidential
- assess the risk of reprisal and workplace conflict related to or likely to arise out of a report, and develop strategies to manage any risk identified
- where required, provide or coordinate support to staff involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report
- ensure Council complies with the PID Act
- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

## 2.4 Nominated Disclosures Officers

Disclosures Officers are additional points of contact within the internal reporting system. They can provide advice about the system and the internal reporting policy, receive reports of wrongdoing and assist staff and Councillors to make reports.

Disclosures Officers have a responsibility to:

- document in writing any reports received verbally, and have the document signed and dated by the reporter
- make arrangements to ensure reporters can make reports privately and discreetly when requested, if necessary away from the workplace
- discuss with the reporter any concerns they may have about reprisal or workplace conflict
- carry out preliminary assessment and forward reports to the Disclosures Coordinator or General Manager for full assessment.

## 2.5 The Mayor

The Mayor can receive reports from staff and Councillors about the General Manager. Where the Mayor receives such reports, the Mayor has a responsibility to:

- assess the reports to determine whether or not they should be treated as a public interest disclosure, and to decide how they will be dealt with
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted Administrative Procedures for the Code of Conduct
- refer reports to an investigating authority, where appropriate
- liaise with the Disclosures Coordinator to ensure there are strategies in place to support reporters, protect reporters from reprisal and manage workplace conflict that may arise in relation to a report
- refer actual or suspected corrupt conduct to the ICAC
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC

## 2.6 Managers and Supervisors

Managers and supervisors play an important role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors and line managers should be aware of the internal reporting policy and are responsible for creating a work environment where staff are comfortable and confident about reporting wrongdoing. They have a responsibility to:

- encourage staff to report known or suspected wrongdoing within the organisation and support staff when they do
- identify reports made to them in the course of their work which could be public interest disclosures, and assist the staff member to make the report to an officer authorised to receive public interest disclosures under this Policy
- implement strategies, in consultation with the Disclosures Coordinator, to minimise the risk of reprisal or workplace conflict in relation to a report
- notify the Disclosures Coordinator or General Manager immediately if they believe a staff member is being subjected to reprisal as a result of reporting wrongdoing, or in the case of suspected reprisal by the General Manager, notify the Mayor.

## PART 3: WHAT SHOULD BE REPORTED?

You should report any suspected wrongdoing you see within Council. Reports about the five categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, government information contravention (GIPA Act), and pecuniary interest contravention – will be dealt with under the PID Act as public interest disclosures and according to this Policy.

### 3.1 Corrupt Conduct

Corrupt conduct is defined in Sections 8 and 9 of the *Independent Commission Against Corruption Act 1988* and is broadly:

- (a) any conduct of any person, including a Councillor official that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority
- (b) any dishonest or partial exercise of any official functions by a Council official
- (c) any conduct by a Council official that constitutes or involves a breach of public trust, or
- (d) any conduct of a Council official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Some examples of corrupt conduct include, but are not limited to:

- Bribery
- Obtaining or offering secret commissions
- Collusive tendering
- Defrauding the public revenue
- Voting on a development matter in which the Councillor has an undisclosed financial interest
- Selling confidential information
- Election fraud

## 3.2 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, but is not limited to:

- 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.

## 3.3 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 money. This includes all revenue, loans and other money collected, received or held by, for or on account of Council.

For example this could include but is not limited to:

- misappropriation or misuse of public property
- not following a competitive tendering process for a large scale contract
- having bad or no processes in place for systems involving large amounts of public funds
- the purchase of unnecessary or inadequate goods or services

## 3.4 Breach of the GIPA Act

A breach of the GIPA Act is a i 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
- intentionally overlooking documents that are clearly covered by an access application
- knowingly making decisions that are contrary to the legislation
- directing another person to make a decision that is contrary to the legislation

### **3.5 Local Government pecuniary interest contravention**

A Local Government pecuniary interest contravention is a failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests. These include obligations to lodge disclosure of interests returns, lodge written declarations and disclose pecuniary interests at Council and Council committee meetings. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

The onus is on Councillors, Council delegates, Council staff and other people to determine whether they are affected by the pecuniary interest provisions in relation to a matter under consideration by Council.

For example, this could include:

- a Council staff member recommending a family member for a Council contract and not declaring the relationship
- the General Manager holding an undisclosed shareholding in a company competing for a Council contract
- A Councillor participating in consideration of a Development Application for a property they or their family have an interest in

### **3.6 Other wrongdoing**

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

For example, these could include:

- harassment or unlawful discrimination
- 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.

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

## **PART 4: REPORTING**

All reports will be promptly and thoroughly assessed to determine what action will be taken to deal with the report and whether or not the report will be treated as a public interest disclosure.

The Disclosures Coordinator is responsible for assessing reports, in consultation with the General Manager where appropriate. All reports will be assessed on the information available to the Disclosures Coordinator at the time. It is up to the Disclosures Coordinator to decide whether an investigation should be carried out and how that investigation should be carried out. In assessing a report, the Disclosures Coordinator may decide that the report should be referred elsewhere or that no action should be taken on the report.

### **4.1 When will a report be treated as a public interest disclosure?**

Council will treat a report as a public interest disclosure if it meets the criteria of a public interest disclosure under the PID Act. These requirements are:

- the report must be about one of the following five categories of serious wrongdoing – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, or local government pecuniary interest contravention and
- the person making the disclosure must honestly believe on reasonable grounds that the information shows or tends to show wrongdoing and
- the report has to be made to either the General Manager or, for reports about the General Manager the Mayor, the Disclosure Coordinator or Disclosure Officer, an investigating authority or in limited circumstances to a Member of Parliament or journalist

Reports by staff are not public interest disclosures if they:

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

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

Staff can report wrongdoing in writing or verbally. Staff and Councillors 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 should keep a copy of this record.

### **4.3 Can a Report be Anonymous?**

There will be some situations where staff 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 a staff member from being identified. If Council does not know who made the report, it is very difficult for it to prevent any reprisal action.

### **4.4 Maintaining Confidentiality**

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

Where possible and appropriate Council will take steps to keep your identity and the fact you have reported wrongdoing, confidential. Council will discuss with you whether it is possible to keep your identity confidential.

If confidentiality cannot be maintained, Council will develop a plan to support and protect you from reprisal in consultation with you.

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. This will include the Disclosures Coordinator and the General Manager, or in the case of a report about the General Manager, the Disclosures Coordinator and the Mayor. The fewer people who know about your report, before and after you make it, the more likely it will be that Council can protect you from any reprisal.

Any staff or Councillors involved in the investigation or handling of a report, including witnesses, are also required to maintain confidentiality and not disclose information about the process or allegations to any person except for those people responsible for handling the report.

### **4.5 Who can receive a report within Council?**

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

The following positions are the only staff within Council who are authorised to receive a public interest disclosure. Any supervisor who receives a report they believe may be a public interest disclosure is obligated to assist the staff to make a report to one of the positions listed below.

If your report involves a Councillor, you should make it to the General Manager. If your report relates to the General Manager, you should make it to the Mayor.

#### **4.5.1 General Manager**

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

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

General Manager responsibilities are outlined in Section 2.2.

The General Manager may be contacted by:

Telephone: 6926 9120

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

#### **4.5.2 Mayor**

If you are making a report about the General Manager, you should make your report to the Mayor. The Mayor is responsible for:

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

The Mayor may be contacted by:

Telephone: 6926 9110 or 1300 292 442 (further contact details can be obtained from <http://www.wagga.nsw.gov.au/city-of-wagga-wagga/council/councillors>)

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

#### **4.5.3 Disclosures Coordinator**

The Disclosures Coordinator is the Manager Audit Risk and Governance and 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 Manager, Audit, Risk and Governance may be contacted by:

Telephone: 6926 9573

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

#### **4.5.4 Disclosures Officers**

Disclosures Officers work with the disclosures coordinator, and are responsible for receiving, forwarding and/or dealing with reports made in accordance with this policy.

##### Corporate Governance Coordinator

Corporate Governance Coordinator may be contacted by:

Telephone: 6926 9175

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

##### People and Culture Officer

The People and Culture Officer may be contacted by:

Telephone: 6926 9288

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

##### Parks Operations Supervisor

The Parks Operations Supervisor may be contacted by:

Telephone: 6926 9611

In person: Civic Centre, Cnr Baylis & Morrow Streets, Wagga Wagga

By mail: marked "Private & Confidential", PO Box 20, Wagga Wagga NSW 2650

## **4.6 Who can receive a report outside of Council**

Staff are encouraged to report wrongdoing within Council, but internal reporting is not their only option. Staff can choose to make their report to an investigating authority

, a Member of Parliament or a journalist, but only in limited circumstances.

## **4.6.1 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.

In relation to Council, these authorities are:

- the Independent Commission Against Corruption (ICAC) — for corrupt conduct
- the Ombudsman — for maladministration
- the Auditor-General — for serious and substantial waste
- the Information Commissioner — for disclosures about a government information contravention
- the Office of Local Government, Department of Premier and Cabinet — for disclosures about local government agencies including non-disclosure of pecuniary interests

Staff should contact the relevant authority for advice about how to make a disclosure to them. Contact details for each investigating authority are provided at the end of this policy.

Staff 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.

## **4.6.2 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 the 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 staff report 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.

### **4.6.3 Other external reporting**

If 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 a staff member 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 contact the Disclosures Coordinator or the NSW Ombudsman's Public Interest Disclosures Unit. Their contact details are provided at the end of this policy.

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

Staff and Councillors who report wrongdoing will be told what is happening in response to their report.

In accordance with the Act, when a staff member makes a report, they will be given within 45 days:

- a written acknowledgement that their disclosure has been received
- a copy of Council's Public Interest Disclosures Policy
- the timeframe for when they will receive further updates
- the name and contact details of the people who can tell them what is happening.

Although the legislative requirement is 45 days, Council will provide this information to the staff member within five working days from the date the report is made.

After a decision is made about how the report will be dealt with, the relevant staff member 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 they may have
- information about external agencies and services they can access for support

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

During any investigation, the reporting staff member will be given:

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

At the end of any investigation, the reporting staff member will be given:

- 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 they will be involved as a witness in any further matters, such as disciplinary or criminal proceedings

Behaviour of all staff involved in the PID process are required to adhere to Council's Code of Conduct. A breach of Council's Code of Conduct could result in disciplinary action.

## **4.8 Managing the risk of reprisal and workplace conflict**

When a staff member or Councillor reports wrongdoing, Council will undertake a thorough risk assessment to identify the risk to you of detrimental action in reprisal for reporting, as well as indirect but related risks of workplace conflict or difficulties. The risk assessment will also identify strategies to deal with those risks and determine the level of protection and support that is appropriate.

Depending on the circumstances, Council may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified
- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure

These courses of action are not punishment and will only be taken in consultation with the reporter.

## **4.9 Protection against reprisals**

Council will not tolerate any reprisal against staff or Councillors who report wrongdoing or are believed to have reported wrongdoing.

The PID Act provides protection for staff and Councillors who have made a public interest disclosure by imposing penalties on anyone who takes detrimental action against another person substantially in reprisal for that person making a public interest disclosure. These penalties also apply to cases where a person takes detrimental action against another because they believe or suspect the other person has made or may have made a public interest disclosure, even if they did not.

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 person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines, and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also a breach of the Council's Code of Conduct which may result in disciplinary action. In the case of Councillors, such disciplinary action may be taken under the misconduct provisions of the *Local Government Act 1993* and may include suspension or disqualification from civic office.

It is important for staff and Councillors to understand the nature and limitations of the protection provided by the PID Act. The PID Act protects reporters from detrimental action being taken against them because they have made, or are believed to have made, a public interest disclosure. It does not protect reporters from disciplinary or other management action where Council has reasonable grounds to take such action.

## **4.10 Responding to reprisals**

If you believe that detrimental action has been or is being taken against you or someone else in reprisal for reporting wrongdoing, you should tell your supervisor, the Disclosures Coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, you can alternatively report this to the Mayor.

All supervisors must notify the Disclosures Coordinator or the General Manager if they suspect that reprisal against a staff member is occurring or has occurred, or if any such allegations are made to them. In the case of an allegation of reprisal by the General Manager, the Mayor can alternatively be notified.

If Council becomes aware of or suspects that reprisal is being or has been taken against a person who has made a disclosure, Council will:

- assess the allegation of reprisal to decide whether the report should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue
- if the reprisal allegation warrants investigation, ensure this is conducted in accordance with Council policy procedure
- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure
- refer any breach of Part 8 of Council's Code of Conduct (reprisal action) by a councillor or the General Manager to the Office of Local Government.
- refer any evidence of an offence under section 20 of the PID Act to the ICAC or NSW Police Force

If you allege reprisal, you will be kept informed of the progress and outcome of any investigation or other action taken in response to your allegation.

If you have reported wrongdoing and are experiencing reprisal which you believe is not being dealt with effectively, contact the Office of Local Government, the Ombudsman or the ICAC (depending on the type of wrongdoing you reported). Contact details for these investigating authorities are included at the end of this policy.

## 4.11 Protection against legal action

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

## 4.12 Support for those reporting wrongdoing

Council will make sure that staff who have reported wrongdoing, regardless of whether they have made a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process, such as the Employee Assistance Program.

Access to support may also be available for other staff involved in the internal reporting process where appropriate. Reporters and other staff involved in the process can discuss their support options with the Disclosures Coordinator.

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

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

Council will not support staff or Councillors who wilfully make false or misleading reports. Such conduct may also be a breach of Council's Code of Conduct resulting in disciplinary action. In the case of Councillors, disciplinary action may be taken under the misconduct provisions of the *Local Government Act 1993* and may include suspension or disqualification from civic office.

### **4.14 Rights of persons subject of a report**

Council is committed to ensuring staff or Councillors who are the subject of a report of wrongdoing are treated fairly and reasonably. This includes keeping the identity of any person the subject of a report confidential, where this is practical and appropriate.

If you are the subject of the report, you will be advised of the allegations made against you at an appropriate time and before any adverse findings. At this time you will be:

- advised of the details of the allegation
- advised of your rights and obligations under the relevant related policies and procedures
- kept informed about the progress of any investigation
- given a reasonable opportunity to respond to any allegation made against you
- told the outcome of any investigation, including any decision made about whether or not further action will be taken against you

Where the reported allegations against the subject officer are clearly wrong, or have been investigated and unsubstantiated, the subject officer will be supported by Council. The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

## **PART 5: REVIEW**

This Policy will be reviewed by Council every two years. For any advice or guidance about this review, contact the NSW Ombudsman's Public Interest Disclosures Unit.

## **PART 6: MORE INFORMATION**

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

## PART 7: RESOURCES

The contact details for external investigating authorities to make a public interest disclosure to or seek advice from are listed below.

<p><b>For disclosures about corrupt conduct:</b>          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: <a href="mailto:icac@icac.nsw.gov.au">icac@icac.nsw.gov.au</a>          Web: <a href="http://www.icac.nsw.gov.au">www.icac.nsw.gov.au</a>          Address: Level 7, 255 Elizabeth Street          Sydney NSW 2000          Postal Address: GPO Box 500 Sydney          New South Wales 2001</p>	<p><b>For disclosures about maladministration:</b>          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: <a href="mailto:nswombo@ombo.nsw.gov.au">nswombo@ombo.nsw.gov.au</a>          Web: <a href="http://www.ombo.nsw.gov.au">www.ombo.nsw.gov.au</a>          Address: Level 24, 580 George Street,          Sydney NSW 2000</p>
<p><b>For disclosures about serious and substantial waste:</b>          Auditor-General of the NSW Audit Office          Phone: 02 9275 7100          Facsimile: 02 9275 7200          Email:          Web:          Address: Level 15, 1 Margaret Street,          Sydney NSW 2000</p>	<p><b>For disclosures about local government agencies:</b>          Office 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: <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>          Web: <a href="http://www.olg.nsw.gov.au">www.olg.nsw.gov.au</a>          Address: 5 O'Keefe Avenue, Nowra, NSW          2541          Locked Bag 3015, Nowra 2541</p>
<p><b>For disclosures about breaches of the GIPA Act:</b>          Information and Privacy Commissioner          Toll free: 1800 472679          Facsimile: 02 8114 3756          Email: <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>          Web: <a href="http://www.ipc.nsw.gov.au">www.ipc.nsw.gov.au</a>          Address: Level 17, 201 Elizabeth Street,          Sydney NSW 2000</p>	

## PART 8: ANNEXURE

