

POLICY NAME: INTERNAL REPORTING POLICY

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OBJECTIVE

To demonstrate Council's commitment to an ethical and accountable organisational culture.

BACKGROUND

Under section 6D of the Public Interest Disclosures Act 1994 (PID Act), public authorities are required to have a policy and procedures for receiving, assessing and dealing with public interest disclosures.

The Public Interest Disclosure Policy adopted by Council in 2014 was developed in line with Section 6D of the Public Interest Disclosure Act 1994.

The NSW Ombudsman has developed a model internal reporting policy, and council policy should now be based on the model policy and NSW Ombudsman guidelines. This policy reflects that model document.

Ballina Shire Council is committed to the aims and objectives of the Public Interest Disclosures Act 1994, and does not tolerate corrupt conduct, maladministration or serious and substantial waste of public money.

It recognises the value and importance of contributions of staff to enhance administrative and management practices and strongly supports disclosures being made by staff which disclose corrupt conduct, maladministration, or serious and substantial waste of public money.

Council will, through this Internal Reporting Policy, continue to ensure that all reasonable steps are taken to provide protection to staff that make disclosures from any detrimental action in reprisal for the making of the disclosure.

DEFINITIONS

In the Internal Reporting Policy the following definitions apply:

Council	Ballina Shire Council
OLG	Office of Local Government
The Ombudsman	NSW Ombudsman
ICAC	Independent Commission Against Corruption
GIPA Act	Government Information (Public Access) Act 2009

APPLICATION OF POLICY

This policy applies to:

- Councillors
- Members of council staff including volunteers, temporary or casual employees, permanent and part time employees

- Consultants
- Individual contractors working for Ballina Shire Council
- Employees of contractors providing services to Ballina Shire Council
- Other people who perform council official functions and whose conduct and activities could be investigated by an investigating authority

The policy also applies to public officials of other councils or public authorities who report wrongdoing relating to Ballina Shire Council.

As a minimum the Internal Reporting Policy should be read in conjunction with the following relevant documentation and legislation:

- Model Code of Conduct
- Fraud and Corruption Control Policy
- Complaints Management Policy
- Interaction between Councillors and Staff Policy

The Internal Reporting Policy has been prepared in reference to the following Acts and publications:

- Independent Commission Against Corruption Act 1988
- Public Interest Disclosures Act 1994
- Government Information (Public Access) Act 2009
- NSW Ombudsman – Model Internal Reporting Policy

POLICY

1. Purpose and Context of the Policy

The purpose of this policy is to establish an internal reporting system for staff and councillors to report wrongdoing without fear of reprisal. The policy sets out who wrongdoing can be reported to, what can be reported and how reports of wrongdoing will be dealt with by Council.

This policy is designed to complement normal communication channels between supervisors and staff. Staff are encouraged to raise matters of concern at any time with their supervisors, but also have the option of making a report about a public interest issue in accordance with this policy and the Public Interest Disclosures Act 1994 (PID Act).

2. Organisational Commitment

Council strongly supports accountability and integrity in all of its activities. The Mayor and General Manager endorse Council's commitment to a policy of zero tolerance of fraud, and an ethical environment where all forms of corrupt conduct, maladministration, waste of public money, government information and pecuniary interest contraventions are actively discouraged.

Council recognises the value and importance of contributions from staff, councillors and contractors (individuals) who report wrongdoing.

Council is committed to the aims, objectives and spirit of the Public Interest Disclosures Act 1994 by;

- Creating a climate of trust where people are confident about reporting wrongdoing
- Encouraging individuals to report any wrongdoing they are aware of
- Keeping the identity of the reporter who discloses wrongdoing confidential, wherever possible and appropriate
- Protecting the person from any adverse action resulting from their report
- Dealing with reports thoroughly and impartially and if some form of wrongdoing is found, taking appropriate action to rectify it
- Keeping the individual who makes a report informed of the progress and outcome of the investigation
- Encouraging the reporting of wrongdoing within the council, but respecting any decision to disclose wrongdoing outside the council that is made in accordance with the provisions of the PID Act
- Ensuring managers and supervisors at all levels in the council understand the benefits of reporting wrongdoing, are familiar with this policy, and aware of the needs of those who report wrongdoing
- Providing adequate resources to encourage reporting, protect and support those who make reports, provide training about how to make reports and properly assess and investigate or otherwise deal with allegations
- Properly managing any workplace issues that the allegations identify or that result from a report, and appropriately address any identified problems

3. Roles and Responsibilities

3.1. Council Staff and Councillors

Staff and councillors play 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 a report

Additionally, the behaviour of all council staff and councillors involved in the internal reporting process must adhere to the OLG Model Code of Conduct. A breach of the code could result in disciplinary action.

3.2. Ballina Shire Council

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
- to keep the identity of reporters confidential where practical and appropriate, and take steps to protect reporters from reprisal and manage workplace conflict
- assess all reports of wrongdoing from staff and councillors and deal with them appropriately
- decide whether a report should be investigated, and if so, how it should be investigated, and by whom
- deal with all reports of wrongdoing fairly and reasonably, and respect the rights of any person the subject of a report
- report on statistical information and obligations under the PID Act to the NSW Ombudsman every six months, and in the Council's annual report
- ensure Council complies with the PID Act and deals with all reports of wrongdoing properly
- ensure that all staff and councillors with roles outlined below and elsewhere in this policy receive training on their responsibilities

3.3. 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 the Council's code of conduct in accordance with the council's adopted 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 ICAC
- refer any evidence of a reprisal offence under section 20 of the PID Act to the Commissioner of Police or the ICAC

3.4. Disclosures Coordinator

The disclosures coordinator can receive and assess reports, and is the primary point of contact 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 the council's code of conduct in accordance with the council's adopted code of conduct procedures
- 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 the council complies with the PID Act
- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

3.5. 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

3.6. 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 the council's code of conduct in accordance with the council's adopted code of conduct procedures
- 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

3.7. Supervisors and Line Managers

Supervisors and line managers 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 local 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 local management 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

4. What Should Be Reported?

Suspected wrongdoing or any activities or incidents that you believe are wrong should be reported.

Reports about five categories of serious misconduct – corrupt conduct, maladministration, serious and substantial waste of public money, breach of the GIPA Act, and local government pecuniary interest contravention – which otherwise meet the criteria of a public interest disclosure, will be dealt with under the PID Act and according to this policy.

4.1. 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 council official being influenced by a member of public to use their position in a way that is dishonest, biased or breaches public trust

4.2. 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. This could include for example;

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

4.3. Serious and Substantial Waste of Public Money

Serious and substantial waste is the uneconomical, inefficient or ineffective use of resources that could result in losing or wasting public money. This could include for example;

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

4.4. Breach of the GIPA Act

A breach of the GIPA Act is a failure to properly fulfil functions under that Act. This could include for example;

- 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

4.5. Local Government Pecuniary Interest Contravention

A local government pecuniary interest contravention is a failure to comply with requirements under the Local Government Act 1993 relating to the management of pecuniary interests.

These include obligations to lodge disclosure of interests returns, disclose pecuniary interests at council and council committee meetings and leave the meeting while the matter is being discussed.

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. This could include for example;

- a senior council staff member recommending a family member for a council contract and not declaring the relationship
- a councillor participating in consideration of a DA for a property they or their family have an interest in

5. Assessment of Reports

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.

6. When Will Reports Be Protected?

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 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

- 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 either the General Manager or, for reports about the General Manager the Mayor, a position nominated in this policy (see section 7), an investigating authority or in limited circumstances to an MP or journalist (see section 8)

Reports by staff are **not** public interest disclosures if they:

- mostly question the merits of government policy (see section 13)
- are made with the sole or substantial motive of avoiding dismissal or other disciplinary action (see section 13)

7. Who Can Receive an Internal Public Interest Disclosure?

Disclosures by staff may be directed to;

- General Manager
- Mayor (if the disclosure involves the General Manager)
- Disclosure Coordinator – Coordinator Records and Information
- Disclosure Officer - Records and Information Specialist

Disclosures by Councillors may be directed to;

- General Manager
- Mayor (for reports about the general manager only)

8. Who Can Receive a Disclosure Outside of Council?

Staff and councillors are encouraged to report wrongdoing within council, but internal reporting is not the only option. A public interest disclosure may also be made to the following authorities and agencies.

8.1. Investigating Authorities

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

- Independent Commission Against Corruption (ICAC) – corrupt conduct reports
- Ombudsman - for reports about maladministration
- Information Commissioner - for reports about a breach of the GIPA Act
- Office of Local Government - for reports about local councils

Contact the relevant investigating 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.

It is likely the investigating authority may well discuss any such reports 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 or councillors who report wrongdoing to an investigating authority.

8.2. Members of Parliament (MP) or Journalists

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

- 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 you report wrongdoing to an MP or a journalist you will need to be able to prove that you have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true (see section 13).

Reports of wrongdoing provided to a person or authority that is not listed above, or made to an MP or journalist without following the steps outlined above, will not be protected under the PID Act. For the reporting officer this could mean a 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.

9. How to Make a Report

Staff can report wrongdoing in writing or verbally, however written reports are encouraged as this can help to avoid confusion or misinterpretation.

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

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

9.1. Anonymous Reports

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 best if the staff member identifies themselves. This allows Council to provide any necessary protection and support, as well as feedback about what action is to be taken or has been taken to deal with the issues raised in the report, or the outcome of any investigation.

It is important to realise that an anonymous disclosure may not prevent the staff member from being identified. If the disclosures officers do not know who made the report, it is very difficult to prevent any reprisal.

10. Feedback to Staff Reporting Wrongdoing

10.1. Acknowledgment

When a report has been made the officer making the report will be given,

- the timeframe for when they will receive further updates
- the name and contact details of the people who can advise them what is happening or handle any concerns they may have

This information will be provided within three working days of receipt of the report

After a decision is made about how the report will be dealt with, the reporting officer will be sent an acknowledgment letter providing:

- information about the action that will be taken in response to their report
- the likely timeframes for any investigation or other action
- information about the resources available within council to handle any concerns
- information about external agencies and services that can be accessed for support

This information will be provided within 10 working days of receipt of the report. The reporting officer will also be advised if their report is to be treated as a public interest disclosure and be provided with a copy of this policy at that time as required by the PID Act.

Note - if a report is made which meets the requirements of the PID Act but was made under a statutory or legal obligation or incidental to the performance of day to day functions, an acknowledgement letter or a copy of this policy will not be provided.

10.2. Progress Updates

During any investigation or other enquiries the following information will be provided to the reporting officer;

- information about the progress of the investigation or other enquiries and reasons for any delay
- advice of any decision by not to proceed with the matter
- advice if the officer's identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to discuss this advice beforehand

10.3. Feedback

Once the matter has been finalised the reporting officer will have been provided:

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

11. Protection Against Reprisals

The PID Act provides protection for officers who report wrongdoing 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.

11.1. Responding to Allegations of Reprisal

If a reporting officer believes that detrimental action has been or is being taken against them or someone else in reprisal for reporting wrongdoing, they should tell their supervisor, the disclosures coordinator or the General Manager immediately. In the case of an allegation of reprisal by the General Manager, the matter should be reported to the Mayor.

All supervisors must notify the disclosures coordinator or the general manager of 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 or suspects that reprisal is being or has been taken against a person who has made a disclosure, they 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 by a senior and experienced member of staff
- 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 the council's code of conduct 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 members of staff report reprisal action, they will be kept informed of the progress of any investigation and the outcome.

If the member of staff has reported wrongdoing and feels that any reprisal action is not being dealt with effectively, they may contact the Ombudsman or the ICAC – depending on the type of wrongdoing the member of Council staff reported.

Contact details for all these investigating authorities are included in section 18 of this policy.

11.2. Protection Against Legal Action

If a member of staff makes a disclosure in accordance with the PID Act they will not be subject to any liability and no action, claim or demand can be taken against them for making the disclosure.

Members of Council staff will not have breached any confidentiality or secrecy obligations and they will have the defence of absolute privilege in defamation.

12. Support for those Reporting Wrongdoing

Council will make sure that staff who have reported wrongdoing, regardless of whether their report is treated as a public interest disclosure, are provided with access to any professional support they may need as a result of the reporting process – such as stress management or counselling services.

13. Sanctions for Making False or Misleading Statements

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. It may also be a breach of the code of conduct and 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.

14. Support for Persons 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. If a member of council staff is the subject of a report, they will be;

- treated fairly and impartially
- told their rights and obligations under council policies and procedures
- kept informed during any investigation
- given the opportunity to respond to any allegation made against

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

15. More Information

Staff can seek advice and guidance from the General Manager, the Disclosures Coordinator or Disclosures Officer and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

16. Resources

16.1. Corrupt Conduct Disclosures

Independent Commission Against Corruption (ICAC)	
Phone Numbers	1800 463 909 028281 5999
TTY	028281 5773
Fax	029264 5364
Email	icac@icac.nsw.gov.au
Web	www.icac.nsw.gov.au
Address	Level 7 255 Elizabeth Street, SYDNEY NSW 2000

16.2. Maladministration Disclosures

NSW Ombudsman	
Phone Numbers	029286 1000 1800 451 524
Hearing or Speech Impaired	National Relay Service Speak and Listen - 1300 555 727 then ask for 029286 1000 NRS Internet relay users connect then ask for 029286 1000
Interpreter Service	131 450
Fax	029283 2911
Email	nswombo@ombo.nsw.gov.au
Web	www.ombo.nsw.gov.au
Address	Level 24 580 George Street, SYDNEY NSW 2000

16.3. Local Council Disclosures

Office of Local Government (OLG)	
Phone Numbers	024428 4100
TTY	024428 4209
Interpreter Service	024428 4100
Fax	024428 4199
Email	olg@olg.nsw.gov.au
Web	www.olg.nsw.gov.au
Address	5 O'Keefe Avenue, NOWRA NSW 2541

16.4. Breaches of GIPA Act Disclosures

Information and Privacy Commission	
Phone Numbers	1800 472 679
Hearing or Speech Impaired	133 677
Interpreter Service	131 450
Email	ipcinfo@ipc.nsw.gov.au
Web	www.ipc.nsw.gov.au
Address	Level 17 201 Elizabeth Street, SYDNEY NSW 2000

REVIEW

This policy will be reviewed at least every four years to ensure that it meets the objects of the legislation and facilitates the making of disclosures.