



Internal Reporting Policy (Public Interest Disclosures Act 1994)
August 2014
Office of the General Manager



Policy Name

1.0 Purpose

The purpose of the Public Interest Disclosures Act 1994 (PID Act) is to encourage and facilitate the disclosure, in the public interest, of any corrupt conduct, maladministration, serious and substantial waste, government information contravention or local government pecuniary interest contravention.

This policy:

- is strongly endorsed by the Mayor and General Manager
- shows Council's commitment to high standards of ethical and accountable conduct and reinforces Council's intolerance to any form of wrongdoing
- conforms with Council's Code of Conduct
- addresses the relevant provisions of the PID Act
- clearly states that staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the council
- reinforces that staff who come forward to make PID's will be strongly supported throughout the PID process

Council has strong policies and procedures committing all Councillors, staff and volunteers to high ethical standards and to work efficiently and effectively for the benefit of the community. The Public Interest Disclosure Policy ties in and strengthens these existing policies.

2.0 Objectives

The objective of the policy is for Council to be able to deal effectively with staff reports of wrongdoing. Council therefore must have the right culture. Kiama Council has a strong commitment to:

- creating a climate of trust, where staff are comfortable and confident about reporting wrongdoing
- encouraging employees to come forward if they have witnessed what they consider to be wrongdoing within council
- keeping the identity of the staff member making the disclosure confidential, wherever possible and appropriate
- protecting staff who make disclosures from any reprisals/adverse action as a result of 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 council, but respecting any decision to disclose wrongdoing outside the council – provided that disclosure outside the council is made in accordance with the provisions of the PID Act

- ensuring managers and supervisors at all levels in council understand the need to be and benefits of, reporting wrongdoing and are familiar with this policy and aware of the needs of those who report wrongdoing
- reviewing this policy every two years or more frequently if appropriate
- 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

Councillors, employees and others performing work for Council are strongly encouraged to report all forms of wrongdoing and the Mayor and General Manager will fully support any Councillor, employee or contractor who wishes to utilise the *Public Interest Disclosures Act 1994* to make disclosures within the parameters of the act.

3.0 Scope

This policy will apply to:

- Council staff and Councillors
- Consultants and contractors working for council and volunteers.

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.

All Council officials are encouraged to report known and suspected wrongdoing within Council. Employees should be reminded that this policy is just one of several relating to grievances and complaints, and provided with links and relevant information for the other policies including the Kiama Council Code of Conduct.

Relevant employees are also be encouraged to support those who have made disclosures, as well as protect and maintain their confidentiality.

Council will not tolerate the victimisation or harassment of anyone who has made a disclosure.

4.0 References

This document should be read in conjunction with:

- *Public Interest Disclosures Act 1994*
- Public Interest Disclosure – assessment of an internal report (internal doc)
- Public Interest Disclosure – Internal Report form (internal doc)
- Public Interest Disclosure – Initial assessment of internal report (internal doc)

5.0 Definitions

- Council Official – includes Councillors, employees, council committee members and delegates of Council.

- Investigator – May be an internal or external person with responsibility for undertaking investigations of the PID.
 - Nominated Officer - is determined by the Principal Officer. Receives reports, documents disclosures, provides support to reporter and carries out initial assessment.
 - PID Coordinator - Nominated staff member (usually the Public Officer) with responsibility for coordinating the PID process. Assesses the report against the Act, determines how the report will be managed and actively manages the situation within Council.
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- Principal Officer – The General Manager. Responsible for ensuring policy is in place, ensuring organisational awareness, make determinations for particular responsibilities, receive PID's.

6.0 Policy

6.1 What should be reported?

Staff should report any wrongdoing within Kiama Council. For a PID to be made reports must relate to one of the following;

- a. corrupt conduct
- b. maladministration
- c. serious and substantial waste of public money
- d. government information contravention (improper disclosure/misuse)
- e. local government pecuniary interest contravention.

a. Corrupt conduct

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

This could include for example:

- 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 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](#).

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](#).

c. Serious and substantial waste in local government

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of the council.

For example, this could include:

- poor project management practices leading to projects running over time
- having poor 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](#).

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](#).

e. 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.

For example, this could include:

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a general manager holding an undisclosed shareholding in a company competing for a council contract

For more information about local government pecuniary interest contravention, see the NSW Ombudsman's guideline on [what can be reported](#).

f. Other wrongdoing

Although reports about the previous four 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
- 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* 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.

6.2 When will a report be protected?

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

- 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 – see section 10 (b), (c) & (d) below
 - the General Manager
 - one of the investigating authorities nominated in the PID Act – see section 10 below

Reports by staff and councillors will not be considered to be public interest disclosures if they:

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

6.3 How to make a report

Staff can report wrongdoing in writing or verbally. However, staff 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.

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

If staff choose not to sign the report, a note to file must be made, indicating the reporter was asked to sign the report, but has declined.

6.4 Can a report be anonymous?

There will be some situations where staff may not want to identify themselves when making a report. Although these reports will still be dealt with by Council it is preferable if the person making the report, identifies

them self. This allows Council to provide the necessary protection and support, as well as feedback about the outcome of any investigation.

NOTE: anonymous disclosure may not prevent identification. If the reporters identity remains unknown, it may be difficult for Council to prevent any reprisal action.

6.5 Maintaining confidentiality

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

Council is committed to keeping a reporters identity, the fact that a disclosure has been made and the nature of the disclosure, confidential. However there are exceptions where confidentiality cannot be maintained. In these instances the nominated officers, the PID Coordinator or the Principal Officer will discuss these exceptions with the Council official making the disclosure.

If confidentiality cannot be maintained, Council will develop a plan to support and protect the reporter from risks of reprisal. The person making the report will be involved in developing this plan and will also be told if the report will be dealt with under Council's Code of Conduct.

Any person making a report should only discuss the report with the nominated officer, the PID Coordinator, Principal Officer or the investigator. Discussing the report more broadly may affect the outcome of any investigation.

6.6 Who can receive a report within Council

All employees are strongly 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 this policy and any supporting procedures.

Any supervisor who receives a report that they believe may be a public interest disclosure, must refer the individual making the report to one of the positions listed below.

A report relating to a councillor should be made to the General Manager or the Mayor.

A councillor making a report about another councillor should refer their report to the General Manager or the Mayor.

The following positions are the only staff within Council who can receive a public interest disclosure (PID).

a. General Manager

Staff can report wrongdoing directly to the General Manager. The General Manager is responsible for:

- deciding if a report is a public interest disclosure
- determining whether the report should be referred to other authorities
- determining the management response to correct the problem that has been identified.

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

Manager is also responsible for referring actual or suspected corrupt conduct to the Independent Commission Against Corruption (ICAC).

b. Mayor

Reports about the General Manager should be made to the Mayor. The Mayor is responsible for:

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

The Mayor must make sure there are systems in place in Council to support and protect staff who report wrongdoing. If the report is about the General Manager, the Mayor is also responsible for referring actual or suspected corrupt conduct to the ICAC.

c. Disclosures coordinator

The Disclosures Coordinator has a central role in managing PID reports. The Disclosure Coordinator will receive, assess and refer the report to staff within Council who can deal with the matters appropriately.

The Disclosures Coordinator role is undertaken by Council's Public Officer.

d. 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.

Council's Disclosure Officers are:-

- Records Coordinator
- Manager Corporate Services
- Manager Human Resources
- Manager Blue Haven
- Manager Depot

6.7 Who can receive a report outside of Council

Staff are encouraged to report internally wrongdoing within Council however a report can also be made to an investigating authority.

This can be done first, or at any stage after an initial report to Council is made. If a report is about the General Manager or the Mayor, staff should consider making the report to an investigating authority.

NOTE: Under the PID Act disclosure can also be made to a Member of Parliament or a journalist, but only in limited circumstances.

a. Investigating authorities

The PID Act lists a number of investigating authorities in NSW that council officials 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 Office of Local Government — for disclosures about local government agencies
- the ICAC Inspector — for disclosures about the ICAC or its staff
- the Information Commissioner — for disclosures about a government information contravention.

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

It is very likely the investigating authority will discuss the case with Council, who will assist and cooperate with the investigating authority to ensure the matter is dealt with appropriately.

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 any 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.

To be protected under the PID Act – a report of wrongdoing made to an MP or a journalist will need to show that it's been made on reasonable grounds i.e. that the person making the report believes the disclosure is substantially true.

Any person making a report of wrongdoing to a person or an organisation that is not listed above, will not be protected under the PID Act.

Caution must be exercised as disclosing confidential information that is inconsistent with the PID Act may be a breach of Council's Code of Conduct and disciplinary action may result.

6.8 Feedback to staff who report wrongdoing

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

When a report is provided, the reporter will be given:

- an acknowledgement that the disclosure has been received
- the timeframe for further updates
- the name and contact details of the people who will provide feedback.

The PID Act requires that reporters are provided with an acknowledgement letter and a copy of this policy within 45 days after the report is made.

However, Council will attempt to provide this information within four working days from the date the report is made.

After a decision is made about how the report will be dealt with, advice will include:

- information about the action that will be taken in response to the report
- likely timeframes for any investigation
- information about the resources available within Council (for example access to Council's Employee Assistance Program) to assist with any concerns the reporter may have
- information regarding external agencies and support access.

This information will be given to the reporter within 10 working days from the date the report is made.

During any investigation, the reporter will be given:

- information about the progress of the investigation and reasons for any delay
- advice if a person's identity needs to be disclosed for the purposes of investigating the matter and an opportunity to discuss any matters.

At the end of any investigation, Council will provide:

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

At all times during an investigation, all relevant staff must adhere to Council's Code of Conduct. Failure to follow and comply with the Code of Conduct may result in disciplinary proceedings.

6.9 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 making the public interest disclosure.

Council will not tolerate any reprisal action against staff who report wrongdoing.

Detrimental action is also misconduct that justifies disciplinary action.

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.

(Under the PID Act) the criminal penalties that can be imposed include imprisonment or fines. People 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).

a. Responding to reprisals

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

When a report is received, the nominated or identified PID officer within 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.

A staff member should advise their supervisor, the disclosures coordinator or the General Manager immediately if it's suspected that detrimental action has been or is being taken against them in reprisal for making a report.

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 member of staff, who has not been involved in dealing with the initial disclosure, will investigate the suspected reprisal. This senior member of staff will normally be the Manager HR.
- 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 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.

The General Manager may issue specific directions to help protect against reprisals. These may include:

- 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 respondent 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 respondent 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.

Where Council officials have reported wrongdoing and feel that any reprisal action is not being dealt with effectively they should contact the Ombudsman or the ICAC – depending on the type of wrongdoing reported.

b. Protection against legal action

If a disclosure is made in accordance with the PID Act, the reporter will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure.

A Council official making a disclosure will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.

6.10 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.

All supervisors must notify the disclosures coordinator if they believe a staff member is suffering any detrimental action or reprisal as a result of disclosing wrongdoing.

6.11 Sanctions for making false or misleading disclosures

It is a criminal offence under the PID Act to willfully make a false or misleading statement when reporting wrongdoing.

6.12 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. The respondent will be:

- treated fairly and impartially
- advised of their rights and obligations under relevant council policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against them
- notified of the result of any investigation.

7.0 Private review

This policy will be reviewed every two years or earlier should circumstances arise to warrant revision.

8.0 More information

More information around public interest disclosures is available on Council's intranet. Staff can also access advice and guidance from Council disclosures coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

9.0 Resources

The contact details for external investigating authorities that staff can make a public interest 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
Web: 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
Web: 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
Web: www.audit.nsw.gov.au
Address: Level 15, 1 Margaret Street,
Sydney NSW 2000

For disclosures about 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
Web: www.dlg.nsw.gov.au
Address: 5 O'Keefe Avenue, Nowra, NSW 2541

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
Web: www.oic.nsw.gov.au
Address: Level 11, 1 Castlereagh Street, Sydney NSW 2000

10.0 Document control

Directorate:	Office of General Manager
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