



## Public Interest Disclosure Policy





## Document Control

This policy will be formally reviewed every three years from the date of adoption or as required to ensure it continues to meet the requirements of the *Public Interest Disclosure Act 2022 (NSW)* and the Council's requirements. Review and revision must be done in consultation with relevant officers.

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## 1. Purpose

All agencies in NSW are required to have a Public Interest Disclosure (PID) Policy under section 42 of the *Public Interest Disclosures Act 2022* (PID Act).

At Bellinghen Shire Council we 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 our organisation relies upon our staff, volunteers, contractors and subcontractors speaking up when they become aware of wrongdoing.

This policy sets out:

- How Council will support and protect the public official if they come forward with a report of serious wrongdoing
- How Council will deal with the report and our other responsibilities under the PID Act
- Who to contact to make a report
- How to make a report
- The protections which are available under the PID Act.

This policy also documents Council's commitment to building a speak up culture. Part of that speak up culture is having in place a framework that facilitates public interest reporting of wrongdoing by:

- protecting those who speak up from detrimental action
- imposing duties on agencies who receive reports of wrongdoing to take appropriate action to investigate or otherwise deal with them.

In NSW, that framework is the PID Act.

## 2. Accessibility of this policy

This policy is available on Bellinghen Shire Council publicly available website as well as on the intranet. A copy of the policy is also sent to all staff of Council on their commencement. A hard copy of the policy can be requested from Governance Team.

## 3. Who does this policy apply to?

This policy applies to, and for the benefit of, all Council Officials, being "public officials" as defined under the PID Act. You are a public official if you are:

- A person employed in or by Council
- Elected Councillor of Bellinghen Shire Council
- A person providing services or exercising functions on behalf of Council, including a service provider/service partner, or volunteer.
- An employee, partner or officer of an entity that provides services under contract, subcontract, or other arrangement, on behalf of Council or exercises functions of Council, and are involved in providing those services or exercising those functions.

The General Manager, other nominated disclosure officers and Group Leaders within Bellinghen Shire Council have specific responsibilities under the PID Act. This policy also provides information on how people in these roles will fulfil their responsibilities. Other public officials who work in and for the public sector, but do not



work for Bellingen Shire Council may use this policy if they want information on who they can report wrongdoing to within Council.

#### **4. Who does this policy not apply to?**

This policy does not apply to:

- People who have received services from an agency and want to make a complaint about those services
- People, such as contractors, who provide services to an agency. For example, employees of a company that sold computer software to an agency.

This means that if you are not a public official, this policy does not apply to your complaint (there are some circumstances where a complaint can be deemed to be a voluntary PID, see section 5(i) of this policy for more information).

However, you can still make a complaint to Council. This can be done by contacting Council through the following channels: online via Council's website, email, phone, in person or by post.

#### **5. Compliance with the PID Act**

Compliance with the policy will be overseen by the Public Disclosures Coordinator. Ensuring that compliance with the policy is maintained will be undertaken in a number of ways.

##### **TRAINING**

Training will be provided to all Council staff using resources provided by the NSW Ombudsman. Additional training will be provided to staff with specific responsibilities under the PID Act to ensure all staff know their obligations and responsibilities.

Relevant training will be provided to all new staff as part of the onboarding process.

Refresher training will be provided to all staff every three years.

Council's Disclosures Coordinator will oversee and review any received Public Interest Disclosures to ensure compliance with the legislation.

In future, Public Interest Disclosures may be looked at as part of Council's internal audit function.

Any non-compliance with Council's PID policy will be assessed and disciplinary action may be taken in accordance with the Local Government Award or where necessary, referred to the NSW Ombudsman.

#### **6. What is contained in this policy?**

This policy will provide information on the following:

- Ways public officials can make a voluntary PID to Bellingen Shire Council under the PID Act
- The names and contact details for the nominated disclosure officers in Council
- The roles and responsibilities of people who hold particular roles under the PID Act and who are employees of Council
- What information public officials will receive once they have made a voluntary PID
- Protections available to people who make a report of serious wrongdoing under the PID Act and what Council will do to protect them.



- Council's procedures for dealing with disclosures
- Procedures for managing the risk of detrimental action and reporting detrimental action
- Council record-keeping and reporting requirements
- How Council will ensure it complies with the PID Act and this policy.

If you require further information about this policy, how public interest disclosures will be handled and the PID Act you can:

- confidentially contact a nominated disclosure officer within Bellingen Shire Council
- contact the PID Advice Team within the NSW Ombudsman by phone: (02) 9286 1000 or email: [pidadvice@ombo.nsw.gov.au](mailto:pidadvice@ombo.nsw.gov.au), or
- access the NSW Ombudsman's PID guidelines which are available on its website. If you require legal advice with respect to the PID Act or your obligations under the PID Act, you may need to seek independent legal advice

## **7. How to make a report of serious wrongdoing**

### **7.1 Reports, complaints and grievances**

When a public official reports suspected or possible wrongdoing in the public sector, their report will be a PID if it has certain features which are set out in the PID Act.

Some internal complaints or internal grievances may also be PIDs, as long as they have the features of a PID. If an internal complaint or grievance is a report of serious wrongdoing, Council will consider whether it is a PID. If it is a PID, Council will deal with it as set out in this policy, but Council will also ensure that any other policy which applies is also followed. For example, the Model Code of Conduct, the Procedures for the Administration of the Code of Conduct and the Fraud and Corruption Control Policy.

It is important that Council quickly recognise when a PID is received. This is because once a PID is received, the person who has made the report is entitled to certain protections and Council has certain decisions that must be made on how Council will deal with the PID and how Council will protect and support the person who has made the report.

### **7.2 When will a report be a PID?**

There are three types of PIDs in the PID 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. More information about

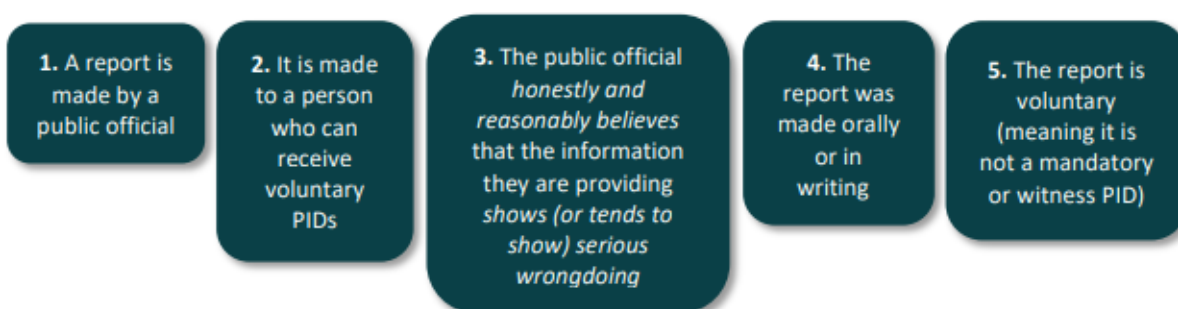


protections is available in this policy. You can find more information about mandatory and witness PIDs in the Ombudsman's guidelines '[Dealing with mandatory PIDs](#)' and '[Dealing with witness PIDs](#)'.

Voluntary PIDs are the kind of PIDs most people have in mind when they think about public interest reporting and 'whistleblowing'.

They involve a public official making a report because they have information that they believe shows (or tends to show) serious wrongdoing, where they are not under a legal obligation to make that report and where it is not an ordinary part of their role to report such wrongdoing.

A report is a voluntary PID if it has the following five features, which are set out in sections 24 to 27 of the PID Act:



If the report has all five features, it is a voluntary PID. Public officials will not be expected to prove that what they reported actually happened or is serious wrongdoing. Public officials do have to honestly believe, on reasonable grounds, that the information you are reporting shows or tends to show serious wrongdoing.

Even though public officials do not have to prove the serious wrongdoing happened or provide evidence, a mere allegation with no supporting information is unlikely to meet this test. If Council makes an error and do not identify that a public official has made a voluntary PID, public officials will still be entitled to the protections under the PID Act.

If public officials make a report and believe Council has made an error by not identifying that they have made a voluntary PID, they should raise this with a nominated disclosure officer or their contact officer for the report. If public officials are still not satisfied with this outcome, they can seek an internal review or Council makes seek to conciliate the matter. They may also contact the NSW Ombudsman.

Further information on rights to internal review and conciliation is found in section 17 of this policy.

### 7.3 Who can make a voluntary PID?

Any public official can make a voluntary PID — see 'Who this policy applies to'. You are a public official if:

- you are employed by Bellingen Shire Council
- you are a duly elected Councillor of Bellingen Shire Council
- you are a contractor, subcontractor or volunteer who provides services, or exercises functions, on behalf of Bellingen Shire Council or





- you work for an entity (such as a non-government organisation) who is contracted by Bellingen Shire Council to provide services or exercise functions on behalf of Bellingen Shire Council— if you are involved in undertaking that contracted work.

A public official can make a PID about serious wrongdoing relating to any agency, not just the agency they are working for. This means that Council may receive PIDs from public officials outside our agency. It also means that public officials can make a PID to any agency, including an integrity agency like the Independent Commission Against Corruption (ICAC) and the NSW Ombudsman. Annexure B of this policy has a list of integrity agencies.

#### 7.4 What is serious wrongdoing?

Reports must be of one or more of the following categories of serious wrongdoing to be a voluntary PID (in addition to having the other features set out here). Serious wrongdoing is defined in the PID Act as:

- Corrupt conduct — such as a public official accepting a bribe
- Serious maladministration — such as an agency systemically failing to comply with proper recruitment processes when hiring staff
- A government information contravention — such as destroying, concealing or altering records to prevent them from being released under a Government Information Public Access application
- 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
- A privacy contravention — such as unlawfully accessing a person's personal information on Council's database
- A serious and substantial waste of public money — such as an agency not following a competitive tendering process when contracting with entities to undertake government work.

When public officials make a report, they do not need to state to Bellingen Shire Council what category of serious wrongdoing they are reporting or that they are reporting serious wrongdoing.

#### 7.5 Who can public officials make a voluntary PID to?

For a report to be a voluntary PID, it must be made to certain public officials.

*Making a report to a public official who works for Bellingen Shire Council.*

Public officials can make a report inside Council to:

- The General Manager
- A Disclosure Officer for Council — a list of disclosure officers for Council and their contact details can be found at Annexure A of this policy.
- Group Leader — this is the person who directly, or indirectly, supervises the public official. It can also be the person who they directly, or indirectly, report to. The Group Leader will make sure that the report is communicated to a disclosure officer on their behalf or may accompany the public official while they make the report to a disclosure officer.

*Making a report to a recipient outside of Council*



Public Officials can also make the report to a public official in another agency (meaning an agency they 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 B 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 they choose to make a disclosure outside of Bellingden Shire Council, it is possible that their disclosure will be referred to Council so that appropriate action can be taken.

#### *Making a report to a Member of Parliament or journalist*

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

- The public official 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.
- The public official did not make the previous disclosure anonymously.
- The public official did not give a written waiver of their right to receive information relating to the previous disclosure.
- The public official 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
    - 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 the public official applied for an internal review of the agency's decision within six months of making the disclosure. If all the above requirements are met, the disclosure to an MP or journalist may be a voluntary PID.

### **7.6 What form should a voluntary PID take?**

A public official can make a voluntary PID:

- In writing — this could be an email or letter to a person who can receive voluntary PIDs.
- Orally — have a private discussion with a person who can receive voluntary PIDs. This can be face-to-face, via telephone or virtually.



- Anonymously — write an email or letter or call a person who can receive PIDs to make a report without providing their name or anything that might identify the public official as the maker of the report. A report will only be considered anonymous if there is no reasonable or practical way of communicating with the person making the report. Even if the public official chooses to remain anonymous, the public official will still be protected under the PID Act. It may be difficult, however, for Council to investigate the matter(s) that the public official has disclosed if Council cannot contact the public official for further information.

### **7.7 What should I include in my report?**

A public official should provide as much information as possible so Council can deal with the report effectively. The type of information the public official should include is:

- Date, time and location of key events
- Names of person(s) involved in the suspected wrongdoing, their role, title and how they are involved
- The public official's relationship with the person(s) involved, such as whether the public official works closely with them
- The public official's explanation of the matter they are reporting
- How the public official became aware of the matter they are reporting
- Possible witnesses
- Other information available that supports the report.

### **7.8 What if I am not sure if my report is a PID?**

Public officials should report all wrongdoing they become aware of regardless of whether they think it is serious wrongdoing. It is important for Bellinghen Shire Council to understand what is or may be occurring. Council is then responsible for making sure the report is handled appropriately under the PID Act, or if it is not a PID, in line with our other procedures. Even if the report is not a PID, it may fall within another one of the agency's policies for dealing with reports, allegations or complaints.

### **7.9 Deeming that a report is a voluntary PID**

The Public Interest Disclosures Coordinator can, in certain circumstances, determine that a report is a voluntary PID even if the report does not otherwise have all the features of a voluntary PID. This is known as the 'deeming power'. By deeming that a report is a voluntary PID, it ensures that reporters are provided with protections under the PID Act.

If the public official makes a report that has not met all the requirements of a voluntary PID, they can refer the matter to the Public Interest Disclosures Coordinator to request that they consider deeming the report to be a voluntary PID. A decision to deem a report to be a voluntary PID is at the discretion of the Public Interest Disclosures Coordinator. For more information about the deeming power, see the Ombudsman's guideline 'Deeming that a disclosure is a voluntary PID'.

### **7.10 Who can I talk to if I have questions or concerns?**

If a public official, including Council Officials, have any questions or concerns, the public official should contact a nominated disclosure officer listed in Annexure A by email, phone or in person. If a public official wishes for



their discussion to be confidential, the public official should mark any communications as confidential, for example, in the subject line of their email.

## 8. Protections

### *How is the maker of a voluntary PID protected?*

When a public official makes a voluntary PID, the public official will receive special protections under the PID Act.

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

Council will not tolerate any type of detrimental action being taken against public officials because they 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:

- 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.
  - Once Council becomes aware that a voluntary PID by a person employed or otherwise associated with Council that concerns serious wrongdoing relating to Council has been made, Council will undertake a risk assessment and take steps to mitigate the risk of detrimental action occurring against the person who made the voluntary PID.
  - 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 PID Act.

- Immunity from civil and criminal liability

Some public officials are often subject to a duty of confidentiality that prevents them disclosing certain information that they obtain or become aware of at work. Sometimes, in order to make a PID, public officials will need to breach or disregard such confidentiality duties. If that happens, a public official cannot be disciplined, sued or criminally charged for breaching confidentiality.

- Confidentiality

Public officials and agencies must not disclose information tending to identify a person as the maker of a voluntary PID unless doing so is permitted by the PID Act.

- Protection from liability for own past conduct



The Attorney General can give the maker an undertaking that a disclosure of their own past conduct will not be used against them if a person discloses their own wrongdoing or misconduct while making a report. This undertaking can only be given on application by an integrity agency to the Attorney General.

#### *Protections for people who make mandatory and witness PIDs*

Apart from PIDs that are made voluntarily by public officials, there are other types of reports that are recognised as PIDs under the PID Act:

- A mandatory PID: This is a PID where the public official has made the 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.
- A 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.

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

<b>Protection</b>	<b>Mandatory PID</b>	<b>Witness PID</b>
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"><li>• breaching a duty of secrecy or confidentiality, or</li><li>• breaching another restriction on disclosure.</li></ul>	✓	✓

## **9. Reporting detrimental action**

If a public official experiences adverse treatment or detrimental action, such as bullying or harassment, based on the suspicion, belief or awareness that the public official has made, may have made or may make a PID, the public official should report this immediately. Public officials can report any experience of adverse treatment or detrimental action directly to a disclosure officer, or to an integrity agency. A list of integrity agencies is located at Annexure B of this policy.



## 10. General support

Council is committed to the wellbeing of all public officials making PIDs. Council will assign a key contact person to a public official and make other arrangements on a case-by-case basis where the public official is at risk of detrimental action. Wellbeing support is also available through Council's Employee Assistance Program.

## 11. Roles and responsibilities

### *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 PID Act
- Ensuring that Council has appropriate systems for:
  - overseeing internal compliance with the PID 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
  - complying with yearly reporting obligations to the NSW Ombudsman.

### *Mayor*

The Mayor is responsible for:

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

### *Disclosure Officers*

Disclosure officers are responsible for:

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

### *Public Interest Disclosure Coordinator*



The Public Interest Disclosure Coordinator and the Alternate Public Interest Disclosure Coordinator are responsible for:

- Receiving reports from public officials
- Receiving reports when they are passed on to them by Group Leaders and supervisors
- Ensuring reports are dealt with appropriately, including by referring the matter to the appropriate complaint unit (if relevant)
- ensuring that any oral reports that have been received are recorded in writing.
- Assessing the risk of detrimental action related to or likely to arise out of a PID and developing strategies to manage any risk identified
- Keeping the General Manager (or Mayor) informed
- Providing advice and support to Disclosure Officers and the General Manager when dealing with PIDs
- Providing sufficient training to staff and people with additional PID responsibilities
- Refer evidence of detrimental action to the Commissioner of Police and ICAC
- Complying with yearly reporting obligations to the NSW Ombudsman

#### *Group Leaders and Supervisors*

The responsibilities of Group Leaders and Supervisors include:

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

#### *All employees*

All employees must:

- Report suspected serious wrongdoing or other misconduct
- Use their best endeavours to assist in an investigation of serious wrongdoing if asked to do so by a person dealing with a voluntary PID on behalf of Council
- Treat any person dealing with or investigating reports of serious wrongdoing with respect.
- All employees must not take detrimental action against any person who has made, may in the future make, or is suspected of having made, a PID.

## **12. How Council will deal with voluntary PIDs**

*How Council will acknowledge that a report has been received and keep the person who made it informed*

When a disclosure officer receives a report which is a voluntary PID, or looks like it may be a voluntary PID, the person who made the report will receive the following information:

- An acknowledgment that the report has been received. This acknowledgement will:
  - State that the report will be assessed to identify whether it is a PID
  - State that the PID Act applies to how Council deals with the report
  - Provide clear information on how the public official can access this PID policy
  - Provide the details of a contact person and available supports.



- If the report is a voluntary PID, Council will inform the public official as soon as possible how Council intends to deal with the report. This may include:
  - That Council is investigating the serious wrongdoing
  - That Council will refer the report to a different agency (if appropriate) to deal with the voluntary PID. Council will provide the details of this referral
  - If Council decides to not investigate the report and to not refer it to another agency for it to be investigated, Council will inform the public official the reasons for this decision. Council will also notify the NSW Ombudsman of this decision.
- If Council decides to investigate the serious wrongdoing, Council will provide the public official with updates on the investigation at least every three months. During this time, if the public official would like more frequent updates, the public official should contact the contact person who was nominated when the public official made the report.
  - If Council investigates the serious wrongdoing, Council will provide the following information once the investigation is complete:
    - a description of the results of the investigation — that is, whether Council found that serious wrongdoing took place.
    - information about any corrective action as a result of the investigation/s — this means Council will tell the public official what action it took in relation to the person who engaged in the serious wrongdoing or if the serious wrongdoing was by our agency, what Council has put in place to address that serious wrongdoing.
    - Corrective action could include taking disciplinary action against someone or changing the practices, policies and procedures that Council has in place which led to the serious wrongdoing.
- There may be some details about both the findings made as a result of the investigation and the corrective action taken that cannot be revealed. Council will always balance the right of a person who makes a report to know the outcome of that report, with other legal obligations Council may have.
- If the public official has made an anonymous report, in many cases Council may not be able to provide this information to the public official.

#### *How Council will deal with voluntary PIDs*

Once a report that may be a voluntary PID is received Council will look at the information contained in the report to see if it has the features of a voluntary PID. This assessment is undertaken to identify whether the report is a voluntary PID or another type of disclosure, and to make sure that the right steps are followed. If it is a voluntary PID, Council will ensure that Council comply with the requirements in the PID Act.

#### **Step 1: Initial Assessment**

The disclosure officer who received the report of serious wrongdoing will conduct an initial assessment to determine if the report meets the criteria for a PID. The disclosure officer must provide the Public Interest Disclosure Coordinator with their findings about whether the report is a voluntary PID. If it is determined that





the report does not meet the requirements for it to be classified as a PID, the disclosure officer will inform the public official that made the report.

Public officials who disagree with this decision may raise it with the disclosure officer, request an internal review in accordance with section 11 or request that the matter be conciliated.

Even if the report is not a voluntary PID, it will still need to be dealt with in a manner consistent with Council internal complaints, grievance handling process or through an alternate process.

## Step 2: Risk Assessment

Once it has been determined that a voluntary PID has been made, the disclosure officer and the Public Interest Disclosure Coordinator must complete a risk assessment to determine whether there are any risks to the public official who made the report. This may involve speaking to the public official (if the report was not made anonymously) to identify whether other persons may know or suspect that the public official was going to make or has made a voluntary PID, and to determine any specific concerns of the maker of the PID.

## Step 3 Determine necessary action

If the report is a voluntary PID, the disclosure officer and the Public Interest Disclosure Coordinator will prioritise putting in place the necessary measures to reduce the risk of detrimental action against the public official who made the voluntary PID. These measures may include:

- Issuing warnings to those alleged to have taken detrimental action against the public official who made the PID.
- Relocating, within the current workplace, the public official who made the PID or the person alleged to have taken detrimental action.
- Transferring the public official who made the PID or the person alleged to have taken detrimental action to another position for which they are qualified.
- Granting the public official who made the PID or the person the subject of the disclosure a leave of absence during the investigation of the PID.

Generally, the Council will conduct an investigation to make findings about whether the serious wrongdoing disclosed in the report occurred, who was involved, who was responsible, and whether the people involved, or the agency engaged, in serious wrongdoing. There may be circumstances where Council believes an investigation is not warranted — for example, if the conduct has previously been investigated. Investigations will be conducted in accordance with the relevant policies and procedures, such as the Model Code of Conduct, the Procedures for the Administration of the Code of Conduct or the Fraud and Corruption Control Policy and Procedure.

There may also be circumstances where Council decides that the report should be referred to another agency, such as an integrity agency. For example, reports concerning possible corrupt conduct may be required to be reported to the ICAC in accordance with section 11 of the *Independent Commission Against Corruption Act 1988*.

Before referring a matter, Council will discuss the referral with the other agency and will provide the public official who made the PID with details of the referral and a contact person within the other agency.

If Council decides not to investigate a report and to not refer the matter to another agency, Council will let the public official who made the PID know the reasons for this and notify the NSW Ombudsman.



Council may stop dealing with a voluntary PID because it is not actually a voluntary PID (meaning it does not have all the features of a PID).

#### Step 4: Preparation of report to General Manager

A confidential report on any matter that is investigated is prepared by the investigator and promptly submitted to the General Manager.

### **13. How Council will protect the confidentiality of the maker of a voluntary PID**

Council understands that people who make voluntary PIDs may want their identity and the fact that they have made a report to be confidential.

Under the PID Act, information tending to identify a person as the maker of a voluntary PID (known as identifying information) is not to be disclosed by a public official or an agency.

There are certain circumstances under the PID Act that allow for the disclosure of identifying information.

These include:

- Where the person consents in writing to the disclosure
- Where it is generally known that the person is the maker of the voluntary PID because of their voluntary self-identification as the maker
- When the public official or Council reasonably considers it necessary to disclose the information to protect a person from detriment
- Where it is necessary the information be disclosed to a person whose interests are affected by the disclosure
- Where the information has previously been lawfully published
- When the information is disclosed to a medical practitioner or psychologist for the purposes of providing medical or psychiatric care, treatment or counselling to the individual disclosing the information
- When the information is disclosed for the purposes of proceedings before a court or tribunal
- When the disclosure of the information is necessary to deal with the disclosure effectively
- If it is otherwise in the public interest to disclose the identifying information.

Council will not disclose identifying information unless it is necessary and authorised under the PID Act. Council will put in place steps to keep the identifying information of the maker and the fact that a report has been made confidential. It may not be possible for us to maintain complete confidentiality while Council progresses the investigation, but Council will do all that it practically can to not unnecessarily disclose information from which the maker of the report can be identified. Council will do this by:

- Council will limit the number of people who are aware of the maker's identity or information that could identify them.
- If Council must disclose information that may identify the maker of the PID, Council will still not disclose the actual identity of the maker of the PID, unless Council has their consent to do so.
- Council will ensure that any person who does know the identity of the maker of a PID is reminded that they have a legal obligation to keep their identity confidential.
- Council will ensure that only authorised persons have access to emails, files or other documentation that contain information about the identity of the maker.



- Council will undertake an assessment to determine if anyone is aware of the maker's identity and if those persons have a motive to cause detrimental action to be taken against the maker or impede the progress of the investigation.
- Council will provide information to the maker of the PID about the importance of maintaining confidentiality and advising them how best to protect their identity, for example, by telling them not to discuss their report with other staff.

If confidentiality cannot be maintained or is unlikely to be maintained, Council will:

- Advise the person whose identity may become known
- Implement additional strategies to minimise the risk of detrimental action
- Provide additional supports to the public official who has made the PID.
- Remind persons who become aware of the identifying information of the consequences for failing to maintain confidentiality and that engaging in detrimental action is a criminal offence and may also be a disciplinary matter.

#### **14. How Council will deal with allegations of a detrimental action offence**

Council will not tolerate any detrimental action being taken by any person against a person who has made a PID, investigators, witnesses or the person the report is about.

Council will assess and take steps to mitigate detrimental action from being taken against the maker of a voluntary PID, the person whose conduct is the subject of a PID, investigators and witnesses.

Council will take steps to assess and minimise the risk of detrimental action by:

- Explaining that a risk assessment will be undertaken, and a risk management plan will be created (including reassessing the risk throughout the entirety of the matter)
- Providing details of the unit/role that will be responsible for undertaking a risk assessment
- Explaining the approvals for risk assessment and the risk management plan, that is, rank or role of the person who has final approval
- Explaining how the agency will communicate with the maker to identify risks
- Listing the protections that will be offered, that is, the agency will discuss protection options with the maker which may including remote working or approved leave for the duration of the investigation
- Outlining what supports will be provided.

Detrimental action against a person is an act or omission that causes, comprises, involves or encourages detriment to a person or a threat of detriment to a person (whether express or implied). Detriment to a person includes:

- Injury, damage or loss
- Property damage
- Reputational damage
- Intimidation, bullying or harassment
- Unfavourable treatment in relation to another person's job
- Discrimination, prejudice or adverse treatment
- Disciplinary proceedings or disciplinary action, or
- Any other type of disadvantage



Detrimental action does not include:

- Lawful action taken by a person or body to investigate serious wrongdoing or other misconduct
- The lawful reporting or publication of a finding of serious wrongdoing or other misconduct
- The lawful making of adverse comment, resulting from investigative action
- The prosecution of a person for a criminal offence
- Reasonable management action taken by someone in relation to a person who made or may make a PID. For example, a reasonable appraisal of a PID maker's work performance.

## **15. How Council will deal with allegations of a detrimental action offence**

If Council becomes aware of an allegation that a detrimental action offence has occurred or may occur, the General Manager will:

- Take all steps possible to stop the action and protect the person(s)
- Take appropriate disciplinary action against anyone that has taken detrimental action
- Refer any evidence of a detrimental action offence to the Commissioner of Police and the ICAC or the Law Enforcement Conduct Commission (whichever is applicable)
- Notify the NSW Ombudsman about the allegation of a detrimental action offence being committed.

The Public Interest Disclosure Coordinator will assist the General Manager with these actions and update the maker of the PID and provide additional support.

## **16. What Council will do if an investigation finds that serious wrongdoing has occurred**

If, after an investigation, it is found that serious wrongdoing or other misconduct has occurred, Council will take the most appropriate action to address that wrongdoing or misconduct. This is also known as corrective action.

- Corrective action can include:
- A formal apology
- Improving internal policies to adequately prevent and respond to similar instances of wrongdoing.
- Providing additional education and training to Council Officials where required.
- Taking employment action against persons involved in the wrongdoing (such as termination of employment, relocation, a caution or reprimand).
- Payment of compensation to people who have been affected by serious wrongdoing or other misconduct.

## **17. Review and Dispute resolution**

### **17.1 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.
- 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 PID Act.

Public officials seeking an internal review must apply in writing to the Public Interest Disclosures Officer within 28 days of being informed of Council's decision. The application should state the reasons why Council's decision should not have been made. Any other relevant material may also be submitted with the application.

## **17.2 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, Council 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.

## **18. Other Council obligations**

### **18.1 Record-keeping requirements**

Council must keep full and accurate records with respect to all information received in connection with the PID Act. This ensures that Council complies with its obligations under the State Records Act 1998. The Public Interest Disclosure Coordinator will keep a confidential record of all the details of the PID, including its subject matter and how it was dealt with.

### **18.2 Reporting of voluntary PIDs and Council's annual return to the Ombudsman**

Each year Council provides an annual return to the NSW Ombudsman which includes:

- Information about voluntary PIDs received by Council during each return period (yearly with the start date being 1 July).
- Action taken by Council to deal with voluntary PIDs during the return period.
- How Council promoted a culture in the workplace where PIDs are encouraged.

The Public Interest Disclosure Coordinator will be responsible for preparing the annual return with the assistance of the Public Interest Disclosures Officer.

### **18.3 How Council will ensure compliance with the PID Act and this policy**

Council will ensure compliance by regularly reviewing its policy and the processes undertaken when a PID is made. Council will promote training and staff awareness about the policy and relevant legislation.

## **19. Breaches of this Policy**

Breaches of this policy may result in an investigation of the alleged breach in line with relevant Council policies including the Model Code of Conduct.

Any alleged criminal offence or allegation of corrupt conduct will be referred to the relevant external agency.



## **20. Administrative Changes**

From time-to-time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made, including branding, Council Officer titles or department changes and legislative name or title changes which are considered minor in nature and not required to be formally endorsed.



## **Annexure A — List of Disclosure Officers for Bellingen Shire Council**

General Manager
Mayor (if your disclosure is about the General Manager)
Deputy General Manager Corporate and Community (Public Interest Disclosures Coordinator)
Deputy General Manager Operations (Alternate Public Interest Disclosures Coordinator)
Team Leader Governance Services (Public Interest Disclosures Officer)
Group Leader People and Culture (Public Interest Disclosures Officer)

Each of the above officers can be contacted by staff by all internal communication methods.

Other persons may contact the above listed officers by calling (02) 6655 7300 and asking to speak to the relevant officer stating that the matter is confidential or by referring your enquiry to [governance@bellingen.nsw.gov.au](mailto:governance@bellingen.nsw.gov.au).



## Annexure B – List of integrity agencies

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





		<b>Email:</b> oilecc_executive@oilecc.nsw.gov.au
<b>Office of the Local Government</b>	<b>Local government pecuniary interest contraventions</b>	<b>Email:</b> <a href="mailto:olg@olg.nsw.gov.au">olg@olg.nsw.gov.au</a>
<b>The Privacy Commissioner</b>	<b>Privacy contraventions</b>	<b>Telephone:</b> 1800 472 679 <b>Writing:</b> GPO Box 7011, Sydney NSW 2001 <b>Email:</b> <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>
<b>The Information Commissioner</b>	<b>Government information contraventions</b>	<b>Telephone:</b> 1800 472 679 <b>Writing:</b> GPO Box 7011, Sydney NSW 2001 <b>Email:</b> <a href="mailto:ipcinfo@ipc.nsw.gov.au">ipcinfo@ipc.nsw.gov.au</a>