

ITEM 13 PUBLIC EXHIBITION - PUBLIC INTEREST DISCLOSURES POLICY

The Public Interest Disclosures Bill 2022 (NSW) passed parliament on 29 March 2022 and will come into effect on 13 October 2023. This Bill repeals and replaces the Public Interest Disclosures Act 1994 (NSW) to address identified shortcomings in the 1994 Act. This report provides an updated Public Interest Disclosures Policy reflecting the requirements of the updated Act.

RECOMMENDATION

- 1 The draft Public Interest Disclosures Policy be placed on public exhibition for a period of 28 days.
- 2 A further report be provided to Council at the conclusion of the exhibition period.

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Governance and Customer Service
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

- 1 Draft Public Interest Disclosure Policy

BACKGROUND

The Public Interest Disclosures (PID) Act 2022 introduces reforms to the way that public interest disclosures are made, received and dealt with and is intended to provide greater protection of persons who make public interest disclosures than currently afforded under the PID Act 1994.

Council must continue to comply with the PID Act 1994 until the new PID Act 2022 commences. For example, Council must continue to:

- Receive, assess and handle reports of wrongdoing that meet the definition of a public interest disclosure (PID) under the PID Act 1994,
- Report data to the NSW Ombudsman every six months,
- Make sure Council officials – including staff, contractors and volunteers – are aware of Council's internal reporting system,
- Make sure that nominated disclosure officers are aware of their role in dealing with reports from staff, including PIDs.

PROPOSAL

Council's existing Public Interest Disclosures policy has been reviewed and a draft update prepared that addresses and ensures compliance with the various changes that will come into effect when the new Act commences in October 2023. The significant elements of the new Act, which are reflected in the updated policy, are outlined below.

The Act attempts to provide a clearer definition of matters covered by the PID Act. The term serious wrongdoing replaces the previous lengthy descriptions of conduct that may be the subject of a public interest disclosure. Serious wrongdoing is defined under section 13 of the Act as follows:

In this Act, serious wrongdoing means 1 or more of the following —

- (a) corrupt conduct,*
- (b) a government information contravention,*
- (c) a local government pecuniary interest contravention,*
- (d) serious maladministration,*
- (e) a privacy contravention,*
- (f) a serious and substantial waste of public money.*

Categories of public interest disclosure

In accordance with the Act, public interest disclosures will now fall under categories determined by the circumstances under which the disclosure was made. Under section 21 of the Act, the categories of disclosure are:

- A witness public interest disclosure, or
- A mandatory public interest disclosure, or
- A voluntary public interest disclosure.

A **witness public interest disclosure** means a disclosure of information, in an investigation of serious wrongdoing, at the request of or in response to a requirement of a person or agency investigating the serious wrongdoing.

A **mandatory public interest disclosure** means a disclosure that occurs while the maker is meeting the ordinary requirements of their role or function or under some legal or statutory obligation imposed.

A **voluntary public interest disclosure** is made when a disclosure complies with sections 25, 26 and 27 of the Act. To meet these requirements, the disclosure must be made by a public official, where the maker of the disclosure believes, on honest and on reasonable grounds, that the disclosure shows or tends to show serious wrongdoing, and is made to one of the following:

- The head of an agency,
- Another disclosure officer for an agency,
- A manager of the person making the disclosure,
- Subject to section 24(3)(c)—a Minister or a member of a Minister's staff, or
- Subject to section 28—a member of Parliament or a journalist.

Protections under the Act

Part 3 of the Act (s30-41) enhances the protections afforded to makers of public interest disclosures and increases some of the penalties for taking detrimental action against those individuals. Where a person commits detrimental action against a maker, or potential maker, of a public interest disclosure in reprisal, this is considered a detrimental action offence. Under section 33, a detrimental action offence will be punishable by an increased fine of up to \$22,000, or 5 years imprisonment, or both.

Where a person or Council believes that a detrimental offence has been committed, they must, by providing a brief of evidence relating to the alleged offence, refer the alleged offence to the Director of Public Prosecutions or the Attorney-General, as the case requires. Importantly, these protections are afforded to all persons, not only public officials, and relate to all three categories of public interest disclosure.

Agencies have an additional obligation under section 34 of the Act to refer evidence of a detrimental action offence to the Commissioner of Police and the Independent Commission Against Corruption. An agency must also notify the Ombudsman as soon as reasonably practicable after:

- Becoming aware of an allegation a detrimental action offence has been committed by a public official associated with the agency, or
- Referring evidence under section 34(1), or
- Becoming aware of the outcome of a prosecution against a public official associated with the agency for the commission of a detrimental action offence, or
- Otherwise becoming aware of a detrimental action offence that has been committed or alleged and arises from a public interest disclosure relating to the agency.

Section 36 of the Act also makes it clear that, where a person who took the detrimental action did so in connection with the person's position or role as an employee, a court may order that the person's employer is liable to pay damages and may order that the employer is jointly or severally liable.

Disclosure officers

Under the Act, disclosure officers are responsible for receiving voluntary public interest disclosures on behalf of Council. Persons considered to be disclosure officers include:

- The head of the Council (General Manager),
- For each work site that is permanently maintained by Council the most senior ongoing employee who ordinarily works at the site,
- A person specified in Council's public interest disclosure policy as a person with responsibility for receiving voluntary public interest disclosures on behalf of the agency.

Public interest disclosure policies

The new Act explicitly outlines the requirements for contents of Council's public interest disclosure policy. Part 4 of the Act requires that the relevant policy must specify Council's procedures to deal with the following:

- Dealing with disclosures that are or may be voluntary public interest disclosures,
- Acknowledging receipt of voluntary public interest disclosures and providing information to the makers of voluntary public interest disclosures,
- Taking steps to assess and minimise the risk of detrimental action, other than reasonable management action, being taken against a person as a result of voluntary public interest disclosures being made,
- Dealing with allegations a detrimental action offence has been committed by or against a public official associated with Council,
- Maintaining confidentiality in relation to voluntary public interest disclosures and protecting the identity of the makers of voluntary public interest disclosures,
- Taking appropriate corrective action in response to findings of serious wrongdoing or other misconduct that arise from voluntary public interest disclosures relating to Council,
- Record-keeping and reporting in relation to voluntary public interest disclosures, including the preparation of annual returns, which must contain the information prescribed by Regulation 5 of the Public Interest Disclosures Regulation 2022 (NSW) (the Regulations),
- Establishing internal oversight of Council's compliance with the Act,
- Responsibilities imposed on the General Manager, managers, and disclosure officers by the Act,
- Protections available to makers of disclosures,
- A list identifying the disclosure officers for Council (by class, position, role, or name) and contact information for those officers.

The draft Policy before Council for consideration is compliant with the above legislated requirements.

CONSULTATION AND COMMUNICATION

The draft policy will be placed on public exhibition for a period of 28 days to allow public comment. A further report will be provided to Council at the conclusion of the exhibition period.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2032 Goal 4. It specifically delivers on the following:

Community Strategic Plan 2032		Delivery Program 2022-2026	
Strategy		Service	
4.7	Demonstrate responsible decision-making based on our values, collaboration, and transport and accountable leadership.	Governance and Administration	

RISK MANAGEMENT

A robust public interest disclosure process contributes greatly to Council's zero tolerance approach to fraud and corruption. The risk of fraudulent and corrupt conduct not being reported is greatly reduced by a well-defined reporting process that will give confidence to Council staff and officials to make reports of suspected fraudulent or corrupt conduct.

CONCLUSION

The updated Policy demonstrates to staff, councillors and the community our commitment to openness and transparency and a willingness to receive and act upon reports of serious wrongdoing to support Council's zero-tolerance approach to fraud and corruption.



PUBLIC INTEREST DISCLOSURES COUNCIL POLICY

ADOPTED BY COUNCIL: [TO BE COMPLETED BY GOVERNANCE]

PURPOSE

The purpose of this policy is to establish an internal reporting system for staff, Councillors and contractors to report wrongdoing without fear of reprisal. The policy sets who can receive reports of wrongdoing in Wollongong City Council, what can be reported and how reports of wrongdoing will be dealt with.

Complaints cannot be made by the general public under this policy.

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 2022* (PID Act).

The internal reporting system established under this policy is not to be used for staff grievances, which should be raised through the *Prevention and Resolution of Workplace Bullying Harassment and Discrimination* policy. If a staff member makes a report under this policy which is substantially a grievance, the matter will be referred to the People and Culture Division to be dealt with in accordance with the Enterprise Agreement for grievance procedure.

POLICY INTENT

The objectives of this policy are as follows:

- facilitate the disclosure by council officials of serious wrongdoing in or affecting council,
- promote a culture in which public interest disclosures are encouraged,
- protect council officials, witnesses and other persons from detriment or liability that might arise as a result of making public interest disclosures,
- provide a defined process for receiving and dealing with public interest disclosures,
- ensure the interests of all persons affected by public interest disclosures are taken into account in dealing with the disclosures

WOLLONGONG 2032 Objectives

This policy contributes towards goal 4.7 “*Demonstrate responsible decision-making based on our values, collaboration, and transparent and accountable leadership.*”

PUBLIC INTEREST DISCLOSURES

COUNCIL POLICY

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POLICY**1 Organisational Commitment**

Wollongong City Council is committed to:

- Creating a climate of trust and integrity, where staff, Councillors and other stakeholders are comfortable and confident about reporting wrongdoing;
- Encouraging individuals to come forward if they have witnessed what they consider to be wrongdoing within the Council;
- Keeping the identity of the person disclosing wrongdoing confidential, wherever possible and appropriate;
- Protecting individuals who make disclosures from any adverse action motivated by their report;
- Dealing with reports thoroughly and impartially and if some form of wrongdoing has been found, taking appropriate action to rectify it;
- Keeping disclosants up to date of the progress of their report and the outcome;
- Ensuring managers and supervisors at all levels in Council understand the benefits of reporting wrongdoing, are familiar with this policy and their requirements and responsibilities under the policy, and aware of the needs of those who report wrongdoing;

2 Who Does This Policy Apply To?

This policy will apply to:

- both Council staff and Councillors;
- permanent employees, whether full-time or part-time;
- temporary or casual employees;
- consultants;
- individual contractors working for Council;
- employees of contractors providing services to Council;
- other people who perform Council official functions whose conduct and activities could be investigated by an investigating authority, including volunteers;
- the policy also applies to public officials of another Council or public authority who report wrongdoing relating to Wollongong City Council.

3 What Should be Reported?

You should report any suspected wrongdoing within Council, or any activities or incidents you see within Council that you believe are wrong.

Reports in relation to “*serious wrongdoing*” will be deemed as public interest disclosures and managed in accordance with the PID Act. For the purposes of the PID Act and this policy serious wrongdoing constitutes the following:

- a) corrupt conduct,
- b) a government information contravention,
- c) a local government pecuniary interest contravention,
- d) serious maladministration,
- e) a privacy contravention,

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- f) a serious and substantial waste of public money.

All other wrongdoing or suspected wrongdoing should be reported to a supervisor, to be dealt with in line with the *Code of Conduct or Council's Policy for Prevention and Resolution of Workplace Bullying Harassment and Discrimination*

Even if these reports are not dealt with as public interest disclosures, Council recognises that such reports may raise important issues. Council will respond to all reports and make every attempt to protect the individual member making the report from reprisal.

Provided below is more detail on the six categories of serious wrongdoing.

a *Corrupt conduct*

Corrupt conduct has the same meaning as in the *Independent Commission Against Corruption Act 1988* and the full definition should be taken from the ICAC Act. However, in general corrupt conduct is:

- any conduct of any person that adversely affects, either directly or indirectly, the honest or impartial exercise of official functions by any council official/s, or by council, or
- any conduct of a council official that constitutes or involves the dishonest or partial exercise of any of their official functions, or
- any conduct of a council official or former council official that constitutes or involves a breach of public trust, or
- any conduct of a council official or former council official that involves the misuse of information or material that they have acquired in the course of their official functions, whether or not for their benefit or for the benefit of any other person.

b *Government information contravention*

Government information contravention means a failure, other than a trivial failure, by council or a council official to exercise functions in accordance with—

- (a) the Government Information (Public Access) Act 2009, or
(c) the State Records Act 1998.

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.

c *Local government pecuniary interest contravention*

A local government pecuniary interest contravention is a failure to comply with requirements under the *Local Government Act 1993* and the Council Code of Conduct 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.

For example, this could include:

- a senior Council staff member recommending a family member for a Council contract and not declaring the relationship;

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- a Councillor participating in consideration of awarding a tender when they or their family have an interest in a supplier bidding for that work.

d Serious maladministration

Serious maladministration is conduct, other than conduct of a trivial nature, of council or a council official relating to a matter of administration that is—

- (a) unlawful, or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) 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 an approval for reasons that are not related to the merits of their application.

e Privacy contravention

A privacy contravention means a failure, other than a trivial failure, by an agency or public official to exercise functions in accordance with—

- (a) the Privacy and Personal Information Protection Act 1998, or
- (b) the Health Records and Information Privacy Act 2002.

f 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 a substantial amount of public money.

For example, this could include:

- 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 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 Public Interest Disclosures Coordinator (or their appointed alternate) 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.

5 When Will a Report be Treated as a Public Interest Disclosure?

Wollongong City 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 disclosure must be about one of the following six categories of serious wrongdoing – corrupt conduct, a government information contravention, a local government pecuniary interest contravention, serious maladministration, a privacy contravention or serious and substantial waste of public money.
- the person making the disclosure must honestly believe, and on reasonable grounds, that the disclosure shows or tends to show wrongdoing;

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- the disclosure has to be made to either the General Manager or, for reports about the General Manager the Lord Mayor, a position nominated in this policy (see section 8), a manager of the person making the disclosure, an investigating authority or in limited circumstances to an MP or journalist (see section 9).
- a disclosure that is made in written correspondence that is sent to Council's registered address, email address or other usual address for the receipt of electronic communications, but is not addressed to a specific individual, will be deemed to have been sent to the General Manager and be treated as a public interest disclosure if the other criteria are met.

Disclosures are not public interest disclosures if they:

- mostly question the merits of Council policy;
- concern only a grievance about a matter relating to the employment or former employment of an individual

A person making a report does not need to identify that the disclosure is a public interest disclosure, or that it is made under the PID Act, for it to be treated as a public interest disclosure.

6 Categories of Public Interest Disclosure?

Under the PID Act and this policy, there are three categories of public interest disclosure:

- a voluntary public interest disclosure, or
- a witness public interest disclosure, or
- a mandatory public interest disclosure.

A **witness public interest disclosure** means a disclosure of information, in an investigation of serious wrongdoing, at the request of or in response to a requirement of a person investigating the serious wrongdoing on behalf of Council.

A **mandatory public interest disclosure** means a disclosure that occurs while the maker is meeting the ordinary requirements of their role or function or under some legal or statutory obligation imposed.

A **voluntary public interest disclosure** is made when a disclosure complies with the requirements of the PID Act and this policy and the disclosure is made by a council official, where the maker of the disclosure believes, on honest and on reasonable grounds, that the disclosure shows or tends to show serious wrongdoing, and is made to one of the following:

- The General Manager, or Lord Mayor (only for reports relating to the General Manager),
- Another disclosure officer for Council identified by this policy,
- A manager of the person making the disclosure,
- Subject to section 28 of the PID Act and as outlined in this policy – to a member of Parliament or a journalist.

7 Who Can Receive a Report Within Wollongong City Council?

The PID Act requires that, for a report to be a public interest disclosure, it must be made to certain public officials identified in this policy or any supporting procedures.

The following positions are the only people within Council who are authorised to receive a public interest disclosure. Any non-identified council official who receives a report that they believe may be a public interest disclosure is obliged to assist the staff member to make the report to one of the positions listed below. The broader responsibilities of these positions are outlined under Roles and Responsibilities (section 22).

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

General Manager
Lord Mayor (for reports about the General Manager only)
Director Planning and Environment
Director Corporate Services
Director Community Services
Director Infrastructure and Works

Manager Governance and Customer Service
Manager People and Culture
Professional Conduct Coordinator
Governance and Risk Manager
A manager of the person making the disclosure (Middle Manager or Divisional Manager,
Specific Disclosure Officers for identified satellite sites.

The full list of disclosures officers are listed on the Council internal Hub website for staff and Councillors to refer to and are also appended to internally published versions of this Policy.

Disclosure Officer procedure upon receipt of a Report

- If a verbal complaint is made document in writing the details of the complaint, and have the document signed and dated by the reporter, if possible
- Discuss with the reporter any concerns they may have about reprisal or workplace conflict
- Carry out a preliminary assessment and forward their reports to the Disclosures Coordinator for full assessment. The Disclosure Officer may seek the assistance of the Disclosure Coordinator to undertake the preliminary assessment if required. Where appropriate the Disclosures Coordinator may take responsibility for the preliminary assessment to ensure appropriate process and due diligence are applied.

Disclosure Coordinator procedure upon receipt of a Referral

- assess reports to determine whether or not a report should be treated as a public interest disclosure
- 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 and document 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 individuals involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report;

8 Who Can Receive a Report Outside of Wollongong City Council?

Staff and Councillors are encouraged to report wrongdoing within Council, but internal reporting is not your only option. In very limited circumstances you can also make a public interest disclosure to a Member of Parliament or a journalist, but only as outlined below:

a Members of Parliament or Journalists

To have the protection of the PID Act, individuals reporting wrongdoing to a Member of Parliament (MP), or a journalist must have already made substantially the same report to a person nominated under this policy to receive such reports.

In addition Council must have either:

- decided not to investigate the matter;

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- decided to investigate the matter, but not completed the investigation within six months of the original report;
- not advised you, within six months of the report being made, the results of the investigation.

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.

b Other external reporting

If you report wrongdoing to a person or authority that is not listed above or make a report to an MP or journalist without following the steps outlined above, you will not be protected under the PID Act. This may mean you will be in breach of legal obligations or Council's Code of Conduct – by, for example, disclosing confidential information.

For more information about externally reporting wrongdoing, 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

You can report wrongdoing in writing or verbally. You are encouraged to make a report in writing as this can help to avoid any confusion or misinterpretation.

If a report is made verbally, the person receiving the report will make a comprehensive record of the report and will ask the person making the report to sign this record. If the reporter agrees to sign the record, they will be provided with a copy of this record.

Can a Report be Anonymous?

A disclosure, if made anonymously, may still be a voluntary public interest disclosure if it meets the other criteria outlined in this policy.

There will be some situations where you may not want to identify yourself when you make a report. These reports will still be dealt with by Council. However reporters should note that Council cannot provide a reporter with 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, if a report is made anonymously.

10 Feedback to Individuals Who Voluntarily Report Wrongdoing

Staff, Councillors and other identified stakeholders who voluntarily report wrongdoing will be told what is happening in response to their report.

a Acknowledgement

When you make a report, *Council* will contact you in writing as soon as is practicable, however no later than within 21 days of receipt of your report, to provide you with a copy of this Policy and to confirm that your report has been received, and to advise:

- the timeframe within which you will receive further updates;
- the name and contact details of the people who can tell you what is happening or handle any concerns you may have.

After a decision is made about how your report will be dealt with, Council will send you an acknowledgment letter, providing:

- information about the action that will be taken in response to your report;
- the likely timeframes for any investigation or other action;

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- information about the internal and external resources or services available that you can access for support.

Please note, if you make a report which meets the requirements of the PID Act but the report was made as a witness public interest disclosure, or a mandatory public interest disclosure you may not receive an acknowledgement letter or a copy of this policy.

b Progress Updates

While your report is being dealt with, such as by investigation or making other enquiries, you will be given:

- information about the progress of the investigation or other enquiries and reasons for any delay;
- advice of any decision by Council not to proceed with the matter;
- advice if your identity needs to be disclosed for the purposes of investigating the matter or making enquiries, and an opportunity to talk about this beforehand.

c Feedback

Once the matter has been finalised you will be given:

- enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to your disclosure and any problem that was identified;
- advice about whether you are likely to be called as a witness in any further matters, such as disciplinary or criminal proceedings.
- Council will notify you in writing of the action taken in relation to your disclosure as soon as a decision has been made, but no later than six months after your disclosure.

11 Maintaining Confidentiality

Council is committed to preserving the confidentiality of disclosures. Information tending to identify a person as the maker of a voluntary public interest disclosure (identifying information) may not be disclosed by Council or a council official.

The preservation of confidentiality of the facts of a disclosure will be subject to:

- a) the need to conduct an assessment of fact;
- b) the provisions of the PID Act for confidentiality;
- c) taking any consequential necessary actions; and
- d) putting in place any necessary care plans for relevant staff

All information received in relation to a disclosure must not be released without the consent of the Disclosure Coordinator, General Manager or Public Officer. This includes:

- a) the identity of the discloser;
- b) the identity of any person or persons who may be the subject of the disclosure; and
- c) the facts of the disclosure.

For all matters managed under this policy, wherever possible, only the following council officers will be made aware of a disclosure:

- Officer receiving disclosure
- Disclosures Coordinator
- Manager People and Culture

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- Public Officer
- General Manager

Where confidentiality cannot be maintained or officers other than those listed above need to be involved, the Disclosures Coordinator will seek the discloser's consent to release any details required to undertake an assessment or investigation; and develop a plan, in consultation with the Manager People and Culture/Public Officer and the discloser, to support and protect a discloser from reprisal.

Notwithstanding the above, the identifying information of a person making a voluntary public interest disclosure, may be disclosed if:

- (a) the person consents in writing to the disclosure of the identifying information, or
- (b) it is generally known the person is the maker of the voluntary public interest disclosure as a result of the person's voluntary self-identification as the maker, or
- (c) after consulting the person, Council reasonably considers it necessary to disclose the identifying information to protect a person from detriment, or
- (d) it is necessary the identifying information be disclosed to a person whose interests are affected by the disclosure, or
- (e) the identifying information has previously been lawfully published, or
- (f) the identifying information is disclosed to a medical practitioner or psychologist for the purposes of the practitioner or psychologist providing medical or psychiatric care, treatment or counselling to the individual disclosing the information, or
- (g) the identifying information is disclosed for the purposes of proceedings before a court or tribunal, or
- (h) the disclosure of the identifying information is necessary to deal with the disclosure effectively, or
- (i) it is otherwise in the public interest to disclose the identifying information.

If you report wrongdoing, it is important that you only discuss your report with those responsible for dealing with it. This will include the Disclosures Coordinator and the General Manager, or in the case of a report about the General Manager, the Disclosures Coordinator and the Lord Mayor. The fewer people who know about your report, before and after you make it, the more likely it will be that Council can protect you from any reprisal. If you breach the confidential nature of the process, Council may not be able to keep your identity confidential.

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

12 Managing the Risk of Reprisal and Workplace Conflict

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

Depending on the circumstances, Council may:

- relocate the reporter or the staff member who is the subject of the allegation within the current workplace;
- transfer the reporter or the staff member who is the subject of the allegation to another position for which they are qualified;

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- grant the reporter or the staff member who is the subject of the allegation leave of absence during the investigation of the disclosure.

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

13 Protection Against Reprisals

Council will not tolerate any reprisal against any individual who reports wrongdoing or are believed to have reported wrongdoing.

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

Detrimental action means action causing, comprising or involving any of the following:

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment;
- disciplinary proceedings.

A person who is found to have committed a reprisal offence may face criminal penalties such as imprisonment and/or fines and may be required to pay the victim damages for any loss suffered as a result of the detrimental action. Taking detrimental action in reprisal is also a breach of 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.

a Responding to Allegations of Reprisal

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

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

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

- assess the allegation of reprisal to decide whether the report should be treated as a public interest disclosure and whether the matter warrants investigation or if other action should be taken to resolve the issue;
- if the reprisal allegation warrants investigation, ensure this is conducted by a senior and experienced member of staff;

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- if it is established that reprisal is occurring against someone who has made a report, take all steps possible to stop that activity and protect the reporter;
- take appropriate disciplinary action against anyone proven to have taken or threatened any action in reprisal for making a disclosure;
- refer any breach of Part 8 of Council's Code of Conduct (reprisal action) by a Councillor or the General Manager to the Office of Local Government;
- refer any evidence of an offence under Section 34 of the PID Act to the ICAC or NSW Police Force.

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

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

b Protection Against Civil and Criminal Liability

The person making a public interest disclosure, in relation to the making of the disclosure—

- (a) does not incur civil liability, including liability for breaching a duty of secrecy or confidentiality or another restriction on disclosure applicable to the person, whether or not imposed by an Act, and
- (b) does not incur criminal liability, including liability for breaching a law or code of conduct imposing a duty of confidentiality or other restriction in relation to the disclosure of information, and
- (c) is not liable to disciplinary action.

However this protection does not extend to protect the reporter against liability for past conduct they themselves have undertaken.

14 Support for Those Reporting Wrongdoing

It takes courage to report wrongdoing, however support is available. Council offers a number of services that can help and support you if you have report wrongdoing.

Care Plans

The Disclosures Coordinator, in consultation with the Manager People and Culture, should put in place a care plan to manage any potential ongoing risk to the complainant. For example, if the complainant is currently required to interact directly with the respondent in the workplace, alternative arrangements may be put in place so that contact is avoided.

Employee Assistance Program

Staff and their immediate family members can access free confidential counselling or support at any time by contacting Lifeworks. Council has engaged lifeworks to provide the services of an Employee Assistance Program which includes independent and confidential professional support to employees and their immediate family members and offers individual face-to-face or telephone counselling. To make an appointment with Lifeworks, call 1300 361 008.

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

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15 Sanctions for Making False or Misleading Statements

It is important all staff and Councillors are aware that it is a criminal offence under the PID Act to wilfully make a false or misleading statement when reporting wrongdoing. Such conduct may also be a breach of the code of Conduct resulting in disciplinary action. In the case of Councillors, disciplinary action may be taken under the misconduct provisions of the *Local Government Act 1993* and may include suspension or disqualification from civic office.

16 The Rights of Persons the Subject of a Report

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

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

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

The fact of the allegations and any investigation will be kept confidential unless otherwise agreed to by the subject officer.

Being the subject of an allegation of wrongdoing can be particularly damaging to the wellbeing to the person subject to the report. Council offers a number of services that can help and support you if you subject to a report wrongdoing.

Care Plans

The Disclosures Coordinator should put in place a care plan to manage any potential ongoing welfare risks to the subject person.

Employee Assistance Program

Staff and their immediate family members can access free confidential counselling or support at any time by contacting Lifeworks. Council has engaged lifeworks to provide the services of an Employee Assistance Program which includes independent and confidential professional support to employees and their immediate family members and offers individual face-to-face or telephone counselling. To make an appointment with Lifeworks, call 1300 361 008.

17 Reporting and oversight of Council's compliance with the PID Act

External Reporting

Council must report on its obligations under the PID Act and provide statistical information about public interest disclosures in its annual report, and to the NSW Ombudsman every six months. The Professional Conduct Coordinator has the responsibility for reporting relevant information to the NSW Ombudsman.

Council shall include the following information in an annual return to the NSW Ombudsman in relation to each voluntary public interest disclosure received or dealt with by Council during the return period—

- a) how Council received the disclosure, including the date on which it was received,
- b) whether the disclosure was a purported public interest disclosure,

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- c) the nature of the serious wrongdoing the disclosure was about,
- d) if applicable—the relationship between the maker of the disclosure and the Council official whose serious wrongdoing the disclosure was about,
- e) whether the serious wrongdoing involved one Council official or more than one Council official,
- f) action taken by Council to deal with the disclosure, including the date on which Council ceased to deal with the disclosure,
- g) if Council investigated the serious wrongdoing—a description of the results of the investigation,
- h) if applicable—the corrective action taken, proposed to be taken or recommended to be taken by Council.

Internal oversight

The Professional Conduct Coordinator, as Council's Public Interest Disclosures Coordinator, has the opportunity to meet with Council's Audit Risk and Improvement Committee in a confidential session, in the absence of other staff. The Professional Conduct Coordinator, without specifying details of any individual matter, may discuss any and all matters relating to Council's compliance with the Public Interest Disclosures Act.

18 Roles and Responsibilities

a The Role of Council Staff and Councillors

Staff and Councillors play a key 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 public interest disclosures must adhere to Wollongong City Council's Code of Conduct. A breach of the code could result in disciplinary action.

b The Role of Wollongong City Council

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

Council will assess all reports of wrongdoing it receives and deal with them appropriately. Once wrongdoing has been reported, Council takes 'ownership' of the matter. This means it is up to Council to decide whether a report should be investigated, and if so, how it should be investigated.

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and by whom. Council will deal with all reports of wrongdoing fairly and reasonably and respect the rights of any person the subject of a report.

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

c Responsibilities of Key Positions

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, Councillors and other identified persons, and has a responsibility to:

- assess reports received by or referred to them, to determine whether or not the report should be treated as a public interest disclosure, and to decide how the report will be dealt with;
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted Code of Conduct procedures;
- ensure there are strategies in place to support reporters, protect them 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 New South Wales Independent Commission Against Corruption (ICAC);
- refer any evidence of a reprisal offence under section 34 of the PID Act to NSW Police or the ICAC.

Professional Conduct Coordinator

This policy nominates the Professional Conduct Coordinator (**PCC**) as Council's Disclosures Coordinator. The Disclosures Coordinator has a vital role in Council's internal reporting system. The Disclosures Coordinator can receive and assess reports and is the primary point of contact in Council for the reporter. The Disclosures Coordinator has a responsibility to:

- assess reports to determine whether or not a report should be treated as a public interest disclosure, and to decide how each report will be dealt with (either under delegation or in consultation with the General Manager);
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted 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 and document 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 individuals involved in the reporting or investigation process, including protecting the interests of any officer the subject of a report;
- ensure Council complies with the PID Act;

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- provide six-monthly reports to the NSW Ombudsman in accordance with section 6CA of the PID Act.

Manager Governance and Customer Service

The Manager Governance and Customer Service (GCS) has been appointed as Council's (Alternate) Disclosures Coordinator. The Manager GCS will assume the responsibilities of the Disclosures Coordinator outlined above during periods of absence of the Professional Conduct Coordinator or as directed by the General Manager.

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 individuals 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;
- conduct preliminary assessment and forward reports to the Disclosures Coordinator or General Manager for full assessment.

Lord Mayor

The Lord Mayor can receive reports about the General Manager. Where the Lord Mayor receives such reports, the Lord Mayor has a responsibility to:

- assess the reports to determine whether or not they should be treated as a public interest disclosure, and to decide how they will be dealt with;
- deal with reports made under Council's Code of Conduct in accordance with Council's adopted 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 34 of the PID Act to NSW Police or the ICAC.

Supervisors

Supervisors who are not identified as Disclosure Officers still play a key role in managing the immediate workplace of those involved in or affected by the internal reporting process. Supervisors should be aware of the Public Interest Disclosures 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 them 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;

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- ensure that individuals who report suspected wrongdoing are assisted in making that report directly to a Disclosures Officer or the Disclosures Coordinator, to ensure protection from reprisal pursuant to the PID Act.
- 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 Lord Mayor.

19 Training and Awareness

To ensure that Council creates a culture that facilitates the disclosure by council officials of serious wrongdoing within Council, a comprehensive and ongoing public interest disclosure training and awareness program will be implemented.

Refresher training will be provided at least every 3 years.

General awareness training

Council will ensure that all Council officials are made aware of the following:

- a) how to make a voluntary public interest disclosure, and
- b) the details of, and how to access, Council's Public Interest Disclosure policy, and
- c) the fact a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with by Council may be entitled to take further action under the PID Act.

Council will do the following as soon as reasonably practicable after a new Council official is appointed to their role/functions:

- a) give the Council official a copy of Council's Public Interest Disclosure policy,
- b) direct the Council official to the page of Council's public website or intranet, on which Council's Public Interest Disclosure policy is published,

Responsible officers training

Council will ensure that the following Council officials are made aware of the official's responsibilities under the PID Act and Council's Public Interest Disclosure policy:

- a) General Manager
- b) Lord Mayor
- c) Disclosure officers identified by Council as Disclosure Officers in accordance with this policy
- d) Public Interest Disclosures Coordinator (and their alternate)

Council will ensure that any Council official appointed to an above-mentioned role will be given the relevant training within a reasonable time after the person is appointed to the role, however no later than 3 months after the person commences in the role.

20 More Information

More information around public interest disclosures is available on Council's intranet site. In addition staff can also seek advice and guidance from the Disclosures Coordinator and the NSW Ombudsman's website at www.ombo.nsw.gov.au.

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21 Resources

The contact details for external oversight authorities that staff receive external and independent advice from are listed below.

For information about corrupt conduct:

Independent Commission Against Corruption (ICAC)

Phone: 02 8281 5999

Toll free: 1800 463 909

Email: icac@icac.nsw.gov.au

Web: www.icac.nsw.gov.au

Address: Level 7
255 Elizabeth Street
Sydney NSW 2000

For information about maladministration:

NSW Ombudsman

Phone: 02 9286 1000

Toll free: 1800 451 524

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Address: Level 24
580 George Street
Sydney NSW 2000

For information about breaches of the GIPA Act:

Information and Privacy Commissioner

Toll free: 1800 472 679

Email: ipcinfo@ipc.nsw.gov.au

Web: www.ipc.nsw.gov.au

Address: Level 17
201 Elizabeth Street
Sydney NSW 2000

For information about local councils:

Office of Local Government

Phone: 02 4428 4100

Email: olg@olg.nsw.gov.au

Web: www.olg.nsw.gov.au

Address: 5 O'Keefe Avenue
Nowra NSW 2541

22 Legislative Requirements

The *Public Interest Disclosures (PID) Act 2022* (the PID Act) prescribes a framework for the disclosure and investigation of wrongdoing and maladministration in the public sector. Under section 42 of the PID Act, Wollongong City Council is required to have in place a policy and procedures for receiving, assessing and dealing with public interest disclosures (PIDs).

23 Review

This Management policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

APPROVAL AND REVIEW	
Responsible Division	Governance and Customer Service
Date adopted by Council	[To be inserted by Corporate Governance]
Date/s of previous adoptions	18/11/2019, 08/05/2017, 30/03/2015, 22/07/2013, 12/03/2012, 10/10/2011, 25/08/2008
Date of next review	[Not more than two years from last adoption]

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APPENDIX A – FULL LISTING OF COUNCIL STAFF POSITIONS IDENTIFIED AS DISCLOSURE OFFICERS

NOTE: This list is only published in the internal version of the policy and is not published externally.